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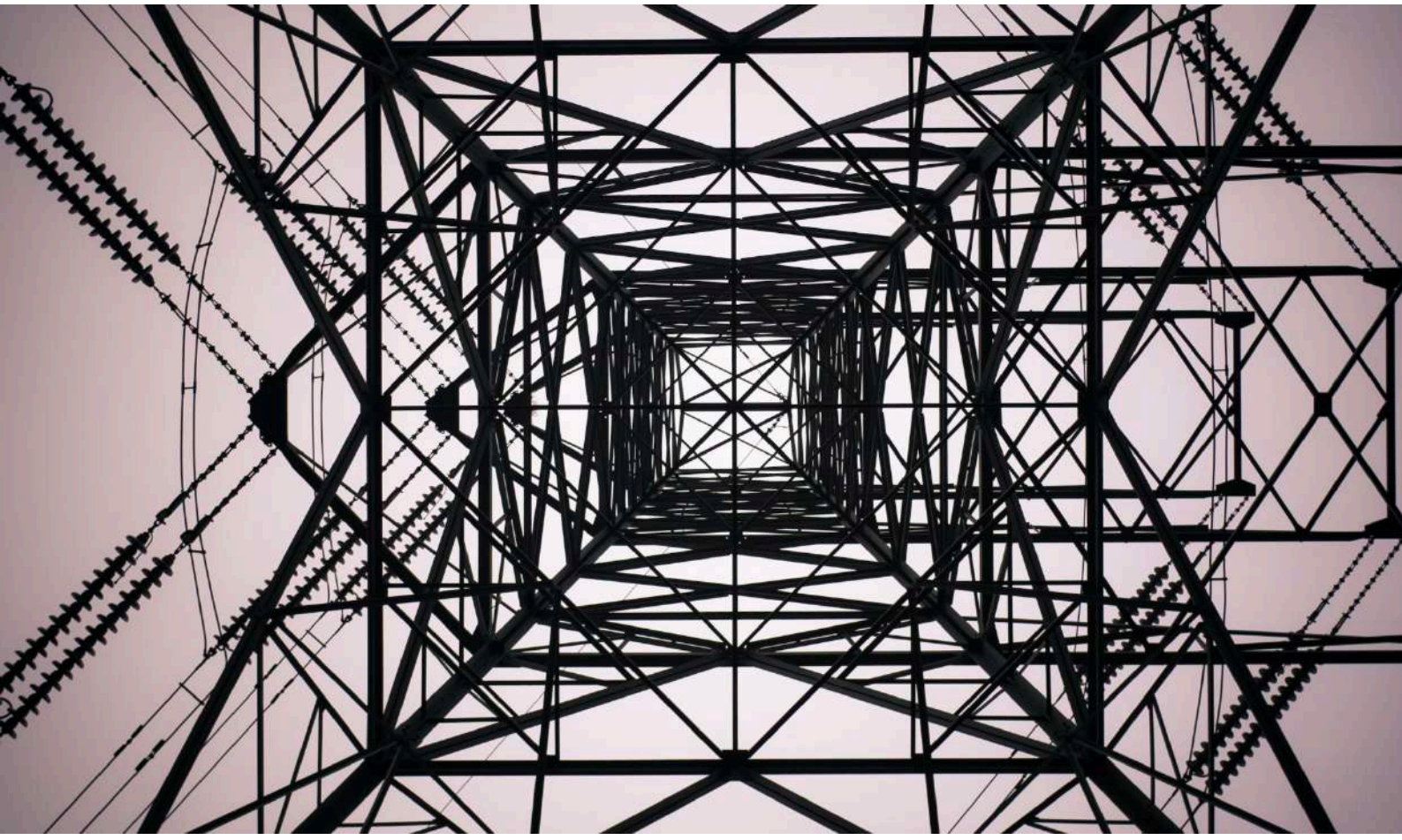

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A Literature Review of Public Investment Capital sManagement in Infrastructure Construction

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Abstract
The article conducts a literature review on the topic of public investment capital management in economic infrastructure construction. Using the bibliometrics method, the author has compiled and analyzed 383 studies to get an overall picture of this topic. Conclusions are drawn based on the following criteria: keywords, author, country, journal, and citations; The results obtained from the literature review show that this is a topic receiving great attention among researchers and retaining. There are two new research trends that the author noticed. First, to delve into theoretical research on public investment capital management, thereby making policy recommendations for governments. Second, to research the management of public investment capital in large projects in specific countries, thereby providing approval, implementation and strict control of public investment capital.

Keywords: Public Investment Capital, Infrastructure Construction, Bibliometrics

1. Introduction

Public investment has been studied quite a lot and is relatively comprehensive in the world on a theoretical basis (Arrow and Kurz, 1970) and empirically (Aschauer, 1989). Economists studying public investment during this period mainly focused on the closed economy, using the Ramsey model and AK's endogenous growth model (Futagami, 1993; Baxter and King, 1993; Glomm and Ravikumar, 1994; Fisher and Turnovsky, 1998).

In the following stage, public relations research developed in small open economies (Turnovsky, 1998). Resources for the Pope in developing countries are funded by bilateral and multilateral foreign loans; or through unilateral capital transfer. Foreign aid is seen as a financing tool for public infrastructure investment and its importance has increased during the expansion process. The link between foreign aid, growth, and macroeconomic governance has been a source of intense economic and political debate since the post-World War II reconstruction of Europe under Marshall’s theory.

Research on the role of the Pope in socio-economic development by Edward Anderson and colleagues (2006 in "The role of public investment in poverty reduction: Theories, evidence and methods" poverty: Theory, evidence, and methods) or the study of the International Monetary Fund (IMF, 2015) "Making Public Investment more efficient". The research focuses on analysis and highlights the role of the Government in economic growth. growth and hunger eradication and poverty reduction. In particular, the study emphasizes that, regardless of political regime countries in the process of socio-economic development use state budget capital to spend part of their expenses. for the Prime Minister to build infrastructure, an area that requires a lot of capital, slow turnover, and low interest rates that other economic sectors do not want to invest in but plays a decisive role in creating the material and technical foundation of the country. At the same time, the research goes into in-depth analysis to prove that effective political mobilization creates a material foundation for socio-economic development, including the task of focusing on creating conditions for low-income groups. , difficult conditions can arise in the country's development. The study also provides an overview of several theories on the relationship between economics and social security, typically Kunet theory, as well as evidence and methods, thereby proposing ways to provide and better guide policymakers to use available techniques and information to set priorities for the Pope in the context of increasing pressure on this type of investment in developing countries. development in the process of realizing the millennium development goals.

Khan (1996) found the relative importance of public and private investment in promoting economic growth for a large group of developing countries. The study uses a data set of 95 developing countries in the period 1970 - 1990. The results of the study show that public and private investment have different impacts on economic growth, in which private investment has a greater impact on economic growth than public investment. Some other typical studies evaluating the impact of government spending and economic growth are Devarajan, Swaroop, and Zou (1996), Barro (1990), and Davoodi and Zou (1998). Among them: Barro's (1990) model evaluates the impact of general government spending on economic growth. The model of Devarajan, Swaroop, and Zou (1996) divides government spending into two spending components. The research model of Davoodi and Zou (1998) divides government spending into three levels: federal, state, and sub-state. The three authors use the Cobb-Douglas production function approach to evaluate the impact of investment factors on economic growth.

The literature review will provide an overall picture of the research situation related to public investment, especially in infrastructure construction, helping to make accurate judgments when embarking on research or making policy decisions in this area.

2. Methodology

2.1. Research process

This study followed the integrated systematic review approach developed by Hauser and colleagues (2006). Thereby providing standards for the system evaluation process based on three main steps including:

(1) Establish criteria for a selected study
(2) Conduct identification and selection of potential studies
(3) Classification of selected articles

This method is considered suitable to carry out the purpose of this research which is to focus on integration and convergence for the assessment of public investment capital management in economic infrastructure construction. The specific process described in Figure 1 includes the following steps: Data collection, data filtering, analysis, synthesis and discussion, and finally pointing out inherited values that can be applied to research. this study and gaps for future research.

2.2. Collect data

The systematic review approach selected keywords for the search including “Public Investment Management”, “Infrastructure” and “Economic Growth”, on the Web of Science data source. With this method, the subjectivity

of researchers in data collection is eliminated. The method proposed by Becheikh et al. (2006) considered only empirical articles that were published and published in academic journals; For this reason, non-experimental studies (internet sources...) were excluded from the review.

The first result for the literature search for the keywords “Public Investment Management” AND “Economic Growth” in the subject (title, abstract, and keywords), and “Public Investment” AND “Economic” AND “ Infrastructure" in the abstract, produced 554 corresponding results. The next step was to filter articles with the selected language being English, excluding conference articles, and book genres, yielding 485 results. The third step is to determine the article conditions suitable for the research from the title, to the summary and finally the entire text to best suit the topic of Public Investment Capital Management in Vietnam. economic infrastructure construction, the total number of articles finally selected was 383 (table 1).

The systematic review process for research will include the following stages:

1. Carry out analysis based on the criteria (research location, research method, classification of factors affecting public investment capital management, proposed policies) in the research.
2. Performing bibliometric analysis on selected articles will indicate the clusters of interest of authors and which clusters readers are interested in in the management of public investment capital in the construction of economic infrastructure of countries. countries and regions around the world.

Table 1: Search results on the selected database

Database	Web of Science
Keywords _	Public Investment Management; Economic Growth; Infrastructure
Search _	Topic (Title, Abstract, Keywords)
Document Type	Articles
Year of publication	1997 -2023
Language _	English
Research area	All
Web of Science Categories	All
Results _	383 articles

Source: Collected by the author

2.3. Bibliometric analysis

Bibliometric analysis methods use quantitative information from bibliographic databases (Web of Science) to identify influential previous articles. The bibliographic co-citation analysis method is based on citation data on the topic of public investment capital management in economic infrastructure construction to determine the structure of the theoretical foundations of the current literature.

Bibliometric data from the Web of Science for the 383 reviewed articles were published, and a co-citation analysis to reveal the theoretical underpinnings of research on investment capital management was performed. Co-citation is a measure of similarity between articles, authors, or journals (Zupic and Čater, 2014). In co-citation analysis, one counts the number of times two certain articles are cited in articles published later than the two cited articles above. The fact that the two articles are both cited by a newer article may indicate a certain quantitative relationship between the two previously published and co-cited articles. The higher the number of co-citations, the higher the relationship between the two articles (Cao Minh Kiem, 2009).

3. Discussion and results

3.1. Study country distribution analysis

Among the 383 selected articles, 80 countries conducted empirical research on the topic of public management in general and public management in investment in economic infrastructure construction in particular. Table 2

lists the 10 countries with the highest publication rates from 1977-2022. The country with the highest percentage of articles is the US with a total of 90 published publications and also achieved the highest total number of article citations with 1349 citations, however, the US only ranks fourth out of ten countries with a Citation rate of 14.99 citations per article. After the US, China is the second country in terms of the number of published research articles with a total of 45 articles, with a total of 397 citations, ranking sixth in the citation rate per article with 8.84 times. Ranked third is the UK with 43 articles related to public investment capital management, ranked second in total citations with 577 times, and is also the country with the second highest rate of links to articles from other countries. with 2112 links. Ranked fourth are Ukraine and South Africa with 15 published articles, however South Africa has a much higher citation rate with 271 citations compared to Ukraine with 32 citations. Since then, Ukraine has also been the country with the lowest citation rate per article with 2.13 citations per article on the topic of public investment capital management. Germany and Spain ranked fifth with 14 published articles. Spain is the country with the highest total number of citations with a total of 356 citations, and is also the country with the highest citation rate per article with 25.43 citations per article. Ranked sixth are Italy, Japan, and Poland with a total of 14 published articles. Spain has the lowest number of citations with 47 citations. In particular, Italy and Japan simultaneously achieved 83 citations out of a total of 12 articles, reaching 6.92 citations per article.

Table 1: 10 countries with the highest publication rates

Research position	Quantity	Number of citations	TC/Art	Total Link Strengths (TTL)
America	90	1349	14.99	3108
China	45	398	8.84	1647
Older brother	43	577	13.42	2112
Ukraine	15	32	2.13	268
South Africa	15	271	18.07	802
Virtue	14	251	17.93	758
Spain	14	356	25.43	856
IDEA	twelfth	83	6.92	610
Japan	twelfth	83	6.92	531
Poland	twelfth	35	2.92	716

Source: Author's analysis of WOS data

A co-citation cluster map was created to drill down further into the country analysis and any connections between them (Figure 1). The frequency of occurrence of representative phrases for each country determines the formation of clusters; The more frequently terms tend to appear together, the more they are colored into clusters. The size of the circles represents the number of products a country has produced, but the width of the lines indicates the level of cooperation. VOSviewer map of cross-national research collaboration between countries identifies six clusters with minimum contributions from 28 countries that have published at least five articles out of 80 countries that have published at least one article. Among them, the strongest research cooperation is between the US and the UK, with a connection strength of 874 and forming the thickest link. The second strongest link is between the US and China with a link strength of 693, demonstrating the level of strong state management interest of the US and China in investment capital management. private public. Figure 1 also shows that the countries with the earliest research on the issue of public investment capital management are Greece, the Netherlands, and Canada, with research related to the field decades ago. Recent countries with research trends are Ukraine, Poland, Türkiye, and Vietnam.

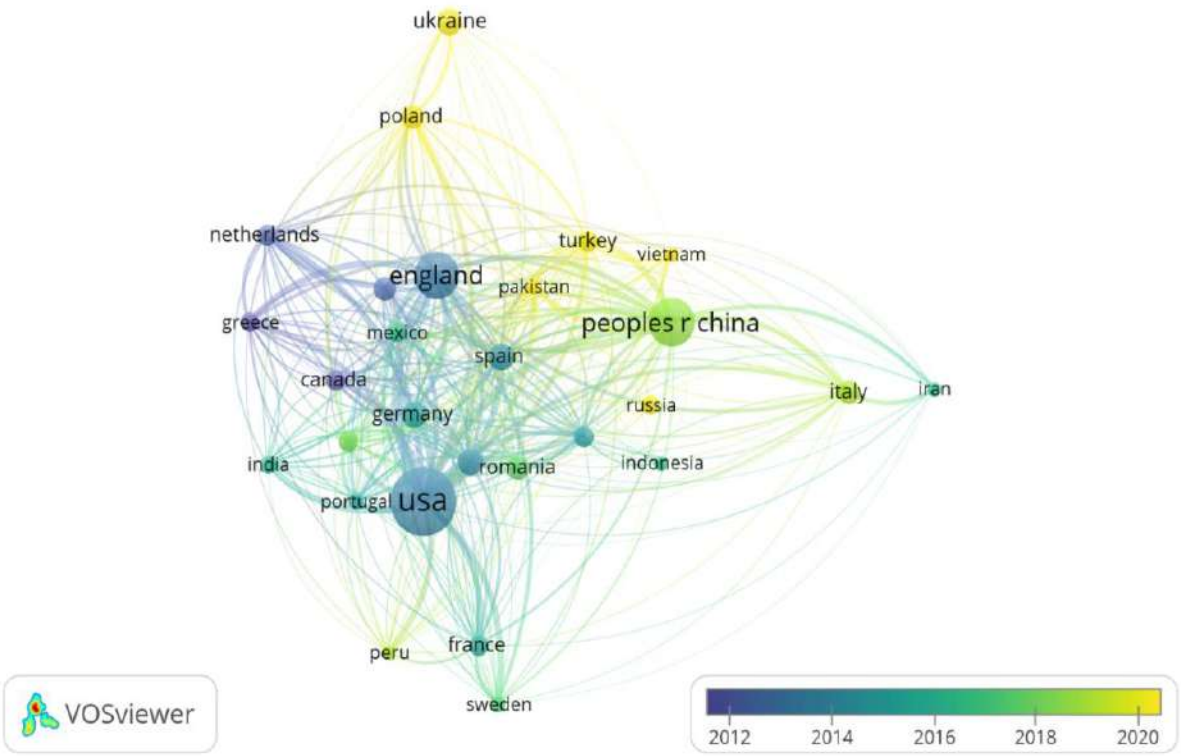

Figure 1: Visualization of country distribution

3.2. Analysis of research organization distribution

After studying the list of countries with the highest number of articles published, organizations and schools from those countries also appear prominently in the rankings of organizations published on the Web database. of Science. According to Table 3, the eight leading establishments have contributed 12% of the total 383 organizations listed in the management of public investment capital in economic infrastructure construction. The *World Bank* ranked first with a total of 11 published articles related to public investment management, with a total number of citations reaching 261 times, reaching an average of 23.72 citations per article. Ranked second is *Oxford University*, with a total of 9 articles published, with a total of 120 citations. Ranked third are *the International Monetary Fund* and *the International Food Policy Research Institute* with 5 articles published each, of which *the International Monetary Fund - IMF* has a higher citation rate per article with 25 citations per article. In fourth place are four institutions including *the University of Cape Town; the University of Barcelona; the Inter-American Development Bank and Kiev National University,* which the University of Cape Town - one of the leading universities in South Africa achieved the highest citation rate per article with 40 citations for each article in public investment management topic.

Table 2*:* Institutions with the highest number of published articles

No	Organize _		Quantity _	Quote _	TC/Art
	English _	Vietnamese _			
first	World Bank	World Bank	11	261	23.73
2	University of Oxford	Oxford University	9	120	13.33
3	International Monetary Fund (IMF)	International Monetary Fund	5	126	25,20
4	The International Food Policy Research Institute (IFPRI)	International Food Policy Research Institute	5	45	9.00
5	University of Cape Town	University of Cape Town	4	160	40.00
6	University of Barcelona	University of Barcelona	4	128	32.00
7	Inter-American Development Bank	Inter-American Development Bank	4	79	19.75
8	Kyiv National University of Trade and Economics	Kyiv National University	4	22	5.50

Source: Author's analysis of WOS data

3.3. Analysis of the distribution of leading publishing journals

In the research field of public investment capital management, we collected 9 journals with the highest number of published articles out of 383 articles collected. From Table 4, we can see that *Sustainability magazine* is the leading journal with a total of 18 related articles out of 383 articles, with a total of 151 citations. Jointly ranked 2nd are *Applied Economics* and *Financial And Credit Activity Problems Of Theory And Practice magazines,* however, *Applied Economics magazine* has significantly higher citations with a total of 147 citations. Ranked fourth is *the Journal Of Infrastructure Policy And Development magazine* with a total of 7 articles published continuously from 2018-2022. Ranked 5th are three magazines: *Economic Modeling*; *Economic Research Ekonomska Istrazivanja* and *World Development* with 5 articles published each. Finally, there are the journals *Fiscal Studies* and *Land Use Policy* with 4 articles with 73 and 115 citations respectively for each journal. In particular, these two magazines both have a high impact index of over 7 points.

Table 3: Magazines lead the way

No	**Magazine**	**Quantity**	**Quote**	**TC/Art**	**Impact Factors**
first	Sustainability	18	151	8.39	4.39
2	Applied Economics	8	147	18.38	2.51
3	Financial And Credit Activity Problems Of Theory And Practice	8	2	0.25	0.33
4	Journal Of Infrastructure Policy And Development	7	20	2.86	0.76
5	Economic Modeling	5	65	13.00	5.17
6	Economic Research Ekonomska Istrazivanja	5	29	5.80	3.08
7	World Development	5	165	33.00	2.32
8	Fiscal Studies	4	seventy-three	18.25	7.44
9	Land Use Policy	4	115	28.75	7.38

Source: Author's analysis of WOS data

3.4. Distribution of leading research

To fully understand research on public investment management issues around the world, an analysis of the distribution of the most cited articles was used. There are only 10 most cited articles out of 383 selected articles (table 5). Through the table, we can see that most of these articles focus on analyzing the process of steps in public investment capital management as well as limitations in the process, the studies also point out investment capital management. The public-private sector is effective in building economic infrastructure and has a positive impact on regional and national economic growth, through which the authors also provide relevant recommendations and policies. Focus on topics including:

Table 4: Top 10 studies with the highest citations

Author	Title	Quote	Method	Policy
Joseph Berechman et al (2006)	Empirical analysis of transportation investment and economic development at state, county, and municipal levels	105	Experiment	The study used econometric models for states, counties, and municipalities from 1990-2000. The results show that public investment in transportation models has strong spillover effects in both space and time. At the same time, in the study, the author also pointed out the positive correlation between transportation infrastructure investment and economic development.
JW Fedderke (2006)	Infrastructural investment in long-run economic growth: South Africa 1875-2001	ninety-four	Experiment	Research has shown that investment in infrastructure leads to economic growth in South Africa both directly and indirectly (the latter by increasing the marginal productivity of capital).
Zac Mills (2011)	Investing in public investment: an index of public investment efficiency	eighty-six	Experiment	The study introduces a new index that reflects the fundamental institutional environment for public investment management through four different stages: project appraisal, selection, implementation, and evaluation. Covering 71 countries, including 40 low-income countries, the index allows for comparisons across regions and country groups, as well as nuanced policy-related analysis and identification of areas of concern. specifically where reform efforts can be prioritized.
Pravakar Sahoo et al (2009)	Infrastructure development and economic growth in India	84	Experiment	The study investigates the role of infrastructure in economic growth in India during the period 1970–2006. The results show that infrastructure, labor force, and total public investment play an important role in economic growth in India. Additionally, the study also found that infrastructure development in India has a significantly positive contribution to growth compared to both private and public investments. Furthermore, causality analysis shows that there is a unidirectional causality from infrastructure development to output growth. From a policy perspective, more emphasis should be placed on public investment management to help develop infrastructure to maintain high economic growth in India.

Santanu Chatterjee (2000) et al	Unilateral capital transfers, public investment, and economic growth	71	Experiment	The study analyzes the impact of permanent and temporary bonded capital transfers on growth and macroeconomic efficiency for small economies. Thereby, the study clearly shows the contrast between traditional pure capital transfers and transfers associated with investment in public infrastructure. In particular, traditional pure transfer has no growth effect or dynamism. It varies with the size of the government as stock values and interests force dynamic adjustments. Constrained capital transfers themselves generate dynamic adjustments as public capital is accumulated in the recipient economy. This positively affects long-term growth and brings benefits, but it also depends on the initial scale of infrastructure in the economy. While purely temporary capital transfers have only a modest impact on short-term growth and lead to a permanent decline in the current account, conditional capital transfers have a significant impact on short-term growth, leading to permanent improvements in the levels of key economic variables including welfare and the current account.
Rosina Moreno and Enrique López-Bazo (2007)	Returns to local and transport infrastructure under regional spillovers	68	Experiment	The results of the study show that for the Spanish provinces, the profits from local infrastructure are much larger than the profits from transportation. At the same time, the authors point out that local infrastructure enhances economic activity in the region where it is located, while transportation and communications infrastructure can create both regional benefits, where they are located, and have positive or negative spillover effects on other areas.
Breunig, C; and Busemeyer, M.R. (2011)	Fiscal austerity and the trade-off between public investment and social spending	sixty-seven	Experiment	The study draws two conclusions: first, tight fiscal policy differs between different types of public spending. Specifically, the study shows that discretionary spending on public investment is more severely affected by tight fiscal policy than entitlement spending (public spending on pensions and unemployment) due to different institutional and political arrangements. Second, research shows that electoral institutions influence how governments resolve these trade-offs. Discretionary spending cuts are more severe in countries with electoral systems based on proportional representation than in a majoritarian system.
Pujadas, P; Pardo-Bosch et al (2017)	MIVES multi-criteria approach for the evaluation, prioritization, and selection of public investment projects. A case study in the city of Barcelona	58	Experiment	The study used multiple methods to evaluate heterogeneous public investments. The MIVES method combines multi-criteria decision-making (MCDM) and multi-attribute utility theory (MAUT), incorporating the concept of value function (VF) and weight assignment through an analytical hierarchy process (AHP). These coefficients measure society's investment needs in each public project by considering the project's contribution to regional balance, investment scope, and assessment of the current status and values of the city. town. The MIVES multi-

				criteria framework is then used to evaluate the contribution of each investment to sustainable development.
Cavallo, E; Daude, C (2011)	Public investment in developing countries: A blessing or a curse?	55	Experiment	The author pointed out 3 bright spots in the research results. First, on average, public investment has the opposite impact on private investment. Second, the results of public investment in developing countries are reversed in countries with good institutions, openness to trade, financial commerce, and financial flows. Third, public policy should focus on the quality of public investment and investment selection, evaluation, and monitoring, rather than just quantitative targets.
Lall, SV (2006)	Infrastructure and regional growth, growth dynamics and policy relevance for India	54	Experiment	Research has shown that spending on transport and communications infrastructure is an important determinant of regional growth and that the positive benefits that accrue from these expenditures do not come solely from the investment of individual countries, but also from positive externalities from the network spending of neighboring countries. Finally, out-of-sample simulated regional growth projections reveal differences in private capital formation between less developed and developed countries.

3.5. Analysis of the distribution of leading authors

Regarding author analysis, 930 authors contributed to 383 documents selected for evaluation. According to Table 6, author *Ari I* is the author with the highest number of published articles with seven articles related to public investment management, and he is also the leading author of more than 16 related articles. to fields such as economics, society, and public management with an h-Index of 7 points. Among the 930 authors, there are 29 authors with at least 2 published articles related to public investment management, however, the table below only mentions the 9 authors with the highest number of article citations. Leading the way is *Dabla-Norris, era* with the outstanding research " *Investing in Public Investment: An Index of Public Investment Efficiency*" - Investment in Public Investment: indicators to Evaluate Public Investment Efficiency with 86 citations and Research " *The Quality of Public Investment* " - Quality of public investment with 16 citations. Next is the author from Taiwan, *Yang, shu-chun* with a total of 68 citations, and is a prominent author with more than 20 studies on public debt, and fiscal and monetary policies including the US and developing countries. Author *Lall, some v* has the highest h-Index with 15 points and owns nearly 40 publications with main topics such as public policy effectiveness, and infrastructure growth associated with economic growth. The remaining six authors are *Ali, Minhaj; Psycharis, Yannis; Haughwout, af; Schweickert, Raine; Barseghyan, Levon, and Onafowora, olugbenga* have 54 extractions respectively; 48; 27; 25; 19; 18 out of total published articles.

Table 5: Top 10 international authors with the highest number of articles

Author	Quantity	Number of citations	Total link strength	H -Index
Ari I	3	34	378	7
Dabla-Norris, era	2	102	sixty-seven	9
Yang, shu-chun s.	2	68	218	twelfth
Lall, somik v.	2	58	41	15
Ali, Minhaj	2	54	226	twelfth

Psycharis, Yannis	2	48	81	twelfth
Haughwout, af	2	27	37	7
Schweickert, Raine	2	25	186	9
Barseghyan, levon	2	19	7	ten
Onafowora, olugbenga	2	18	164	8

Source: Author's analysis of WOS data

3.6. Analyze keyword trends

Co-word analysis of keywords appearing in each article allows authors to identify research trends or prominent topics in each field. The keywords used by the study's authors provide information about the most important research topics (NJ Van Eck & Waltman, 2014). Therefore, the present study examines the co-occurrence of keywords, which may originate from the title, abstract, or author. VOSviewer checked a total of 1595 keywords appearing at least once and also pointed out the 20 most appearing keywords (≥ 5 times) listed in Table 7. Through the table, we can see that the six main keywords in the study include "Infrastructure" appearing the most 65 times, "Growth" appearing 61 times, the keyword "Economic Growth" appearing 60 times and the keywords "Public Investment" and "Investment" co-appear 50 times.

Table 7: Keywords with the highest frequency

No	Keywords	Keyword	In turn	TLS	No	Keywords	Keyword	In turn	TLS
first	Infrastructure		65	509	11	Performance		24	228
2	Growth		sixty-one	511	twelfth	Expenditure		21	195
3	Economic Growth		60	611	13	Private investment		19	162
4	Public Investment		50	421	14	Public infrastructure		19	143
5	Investment		50	421	15	Management		17	140
6	Productivity		36	288	16	Public Debt		17	128
7	Impact		thirty-first	298	17	China		15	131
8	Policy		27	239	18	Africa		15	125
9	Model		26	231	19	Fiscal Policy		26	159
ten	Cointegration		25	228	20	Trade		twelfth	96

Source: Author's analysis of WOS data

Table 8 presents a comprehensive summary of the concept network by identifying five distinct clusters, each represented by a term and a corresponding number of keywords, characterized by a set of nodes and links.

Table 8: Clusters are identified in the keyword network

No	Name of cluster	Vietnamese name	Number of keywords	Featured keywords related to the cluster	
				English	Vietnamese
first	Growth	Growth	22	Economy; Economic development; Finance; Innovation; Impacts; Infrastructure investment; Management; Decision Making; Poverty reduction; Public investments; Sustainability; Sustainable development; Africa; China; Uganda	Economy; Economic development; Finance; Innovation; Impact; Infrastructure investment; Manage ; Decision; Hunger eradication and poverty reduction; Government's Invest; Sustainability; Sustainable development ; Africa; China; Uganda
2	Impact	Affect	21	Challenges; Corruption; Determinants; FDI; Governance; Infrastructure development; Transport Infrastructure; State; Policy; Politics; Public Debt' Public Finance; State	Challenge; Corruption; Determining factors; FDI; Administration; Infrastructure development; Transportation infrastructure; Status; Policy; Politics; Public debt; Public finance;
3	Cointegration	Co-linkage	17	Private investment; Consumption; Demand; Crowding out; Economic Growth; Financial Development; Projects; Empirical evidence; India; Pakistan	Private investment; Consumption; Demand; Overwhelms; Economic growth; Financial development; Project; Empirical evidence; India; Pakistan
4	Public Infrastructure	The infrastructure	14	Infrastructure; Poverty; Costs Productivity; Public expenditure; Returns; Roads; Trade; Spillovers	The infrastructure; Poor; Productivity Cost; Public expenditure; Turn around; Traffic road; Commerce ; Spillover impact
5	Investment	Invest	9	Construction; Expenditure; Investments; Performance; Public sector; Quality; Output; Productivity Growth; Public infrastructure	Construction; Expense; Invest; Efficiency; Public area; Quality ; Output; Increase productivity; Public infrastructure;
6	Fiscal Policy	Fiscal policy	6	Debt; Government; Model; Public Investment	In debt; Government; Model; Government's Invest

Source: Author's analysis of WOS data

Cluster 1 – Growth: The ability to grow is associated with the effectiveness of public investment capital management in building economic infrastructure. The first cluster includes the 22 most pervasive keywords. In which the keyword "Growth" *appears* on 61 out of 383 articles and the total link power is 235 to other keywords on the map cluster. This is strong evidence of the relationship of public investment management to the effectiveness of the region's economic infrastructure as well as the indirect growth potential for the local economy. point for infrastructure investment. It is expressed by keywords such as " *Economy"; "Economic development"; "Finance"; "Innovation"; "Impact"; "Infrastructure investment;" "Management"; "Decision* "; Besides the issue of growth, sustainable growth is also a keyword mentioned a lot in the cluster, through keywords such as " *Sustainability"; "Sustainable development* " each word appeared more than 10 times in a total of 383 selected articles. This shows the level of concern of the authors for maintaining sustainable growth

for the countries and regions studied. Besides, three countries appearing in this growth cluster including China; South Africa, and Uganda are typical examples of the level of government attention to public investment management in economic infrastructure construction.

Cluster 2 – Impact: Impact of policies on public investment capital management in economic infrastructure construction. The second prominent cluster is represented by 21 keywords. The map of this cluster has a close connection with state policies, existing challenges, and impact factors, thereby analyzing the influence of policies on investment capital management issues. The public sector still has many shortcomings, in the typical keyword that appears in those challenges is *Corruption*. Reality also shows that the work of preventing and fighting against corrupt practices in the management, allocation, and use of investment capital originating from the state budget has not had many positive changes, still, many shortcomings are leading to low efficiency of public investment management. Besides, policies are also mentioned quite a lot with keywords such as Public Debt, Public Finance; Policy; The State and Government aim to emphasize the role of state policies on public capital management. Author Kyunghoon Kim (2021) analyzed the performance and appropriateness of the Indonesian government's institutional reforms to stimulate economic infrastructure construction after the 1997 Asian economic crisis. In addition to the results achieved in improving the efficiency of public investment capital management as well as attracting private investment, the author emphasized that incomplete institutional reform is the cause of infrastructure construction. slow growth in Indonesia, and the author also argues that group interests as well as passive development policies lead to conflicts between the state and businesses and the loss of public investment capital is the main cause of the slow growth in Indonesia. poor performance of infrastructure construction investment.

Cluster 3 – Cointegration: Balanced cointegration between Public Investment and Private Investment. With 17 keywords, cluster 3 refers to issues of balance between public and private investment. With typical keywords such as “Private investment”; "Consumption"; "Demand"; "Economic growth"; “Financial development”; "Project". It refers to countries with an imbalance between public and private investment such as India and Pakistan. As the authors Easterly and Rebelo (1993), and Everhart and Sumlinski (2000) have confirmed the hypothesis of crowding out of private investment by public investment in general. In addition, author To Trung Thanh (2012) commented on the market between public investment and private investment in the Vietnamese market: on average, after a decade, 1% of initial public investment capital increases. will cause private investment to shrink by 0.48%. At the same time, the impact on GDP of public investment is low compared to the impact of private investment. Author Nguyen Thi Canh (2018) also mentioned that public investment in Vietnam has an impact on economic growth according to an inverted U-shaped model like that of Barro (1990), with the positive impact mainly appearing since 2018. Monday. Meanwhile, investment from the private sector, state-owned enterprises, and FDI has a positive impact on short-term economic growth. Besides, the author also emphasizes the phenomenon of public investment overwhelming private investment in the short term. However, Ramirez and Nazmi (2003) and Argimón et al. (1997) also argue that public investment can stimulate private investment when the government invests specifically in infrastructure for this economy, such as building new highways or increasing electricity production by building new power plants. Therefore, the best measure is to balance public investment and private investment to avoid an increase in government spending financed by public debt that could negatively impact private sector investment. private investment, as well as promoting private investment in the economic structure as a key to long-term growth.

Cluster 4 – Public Infrastructure: Current status of public infrastructure. Includes 14 keywords representing the current state of public infrastructure investment in public investment management. Among them, the keyword " *Productivity* " stands out, appearing 36 times, and is also the keyword with the strongest influence and link level in the cluster with a total link power of 165 times. Shows the authors' great concern about the issue of productivity and efficiency of public investment management with the current state of public infrastructure. Along with that, author Hiroaki Miyamoto (2020) also emphasizes that not all new physical infrastructure has the same productive impact on the economy. Even where physical infrastructure is accumulated, its productivity can be eroded by poor project selection, and if the infrastructure created contributes little to growth. Therefore, there must be a good public infrastructure investment management mechanism that can lead to better infrastructure quality, with more beneficial impacts in the long term.

Cluster 5 – Investment: Effectiveness of investment policies. With 9 keywords focusing on efficiency issues in the investment management process of projects with typical keywords such as "Construction"; "Overwhelms"; "Expense"; "Invest"; "Efficiency"; "Public area"; "Quality". In particular, the keyword "Performance" appears 24 times, emphasizing the issue of management quality of projects as well as the effectiveness of invested and built infrastructure projects. As author Arnt O. Hopland (2023), mentioned, the role of public facilities in providing public services is very important. At the same time, the author also emphasizes that the current empirical literature lacks assessments related to the condition of public facilities and their impact on public services.

Cluster 6 - Fiscal Policy: Fiscal policy. The final keyword phrase includes 9 keywords, referring to the importance of public spending as a tool in the fiscal policy of running an economy. In particular, the key phrase Fiscal Policy was mentioned 26 times, demonstrating the importance of timely policy measures from the government to deal with rising unemployment and property damage as a means to stimulate recovery. the economy after the Covid 19 pandemic (Craig Langston, 2022). Keeping people employed through nation-building projects especially related to transport infrastructure and supply chains is a key objective and has the potential to provide assets to support capacity. long-term production. However, the author also emphasizes the importance of the quality of public infrastructure being appropriate for projects to progress, and the government must put in place policies to manage the realization of long-term benefits and Important resources are not wasted through potential future liabilities. In addition, author Makohon, V (2021), also emphasizes the development of regulations on the institutional basis for fiscal policy planning based on the need to regulate the budget by the development conditions of the country. Priority directions of budget policy in the context of economic transformation are identified, specifically strengthening the investment and innovation budget component, improving the structure of tax revenues, maintaining the level of safety of public debt and budget deficit as well as improving the quality of public investment management.

4. Conclusion

This study has reviewed the literature on the topic of public investment capital management in economic infrastructure construction based on the os database - a reliable basis in research. The results obtained from the literature review show that this is a topic receiving great attention among researchers and policymakers. There are two new research trends that the author noticed, one is to delve into theoretical research on public investment capital management, thereby making policy recommendations for governments; and the second is to research the management of public investment capital in large projects in specific countries, thereby providing approval, implementation and strict control of public investment capital.

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Ecocriticism in Bangladesh: Reading Environmental Concerns in Selina Hossain's Short Stories

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Abstract
Having a historical legacy of the relationship between culture and nature, literature in Bangladesh has always incorporated ecological concerns. The study aims to explore the cultural attitude towards nature and environment in Bangladeshi short stories. It is observed that literature explicitly and implicitly aims to define and impart values with profound ecological implications. Hence, it has become an urgent matter these days to address the environmental concerns that have also seen to be impeding or challenging the aesthetic sensibilities. However, this study explores how environmental disasters in Bangladeshi short stories highlighting both life and fiction explicitly ties the representation to global reality. For the purpose of research, the study intends to analyse Selina Hossain's short stories that talk about the inseparable relation between human and nature. However, the narrative in the selected short stories allows for a literary exploration of the relationship between Bangladeshi people and the natural resources available to them. The depiction in the text raises and addresses questions, which should be at the heart of the critical meta-discourse environment studies. This paper analyses ecocriticism in "Death", "Khoai Nodir Baak Bodol", and "Longor Khana" authored by Selina Hossain.

Keywords: Environmental Degradation, Ecocriticism, Human Exploitation, Social Injustice, Bangladesh

1. Introduction

Just after the independence acquired, the newly born Bangladesh faced many nature-induced and human created problems. The people were striking with political and social uncertainties as the country was grappling with the national problems. In post-independent Bangladesh, environmental damage, along with other social changes, is nowadays a burning issue which consequently makes the climate change inevitable. Moreover, Bangladesh, being occupied by the huge Ganges-Brahmaputra Delta, is most vulnerable to climate crisis. Because of its having tropical climate, it faces hot temperatures throughout the year. The climate characteristically involves frequent floods, storm surges, tropical cyclones, tidal bores and tornadoes. Having various altitudinal length, Bangladesh is susceptive to rising sea levels due to global warming, presupposing the low-lying lands will get submerged first. As a result, Bangladesh in the recent past, has experienced two severe cyclonic storms, respectively Sidr (2007) and Aila (2009) that have caused extensive damage to the lives of the people and their shelters. The detrimental effect of these storms continued with post-disaster diseases as well.

Aila, a severe cyclonic storm battered the coastal areas of Bangladesh, particularly Satkhira and Khulna, inflicting huge tidal surges and flooding in 2009. More than a million people lost their homes and had to migrate from their regions. Thousands of houses, livestock and other properties in coastal areas of Bangladesh were swept away, people migrated towards northern and hilly regions. While reporting some background of the top cyclones since 1960, Dr. Md. Rashed Chowdhury in an article titled "Cyclone Aila and climate change" published in *The Daily Star* in 2009 points out:

> May 25, 2009: Tropical Cyclone Aila hit Bangladesh. This is the time when the equatorial Pacific Ocean is expected to be transitioned from La Niña to ENSO-neutral conditions, ending the 2008-09 La Niña. However, the equatorial Pacific has been found to be warmed (i.e., El Niño like event) to the positive half of the neutral range, after weak La Nina conditions ended early last month. While most of the dynamic and statistical models forecast that during the May-July season there is an approximately 75% probability of maintaining ENSO-neutral conditions, some model forecasts stated that the probability for El Niño conditions rises to 45% (*The Daily Star* 2009).

These investigations show how these violent storms intensify the threats of cyclone in Bangladesh as a result of global climate change. Aila ripped through the Satkhira district near the port of Mongla, and flooded many areas still recovering from Cyclone Sidr in November 2007 which had an immense toll on human lives and subsistence. This devastating cyclone killed "3,500 people and made at least a million homeless" (*Reuters*). Moreover, the surge subsequently, resulted in migration at a grand scale and landlessness.

Hossain, with a view to bringing ecological education and awareness, narrates the life of such affected people as a central tenet of action on climate change in Bangladesh. She appeals to the reader to be attentive to historical and contemporary attitudes to nature and areas, such as; Satkhira, Khulna, Patuakhali, Mongla etc., little known outside this country. The people, here have diminishing strength to encounter calamities combined with their lack of ecological knowledge and awareness culminate in the massive rate of destruction. Her impassioned critique reinforces the places in the narratives as regions where nature shows its violent face. However, remaining still ignorant amounts to the serious denigration of ecological knowledge and awareness, and thus, contributes to multiplying the miseries of the people. The topography of the place comes to be emblematic of the tenuousness of human categories of meaning, especially in relation to the bond between human and nature.

The efforts taken by the Government along with the development partners and NGOs to implement early warning systems, cyclone shelters and relief allocation systems, remain insufficient. But, the scientists and intellectuals are concerned about the permanent measures taken to prevent these phenomenal disasters and eventually protect the earth and humankind. Climate crisis caused by increasing concentrations of greenhouse gasses and human-caused emissions leading subsequently to these severe cyclonic storms. Measures adopted in the time of these havoc alone will fail the long-term idea of sustainability. Public awareness needs to be accelerated as well since the development paradigm of a country incorporates how development should be carried out properly. However, literature as a field of study encompasses discussion on human beings and non-human environment. Pranoto (2014) claims that "green literature has several criteria. These criteria also emphasize that green literature has a vision and mission of awareness and enlightenment that is expected to change the lifestyle of the destroyer to become the nurturer and nurse of the earth" (cited in Budi Arianto, Suminto, and Anwar, 1269).

The purpose of literature is to appeal to human's finer instincts. It involves discussion and thus draws attention to various socio-human issues, one of which is prominent nowadays is environment. In the name of ecocriticism, it views and delineates the rich array of fictional and non-fictional wittings focusing humans' changing relationship to the natural world. It validates its existence and the growing need of this kind of study in literature. Literary texts help in enriching and transforming our knowledge about the current situation of climate change. In so doing, they exemplify the contribution literature can make to the theoretical project of environmental studies. The physicality of different environmental manifestations and their textual representations evoke a conceptual account of places and lives. However, critics have defined ecocriticism in various ways. A few of them relevant to this study is discussed. According to Glotfelty (1996), "ecocriticism is the study of the relationship between literature and the physical environment" (xix). Commenting on the importance of attachment to place in the life and unity of a community, Buell, in his *The Future of Environment Criticism* (2005) says, "Ecocriticism,

however, has tended to favor literary texts oriented toward comparatively local or regional levels of place attachment" (68). The scholars are relentlessly trying to draw our attention to the imminent threat to the natural space. In an essay in *The Ecocriticism Reader* (1996), Glen A. Love claims "The most important function of literature today is to redirect human consciousness to a full consideration of its place in a threatened natural world" (237). Kevin Hutchings (2007) illumines the definition in this manner:

> One of ecocriticism's basic premises is that literature both reflects and hekps to shape human responses to the natural environment. By studying the representation of the physical world in literary texts and in the social contexts of their production, ecocriticism attempts to account for attitudes and practices that have contributed to modern-day ecological problems, while at the same time investigating alternative modes of thought and behaviour, including sustainable practices that would respect the perceived rights or values associated with non-human creatures and ecological processes" (172).

However, all these definitions focus on the environmental issues and concerns, ecological awareness to save humankind and the earth. This study highlights how environmental issues are reflected in Bangladeshi fiction and how its implications are filled with ecological awareness.

There have been some emerging writers and scholars who have started incorporating eco-consciousness in their writings in independent Bangladesh. Among them, Syed Manzoorul Islam's novel *Shakuner Dana* (2013), Rafiq Azad's poem "Pardon me O Blowing Generous Infinite Wind", Fakrul Alam's essay "Rabindranath Tagore and Eco-Consciousness" (2012), Ahsanul Kabir's essay "Nature and the Imagery of Bird in the Works of Jibanananand Das" are some notable works. Selina Hossain, being the President of Tarupallab, an organization for promoting knowledge of tress, bears the legacy of an environmentalist. Moreover, the publication of her *Galpashamagro (Collected Short Stories)* in 2010 is typically regarded as a starting point for raising public awareness of environmental crises in post-independent Bangladesh. Even long before that, the dangers of global warming, the destruction of the rainforest and air pollution have reached a certain consensus not only in Bangladesh but around the world. While keeping in mind the extremity of environmental danger and the dire necessity of awareness of environmental crises in the earth, she strongly believes that South Asian writers should include rapidly changing environment through their works and the glaring injustice that has been given by developed countries to developing countries in matters of climate change. In "Death", the creation of the protagonist, Jabbar who loses his home and entire family to the fury of cyclone Aila, is an attempt to raise awareness of environmental crises. This is further reinstated in Hossain's remark as she says in her talk to *The Daily Star* in 2010 tilted An Author's Environmental Concerns, "The writers will have to speak in the language of the heart of the people who are victims of climate change, their pain, and their protest and resistance so that there is a universal appeal" (Pallab Bhattacharya, *The Daily Star*). She reaches the height of an activist because of this universalism in her short story "Death", in which the presentiment of the story does not confine it in a setting of Bangladeshi village, rather places it in any cyclone-ravaged corner of the world. Hence, Jabbar's predicament becomes the predicament of any victim of environmental disaster.

This paper examines how profoundly Hossain's writings about the riverine local people and the monumental effect of climate crisis will shape the view of contemporary Bangladeshi fiction. Hossain expresses direct and explicit ideas about the havoc wreaked on human's social and psychological being, and the need for human to stand up for the environment because the threat is impending on us at an alarming speed. This paper addresses how environmental crisis is bringing change not only in the physical existence but also in the psychological entity as well. In all the stories to be discussed, Hossain is so deeply concerned and moved by the plight befalling on humans due to nature-induced disasters by global warming, she is charged to find a solution to save humankind from danger and the destruction of the ecosphere through her writings. Remaining persistent with this spirit, she not only visits the cyclone affected areas but also participates in disbursing relief to the survivors.

In an interview with *The Daily Star* in 2010, Hossain says, "Environment and literature are not two different things and environment could not be seen separately from state policy" (Pallab Bhattacharya, *The Daily Star*). The primordial stage where people had close connections with nature needs to be reestablished in the wake of ecological crisis. Hossain's holistic view on life enables us to reestablish our connection with nature, and raise awareness of the pollution of commercialized culture. Characters in the stories under discussion showcase the stark reality of the consumerist world and henceforth, implicates a possible suggestion to lead man out of the

endangered world, helping rebuild the harmonious relationship between humankind and nature. The famous ecocritic Lawrence Buell highlights the importance of an increasing amount of literature dealing with "compromised, endangered landscapes" and "marginalised, minority peoples and communities" everywhere (cited in Alam, 97).

2. Environment and Society

Industrial revolution has a profound impact on the bond between humankind and the natural world. Moreover, the society that has emerged as a repercussion of industrialisation has marginalized nature as well as human for fulfillment of their essentials. Over the years, as matter of fact, nature appears to have come in the way of progress. The focus, rather, has shifted to taming or civilizing nature. The time witnesses the exploitation of water, forests and other natural resources that consequently lead to their collapse. Eventually, it culminates into the subsequent exploitation of minorities such as indigenous people who have traditionally respected the natural world that sustain them. Bangladesh being a small but densely populated country has the worst effect of it. This condition is further reinforced in Nishita Ivy's article, as she quotes a report of the Department of Environment, Dhaka, Bangladesh in 2013, "The natural environment of Bangladesh has been under continuous pressure due to unplanned urbanization and industrialization" (11). Apparently, it looks like an advancement in the face of rapid commercial expansion, but Bangladeshi narratives have not yet entailed that much the havoc it caused on plants, trees, forests, birds, skies, rivers, canals etc.

Selina Hossain being one of the pioneering writers is prompted by the issues of environmental degradation and its effects on the lives of the riverine local people. She strongly recognizes the destructiveness of industrialization towards the natural environment and deals with the issues in her work. "Death", "Khoai Nodir Baak Bodol", and "Longor Khana" stand as her most explicit warning of an ecological crisis. She was the only writer to talk about climate change issues and how literature can bring it into sharper focus among the masses at a SAARC Literature Festival held a few years back at the India International Centre. Her concern with environment and the relationship between humankind and the natural world is best expressed as she said in an interview at *The Business Standard* in 2021,

> "With more time passing by, we have now forgotten that trees are our real guardians, ancient story-tellers, providers of food and, most importantly, providers of clean air. We need to leave this place pure enough for the next generation to breathe." (Kamrun Naher, *The Business Standard*).

Lawrence Buell et al., while talking about the implications of ecocriticism, argued in a paper titled "Literature and Environment", "…the arts of the imagination and the study thereof – by virtue of their grasp of the power of the word, story and image to reinforce, enliven, and direct environmental concern – can contribute significantly to the understanding of environmental problems: the multiple forms of ecodegradation that afflict planet Earth today" (418). Hossain with her skillful art and craft tries to raise our awareness of the urgency of the situation. The merging of fictional and factual histories and regions is important to decode the severity of the current situation of local residents. However, devastating environmental hazard created by the increasingly rising mills and factories depicted in "Longor Khana", exerts a powerful influence on their own lives and the communities, all of which depend on the physical environment and its bounty. Even when a voluntary organisation from a municipal area arrive to disburse relief to the Jute Mill workers who were living in a dilapidated condition after the mill gets shut without a prior notice, the local administrative people threaten the relief provider. The placement of toxic facilities in low-income communities where Nur Ali lives with his family means that these communities are often the hardest hit by environmental problems, such as the indigenous people in Death, whose homeland and lives are totally degraded and destroyed by climate change. In "Khoai Nodir Baak Bodol", Monu Mia, a by-product of industrialisation, blatantly disregards all his duties and responsibilities towards his children and bed-ridden aged father just for occupying the Khoai formed island. Hence, ecocritical perspective in literature envisages the dire need to preserve nature, instead of destroying it.

Effects resulting from climate change are magnitude in scale as is seen in the selected stories the characters are starving for lack of food and medical facilities. The most affected among them are children and the elderly people in the families. When water quality and public health are in risk, Nur Ali, Jabbar, and Monu Mia depend on Kochu Shakh (Taro stem), and thus, again indicating how nature saves man from total extinction. People find solace in nature in time of scarcity from eternity. But, the people who could take initiative to bring the change seem to be unmoved. However, Nur Ali senses the crisis that "One day kochu shakh (Taro stem) won't be available – eventually grasses will disappear – trees will turn barren – all these are going to be extinct someday if people finish them by eating" ("Longor Khana", p. 639). Hossain's frustration and anger finds an outlet in Nur Ali's final words as he turns back and gathers the courage to say sarcastically "Mr. Police, the butt of your government is huge and fat…why don't you kick there" ("Longor Khana", p. 642)?

The destruction caused by humankind results in the rise of sea levels, the transformation of the coastlines, as well as engendering deadly cyclones. Moreover, the ecosphere is fundamentally changed with global warming. "Death" captures a subtle account of the devastating effect Aila had on Bangladesh in 2009. Hossain has maneuvered the plot of the story in such a manner as to storms are not used as literary devices only. Rather they have got interwoven into the thematic unravelling of the story. Instead of discussing only the plight of the people caused by the tidal surge, I'm going to focus on the importance of the use of natural elements (here they are storm, river, kochu shakh/taro stem, khichuri (a dish of rice and lentils), etc. in terms of the manner of relationship it holds between the nature and humans. However, in the beginning, Hossain portrays the gust of wind that keeps blowing all day and makes Amina's life more miserable with old and shabby sari which is the only piece of cloth left to her. She prepares us for the "keyamot" (destruction of the earth) that is going to befall on the family by the nightfall. In Death, the protagonist Jabbar loses his home and entire family to the fury of Aila.

The increasing rate of cyclones means the collapse of the ecological system. The coastlines of countries are changed forever, breaking off like crust. It rains the whole year due to climate change. Houses, plants, and animals are deluged with great frequency which allows no time for the characters even to protect themselves. As Jabbar says, "The way the water of the sea is roaring, it will surely wash away the houses, if mother could float on this fence, would possibly survive" ("Death", 2010, p. 643). Environmental crises affected people directly, in fact and in fiction, forcing them to run for life. In the beginning of the story, "Khoai Nodir Baak Bodol*",* Hossain gives a depiction of the Khoai which the two sides of the river breaks down and endanger the lives of the people during monsoon. But, Monu Mia remains unconcerned about the misfortune that befalls on the villagers rather get amused by the exuberance of the river and secretly wishes to have the same spirit as the river.

3. Exploitation of Environment and its Potential Threats

Like the other developing countries of Asia, Bangladesh faces the worst case of environmental problems due to rapid growth of economy, population, urbanization and dependency on vehicles as research studies show. Marginal people, such as boatmen and fishermen of the riverine delta alongside factory workers are always the most affected when living closer to the resources of pollution. The natural scientists, authors, literary critics, anthropologists, and historians of Bangladesh are expressing their concerns over the environmental problems and identifying them as the root of social problems. Deterioration of environment inevitably impedes not only the social growth of Bangladesh but also accelerates social injustice of all kinds. Hossain's critique of exploitation reinforces that we need to embrace and celebrate the essence of humanity in the real sense by supporting and recognizing the communities close to clime. However, many stories have candidly addressed episodes of ethnic attacks, displacement and the like of these social injustices. However, Bangladeshi short stories are yet to significantly feature climate change which have severe implications for sustainable development. More emphasis should be given on in the portrayal of the lives of the victims of climate change and environmental degradation to raise awareness among mankind. As Singh says in an essay on environment, "Through literary works, Ecocriticism tries to bring attention to the need to reassess man's connection with his environment" (577). However, Jabbar, Nur Ali, and Monu Mia in the chosen stories are the victims of this environmental exploitation.

Environmental exploitation often leads to human exploitation. In "Death", Jabbar and his family, the economically impoverished riverine indigenous people lost their homes to climate change. In real world too, indigenous communities globally face some of the worst environmental hazards. Monu Mia in "Khoai Nodir Baak Bodol", finds no valid reasons for letting his sons continue going to school rather, decides to engage them in sowing In "Longor Khana", seeing the family run out of anything to eat, Tajun, the eldest daughter of Nur Ali, breaks out the news of khichuri (a dish of rice and lentils) that is going to be distributed as relief. The narrative unveils the extreme hunger and deprivation of basic rights that lie at the heart of this indigenous community. However, social justice and environmental justice stand as binary to each other. As per Adamson et al., in the Environmental Justice Reader (2002), "environmental justice can be defined as the right of all people to share equally in the benefits bestowed by a healthy environment" (cited in Clark, 88). Social injustice threatens the well-being of indigenous people and their families, as articulated in "Longor Khana":

> Do people really get isolated when there is no means to earn money? Nur Ali sleeps on the veranda and coughs hard, rises again, and then again lies down. Time flies for an indeterminate period of time. How long? Nobody cares. Eventually, coughing ends. Nur Ali has been having this since the last few months. But no medical aid is available (637).

Characters depicted in the stories are treated as commodities in "Death", "Khoai Nodir Baak Bodol", and "Longor Khana" and the predators who exploit are also the victims of climate change. Likewise, Jabbar, Amina and his mother and children in "Death" are victims in face of the injustice, exploitation, and cruelty of the world. They must stay forever on alert in order not to be devoured by the forces of nature, such as, cyclones, tornadoes, droughts or by other forces of climate change. Jabbar relentlessly tries to figure out what to do for survival and finding no better options leaves his senile and sick mother tie up with a fence with a hope that she will be able to float and thus, survive. Jabbar is a typical case. He is hunted, runs away to seek shelter, and finally is left to live in despair and disillusionment and utter shock.

Environmental disasters are not just a physical experience but a potent psychological experience as well. All the characters experience an ecological event while living in the areas affected by climate change. Hence, the local people living in disaster prone areas confront nature, suffer the loss of homeland, disconnection with nature, and the loss of a sense of belonging. It is thus, evident that the physical, psychological and emotional wellbeing of humans is how strongly tied with nature and its sources. Nonetheless, their physical pains caused from climate catastrophe are far less than the psychological traumas. All of them suffer from the loss of their loved ones, get disconnected with their dearest ones, lose social ties and eventually become traumatic. As Marcus Arcanjo quotes in an article in *A Climate Institute Publication* (2019), "… people coping with severe weather conditions can experience serious mental health symptoms, including post-traumatic stress, depression and anxiety" (2). However, the characters in "Death" are abused and traumatic. In "Death", after the natural disaster wreaks havoc in his village, Jabbar fails to recognise it as the village where he was born and brought up. Jabbar has to leave his mother alone by tying her with ropes around the fence. Her yells for survival leaves Amina helpless and numb. Jabbar says, "The roofs of neighbourly houses are toppling, trees are being uprooted" ("Death", p. 643). The way the family floats in the gusty waves is indescribable. The horrendous experience of that cyclone-hit night leaves an indelible mark in his life. The mental state of Jabbar is best understood from the author's remarks in the last, "Jabbar does not look at Sagir. He keeps running with heavy breath. He cannot understand at which corner of the village he will get the pleasure of returning home" ("Death", p. 645).

In "Khoai Nodir Baak Bodol", Monu Mia connects himself with that river. He nurtures an ambition to possess the entire riverine island. The location and the flow of water of the river has a tremendous influence on the thoughts and desires of Monu Mia. His desire fumes with the fuming of the river. Later when the chairman declares that the pathway of the river will be cut through his land, Monu loses his balance, shrieks and gets disillusioned. "In a state of despair, he halts at the bank of the Khoai. The Khoai is now a dream to the whole village. But, Monu Mia envisions that darkness is letting his feet drench into the Khoai" ("Khoai Nodir Baak Bodol", p. 124).

"Longor Khana" is a tale of Nur Ali and his family where everything appears to be at discord at the very onset due to climate crisis. Lack of food and hunger is a rife in the conjugal life of Nur Ali and Kajol Banu. Hossain

allows us to see how these factions affect the children in the family. Their eldest daughter Tajun shows her disregard for the social ties. The unjust treatment the family receive from the administrative people also symbolizes the moral degradation of the whole community. Poverty, hunger and crimes emerge with environmental deterioration. Nur Ali finds himself neglected, desolate, uncared and deserted by his society and becomes traumatised. Disasters and the subsequent injustices cause catastrophic imbalance in the society as well.

4. Conclusion

Environmental disasters pose a potential threat to our existence on earth at an alarming rate. Hossain's stories represent the environmental crisis. She, with an adroit skill and dexterity intertwines the physical injuries associated with environmental disasters and the psychological difficulties that local residents face. Through these stories, Hossain gives a message of changing our thoughts on the age-old bond between man and nature and tries to raise an awareness of the urgency of the environmental degradation. The representation of ecological reality in Bangladeshi short stories is an attempt which deserves critical acclaim and an awareness of the current ecological conditions. Her astonishingly courageous effort has to be lauded. The attempt has been made here to appreciate the manner of her inclusion of a greater reality which gives a newer dimension to an ecocritical perspective. It is worth noting how disasters ensued by climate change here powerfully controls the destiny of the characters involved. The rendition of both nature and human-induced disasters, however, in the short stories compels us to examine it from literary and humanitarian angles.

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Gender-Based Violence in Tertiary Education in Bangladesh

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Abstract
Gender-based violence, or GBV, is a concerning concept that one in three women may experience in their lifetime, thus converting it into one of the most enormous impairments of human rights worldwide. It has a substantial impact on one's health, including physical, mental, and sexual health, and it involves emotional, physiological, sexual, and even economic violence. This research delves into the intricate dimensions of GBV within the specific context of Bangladesh's Tertiary Educational Institutions (TEIs). This study employs a mixed-method approach, combining qualitative and quantitative data, to unveil the nuanced dynamics of GBV within higher education institutions. The findings highlight several key issues within TEIs. Firstly, sexual harassment complaint committees often exhibit deficiencies in their responsiveness and commitment, which deter female victims from seeking redress. A lack of awareness about sexual misconduct regulations impedes victims from taking legal action. Additionally, the misuse of political power in sexual harassment cases exacerbates the consequences for victims. The absence of transparent reporting and investigation procedures within organizations leaves victims without adequate support and discourages reporting. To rectify these issues, we propose a series of recommendations. Public universities must prioritize the establishment of influential sexual complaint committees to address misconduct, safeguard individuals' rights, and prevent legal and reputational repercussions. Collaboration with relevant organizations and legal entities, along with advocacy efforts, can raise awareness and catalyze the creation or enhancement of these committees. Sexual complaint committees are vital for reporting, support, and accountability in combating harassment, assault, discrimination, and misconduct within academic institutions.

Keywords: GBV, Tertiary Education, COVID-19, Mental Health

1. Introduction

The identity of men and women and the third gender is denoted by the term gender, which is a global phenomenon. The hijras have been recognized as the third gender by the government, though. Still, in practice, it’s not easy to access health care and other government services for hijras, a problem that increased during COVID-19. Other people like them, for instance, lesbian, gay, bisexual, and transgender, along with advocates, are not getting much protection from the police and continue encountering violence and threats (Chakraborty Roshni, 2021). Gender-based violence, or GBV, is a concerning concept that one in three women may

experience in their lifetime, thus converting it into one of the most enormous impairments of human rights worldwide. It substantially impacts one's health, including physical, mental, and sexual health, and it involves emotional, physiological, sexual, and even economic violence (Hafeez, 2022).

Nevertheless, gender-based violence, discrimination, and inequalities have become common issues in our society, and the state tolerates and tolerates this violence. Thus, women are becoming more vulnerable (Kimuna & Djamba, 2008). The immediate and long-term effects of GBV on the person, family, and society are severe and should be treated more seriously. GBV is not a recent development and is certainly not unique to Bangladesh. Violence severely affects one's health, including long-term disabilities, psychological stress, unintended pregnancies, and problems from unsafe or coerced abortions. Women and girls are denied their rights to education, health care, and adequate living conditions because of their exposure to and fear of violence. One of its harshest forms is child marriage alone, which affects 59% of girls in Bangladesh (Rana, 2016). While it is exacerbated in nations experiencing conflict, it has no bounds related to geography, culture, social class, or ethnicity (Islam, 2018).

To achieve gender equality, Bangladesh's government has set some specific targets by diminishing the existing discrimination and violence, which are derived from the SDGs containing health and well-being, better education, growth of the economy and decent tasks, long-lasting city and populations, peach, and justice that will ensure security and provide more affordable transportation for women and children along with set a better standard of living. Precisely saying that to preserve women's rights and achieve gender equality, the government is working to abolish all types of discrimination, eliminate all forms of internal violence such as trafficking and sexual harassment, and eradicate damaging societal practices such as child marriage and forced marriage (Iqbal et al., 2020). Human beings have an inherent right to a life free from violence, and abuse based on gender can severely damage a sense of value and pride in themselves. It has psychological and physiological consequences, increasing the risk of self-injury, social withdrawal, and even suicide attempts. Due to the social stigma, data on GBV suffers severe scarcity in the areas of prevalence in different contexts, demographics of the perpetrators, and the nature of their relationships with victims. Our conventional idea has been that GBV is prevalent among the illiterate and low-educated sections. However, high educational institutions are no exception as well. The cases of GBV have been on the increase in HEIs. During the pandemic period, the cases multiplied.

GBV is deep-seated in historical and organizational inequality in power relations concerning gender that impedes gender equality and empowerment. Students increasingly depend on the internet for entertainment; eventually, many become cyberbullying victims. Despite growing attention to the problem of GBV in higher educational institutions (HEI), little attention has been accorded to the issue. In addition, it is challenging to identify the true prevalence of violence at HEIs due to the under-reporting of this sort of violence, particularly sexual violence. The paper intends to cover the patterns and trends of GBV in TEIs in Bangladesh, the influencing factors in higher educational institutions in conducting GBV offenses, and the impacts of GBV on female students' academic performance and mental health. Diverse historical, social, cultural, technological, and political issues are fundamental to these trends and practices.

The primary objectives of this study are twofold: firstly, to comprehensively examine the intricate patterns, evolving trends, and underlying factors contributing to Gender-Based Violence (GBV) within the context of Bangladesh's Tertiary Educational Institutions (TEIs); and secondly, to rigorously evaluate the direct and indirect ramifications of GBV on the academic performance of students within these institutions. This research seeks to illuminate the multifaceted nature of GBV in TEIs and elucidate its impact on educational outcomes, ultimately contributing to a deeper understanding of this critical issue and informing potential interventions and policy changes.

2. Conceptual Clarification

2.1. Gender-Based Violence

Violence may be defined as the use of physical force with the intent to cause harm, abuse, inflict damage, or induce destruction. Alternative definitions are also employed, including the definition of violence provided by the World Health Organization (WHO). According to the WHO, using physical force or power, either threatening or actual, against oneself, another person, a group, or society is defined as violence. Injury, death, mental anguish, stunted growth, and material hardship are only some adverse outcomes linked to or made more likely by this kind of violence. Conversely, Gender-Based Violence (GBV) encompasses detrimental actions targeted at people due to gender. The phenomenon may be traced back to gender disparities, the exertion of authority in an abusive manner, and the perpetuation of detrimental societal standards. Gender-based violence (GBV) is a grave infringement against the fundamental rights of individuals and poses a significant danger to their health and overall well-being. According to estimates, almost one out of every three women is projected to encounter instances of sexual or physical abuse throughout their lives. In situations of displacement and catastrophe, the risk of gender-based violence (GBV) experiences a notable escalation, particularly affecting women and girls (Shahen, 2021). Coercion, threats, or arbitrary deprivation of private or public liberty within the context of a family or community all fall under the UN's definition of violence based on gender (GBV), as does any conduct that is likely to or results in physical, sexual, psychological, or struggling for women. All forms of violence, not only those directed towards women, fall under this category (Iliyasu et al., 2011). Gender-based violence (GBV) refers to acts or the expression of threats by individuals who identify as males or by mostly male-led organizations, resulting in bodily, sexual, or psychological damage to women or girls solely due to their gender. Currently, violence based on gender (GBV) continues to be a significant public health issue in the United States, with far-reaching implications for individuals and society (Walsh et al., 2015).

Violence against an individual based on their gender is included in the concept of GBV, which goes beyond the deliberate application of one's position of authority to harm people, organizations, or the community as a whole (Kibriya Shahriar, 2020). Instances of violence and harassment, which include gender-based violence and harassment, which include sexual harassment, have the potential to be seen as a significant infringement against fundamental human rights. Within the realm of employment, a multitude of manifestations of harassment and assault inflict covert and detrimental effects on people, organizations, as well as the broader societal fabric. These factors significantly impede growth, primarily via the reduction of social and human capital accumulation, as well as creating substantial obstacles for both women and men in their pursuit of decent and adequate employment opportunities(Yasmin, 2020) .

Over the last two decades, Bangladesh has shown noteworthy advancements in enhancing the well-being of women and girls. The rates of maternal mortality are experiencing a downward trend, the fertility rate is exhibiting a decline, and there is an observable improvement in gender parity in the enrollment of students in educational institutions. Simultaneously, it is noteworthy that a substantial majority of married women, namely 82 percent, experience gender-based violence. Furthermore, widespread sexual assault hinders women's ability to fully realize their capabilities and aspirations (Shahen, 2021). According to research conducted by BRAC, there has been an increase in gender-based violence in Bangladesh during the continuing COVID-19 epidemic. The report further highlights that BRAC's Legal Aid Services received over 25,000 complaints in the first ten months 2020. According to statistics provided by BRAC, despite the constrained mobility resulting from the COVID-19 lockdowns for a specified duration, a cumulative count of 25,607 grievances about gender-based abuse was reported to its network of 410 Human Rights and Legal Aid Clinics situated across Bangladesh during the first ten months of the current year. Out of the total complaints received, a significant portion of 15,047 instances were successfully handled using alternative dispute resolution methods.

Additionally, legal assistance was given to 3,239 survivors, aiding them in navigating the legal complexities of their situations. Furthermore, 1,724 complaints resulted in the initiation of civil and criminal proceedings. Again,

a substantial sum of about $4 million was successfully retrieved to provide dower and support for the surviving individuals (Hossain, 2020) .

Despite the concerted efforts of governmental and non-governmental entities to mitigate the prevalence of child marriage in Bangladesh, the country continues to exhibit the highest incidence of this practice within the South Asian region. Approximately 59 percent of girls in Bangladesh are compelled to marry before age 18. The involvement of women in the labor market continues to be restricted to areas that provide limited opportunities and lower wages. The ready-made garment business in Bangladesh, being the country's most significant export industry, employs a substantial workforce of around three million women from Bangladesh. The participation of women in small and medium firms is seeing a notable upward trend. However, it is essential to acknowledge that significant financial disparities persist for women despite implementing many government measures (Shahen, 2021).

3. Literature Review

In an ideal scenario, society is anticipated to be founded around the fundamental principles of fairness and parity. Higher education institutions are expected to serve as leaders in promoting, maintaining, and perpetuating principles of strong moral values. In contemporary culture, there is a prevailing expectation that individuals of all genders, namely men and women, should get equal treatment. When this essential principle derived from biblical teachings is transgressed, it leads to societal disorder. Gender-based violence (GBV) is maintained chiefly due to the social inability to acknowledge and embrace shared principles of fairness and equitable treatment, as recommended by religious texts (Samakao et al., 2023). Universities and other institutes of higher education are responsible for cultivating and developing highly competent and esteemed individuals who contribute to the workforce. Including graduates with technical competence and disciplined attitudes, values, and behaviors contributes to their enhanced worth. Most individuals enrolled in these educational institutions are primarily young people ranging from 18 to 25 years of age. Many individuals have been socialized within patriarchal societies, whereby the gender norms they are used to may directly conflict with the ideals promoted inside academic institutions.

Furthermore, students' educational and instructional experiences occur within diverse and heterogeneous settings, characterized by the coexistence of individuals from various cultural, ethnic, socioeconomic, gender, age, class, and religious backgrounds who come together with the same objective of acquiring knowledge and skills. This phenomenon significantly impacts the student population's cognitive development, anticipations, dispositions, conduct, affective states, and interpersonal skills. In addition, it is worth noting that college campuses often exhibit a prevalence of male students, leading to the establishment of cultures and surroundings that are more accommodating and accepting of male individuals (Iliyasu et al., 2011) .

Economic issues may significantly influence pupils, leading to aggressive or submissive behavior when confronted with social difficulties. The convergence of these elements contributes to the prevalence of nonconforming gender behaviors inside higher institutions, with females being the primary recipients, albeit not entirely so. These behavioral patterns include sexual assault and other forms of gender-centric violence. The potential consequences of these circumstances may consist of fear, especially among female students, which might deter their participation in higher education institutions. Consequently, this may exacerbate the gender imbalance among the student body, favoring men. Therefore, gender-based violence inside educational institutions poses a significant barrier to acquiring knowledge, resulting in physical injury and profound adverse effects on psychological well-being and educational outcomes (Iliyasu et al., 2011) .

Torture, rape, forced rape, physical abuse, and sexual assault are common kinds of domestic violence and oppression against wives and housemates, including attendants, cooks, and cleaners. In addition, the study discovered that harassing behaviors, including touching, standing too close together, purposely pushing, gripping the shoulders, making inappropriate comments, and touching sensitive areas of the body, cause women and girls to feel unsafe when moving around in public transportation. They are being harassed and sexually assaulted by

house instructors and close kin at home as well as at educational institutions, the report also found. A danger to their lives and their health, child marriage is another issue that prevents children from giving their permission. Their situation is still precarious even though the Bangladeshi government has taken steps to end child marriage to provide them with a stable living situation. Women's rights advocates maintained that the government ought to take the lead in changing the regulations that are now in place, that the executive branch administering laws and safeguards must be open and responsible, and that the general public's attitudes towards women and children need to shift. In addition, it is evident that social and cultural norms, a dearth of political will, and a shortage of legislative measures to create an atmosphere welcoming to women entrepreneurs all contribute to the detrimental business climate female entrepreneurs face (Shahen, 2021).

Yasmin, (2020) highlights many significant deficiencies within Bangladesh's legal and legislative framework, institutional procedures, and practices concerning handling gender-based violence and harassment. The statement above underscores the difficulties arising from the absence of precise legal delineations for crucial concepts, such as 'sexual harassment,' the lack of comprehensive legal measures addressing instances of sexual harassment, and the failure to criminalize some forms of sexual misconduct. Additional significant challenges encompass the absence of explicit provisions within Bangladesh's labor legislation addressing gender-based violence or harassment. Furthermore, the absence of regulatory measures about informal employment and the lack of a legal framework prohibiting discriminatory practices pose substantial obstacles. Moreover, a limited comprehension exists regarding the true nature and implications of gender-based violence and harassment. The inadequate enforcement of the recommendations set out in 2009 by the High Court Division, together with the criminal laws about gender-based violence and harassment, provide significant obstacles.

Additionally, the absence of internal organizational policies addressing gender-based violence and harassment further contributes to these hurdles. There are further deficiencies that may be seen in the realm of occupational safety and health. These deficiencies pertain to the absence of gender-based violence and harassment in existing programs and policies, the need for bolstering labor inspection procedures, and the prevalence of non-compliance with labor regulations.

Makhene, (2022) reveals that the investigation told the elements that contribute to gender-based violence, its impact on the victim, and the strategies to eradicate its prevalence. Understanding the many variables contributing to gender-based violence and implementing effective ways to combat this pervasive issue may significantly reduce the prevalence of gender-based violence inside higher education institutions. This study explores the many elements contributing to gender-based violence (GBV) in higher education institutions. Specifically, it seeks to examine the underlying causes and the subsequent repercussions experienced by victims. Additionally, this research endeavors to identify potential strategies for preventing and mitigating GBV in these educational settings. Preventing gender-centric violence requires collective and proactive effort from all relevant stakeholders to eradicate this pervasive societal issue. Addressing gender-based violence (GBV) is multifaceted and needs comprehensive answers and the dedication of many actors, such as governmental bodies and civil society organizations. Violence prevention policies and activities must be guided by the most robust and reliable evidence currently accessible. Evidence-based programs are developed by drawing on previous successful initiatives and proven effective strategies. These programs are inspired by a theoretical framework and are driven by formative research and successful pilot studies. They are designed to be comprehensive, addressing several causative elements.

Iliyasu et al., (2011) suggest that our research facility in Northern Nigeria has a high rate of GBV prevalence. Sexual assault by male instructors and students was the most prevalent gender-based violence. Marital status, religious beliefs, ethnicity, place of origin, domicile, and faculty of study are some of the socio-demographic and environmental variables that influence social interactions between female students and male students on campus and are associated with a higher risk of gender-based violence (GBV). Therefore, it is crucial that campus safety initiatives, such as appropriate no-tolerance policies, efficient redress procedures, and enhanced GBV victim counseling, be developed and implemented by the university administration and other stakeholders, including non-governmental organizations.

Humphreys, Clarissa J. , Towl, (2022) addressing the present discourse pertains to the contextual framework, theoretical underpinnings, and legal provisions that delineate the appropriate measures for colleges to effectively address incidents of gender-based violence. The subsequent discussion focuses on the most practical approaches to effectively tackle the problem while promoting preventative efforts and assisting those who have experienced victimization. The book ultimately encourages establishing advantageous collaborative relationships with essential external services accessible to university communities and engaging with students as partners in a manner that upholds ethical standards and ensures their safety. The book encourages writers to showcase a holistic strategy encompassing the whole institution and is inspired by an understanding of trauma. This approach aims to prioritize the victim-survivor's needs and allocate wealth accordingly, recognizing the importance of this crucial undertaking. After each chapter, a concise overview of pivotal aspects or suggestions and a list of recommended supplementary readings about the chapter's subject matter are provided. The ideas presented by the writers, although primarily based on research and policy within the Higher Education Sector in the UK, might serve as a valuable resource for individuals at universities worldwide.

4. Scope & Significance of the Study

Due to lockdown procedures, COVID-19 has exacerbated some of these causes and caused a secondary shadow pandemic in Bangladesh, where more women and children have experienced violence for the first time (Hafeez, 2022). Bangladesh needs more solutions as it deals with GBV, a persistent issue that worsened after strict measures to address the COVID-19 crisis were implemented starting in early 2020. BRAC legal aid services received over 25,000 complaints within the first ten months. From pre-primary through higher school levels, 40 million pupils were impacted, increasing their vulnerability to abuse and child marriage. Ain O Salish Kendra (ASK) reports that 1627 women were raped in 2020. However, there are certain restrictions on the statistics. Already a complicated and delicate subject, GBV is sadly underreported. Detecting meaningful patterns over time is challenging since the available statistics are frequently fragmented, provide glimpses of the situation, or are occasionally inaccessible (UNDP, 2022). Gender-based violence (GBV) against women in educational institutions has recently been shared in Bangladesh (Hasan, 2019). Quantitative and qualitative data will be collected on harassment and governance patterns, influencing factors, academic performance, and mental health.

Table 1: Potential Variable of the Study

Considerable Factors	**Measuring Indicators**	**Measuring Techniques**	
Existing online harassment and Governance Pattern	• Cyberbullying • Organizational rules and procedures • The activity of the complaint committee	KII, FGD, Content Analysis	Gender-Based Violence (GBV) in Tertiary Educational Institutions
Influencing Factors	• Social • Cultural • Political • Financial • Technological • Power-relations	KII, FGD	
Academic Performance and Mental Health	• Academic results • Extra-curricular activates • Mental condition	KII, FGD	

Source: Adapted from Khan & Shathi, 2018; Hossain, 2020; Hossen, 2014; Olson-Strom & Rao, 2020.

The rate of GBV is growing globally. No noteworthy study was undertaken to determine the GBV in TEIs in Bangladesh. Educational institutions remained closed during the trying time of the pandemic. There has been a

correlation between the pandemic and the growing rate of cyberbullying and GBV. It is hard for the victims to move against the committers of authority positions. Available literature confirms that there remains a massive gap in the scholarship. This research is intended to fill in the research gap. This research is expected to develop policy recommendations for the TEIs and the respective government.

5. Research Methodology

The mixed method includes assembling both qualitative and quantitative, incorporating the two data channels, and managing discrete reasons that may consist of theoretical structures and logical backgrounds (John W. Creswell, 2014) . It is a determination to uncover GBV in higher educational institutions in Bangladesh, which is the essential research objective of the projected study. The research focuses on both primary and secondary evidence. The secondary data will be collected through field visits, and the study also includes data on GBV in tertiary educational institutions in Bangladesh. They will also be gathered from secondary sources, including journal articles, newsletters, books, research reports, and official documents.

A public university, such as Comilla University, for the Case study (Yin, 2011). Comilla University was formed in 2006, making it one of the most recent in terms of methodology. The universities represent the prestigious geographical location. Furthermore, the researcher is currently employed as a faculty member at Comilla University, located in the researcher's native place. The study used a hybrid technique. Comilla University's study on GBV in Bangladesh's tertiary education contributes to international literature by shedding light on a crucial but underexplored issue. A convenient sample size of respondents was taken for the research aim in a public university named Comilla University for Key Informant Interview (KII), Focused Group Discussion (FGD), and questionnaire survey. A questionnaire survey was administered to 50 students from each institution based on their gender, age, length of study, and teacher diversity. Key Informant Interviews (KII) were conducted in the second part of the study to generate balance in the quantitative data. In this part, ten persons from each institution were chosen to conduct Key Informant Interviews (KII) to investigate sexual harassment in public universities in Bangladesh based on gender, time spent in the institution, institutional affiliation, and faculty responsibility. Focused Group Discussion (FGD) was employed in the third segment since it is essential for gathering qualitative data. One FGD from each researched educational institution will be directed to collect adequate data to justify the survey conclusions. There will be a total of 7-12 responders for the FGD. Finally, the data required to complete the investigation and draw conclusions is sufficient.

6. Result and Discussion

Gender-based violence is a widespread issue that has a severe impact on women, even those who are in higher education. Numerous studies have highlighted the problem of gender-based violence, and statistics suggest that rather than diminishing, its frequency is increasing (Makhene, 2022). To critically examine research produced better to understand the phenomena of gender-based violence in higher education.

Lack of Complaint Committee Responsible: Most university sexual harassment complaint committee members don’t maintain responsibility. Even some of the members aren’t concerned about this committee. For that, female isn’t confident on the committee. They haven’t taken legal action against the criminal for lack of knowledge about the sexual rules and regulations.

Abuse of Political Power: Abuse of political power in the context of sexual harassment refers to instances where individuals in positions of political authority or influence misuse their ability to engage in sexual harassment or assault. This can occur in various settings, including within political parties, government institutions, or political campaigns, and involve individuals at different levels of political hierarchy, such as politicians, officials, staffers, or activists. The abuse of political power in sexual harassment can have severe and lasting impacts on victims, including psychological, emotional, and professional harm. Victims may face barriers

in reporting incidents, seeking support, or pursuing justice, particularly when the perpetrators hold significant political power or influence.

Lack of Organization Rules and Regulation: Many organizations lack precise and all-encompassing definitions of sexual harassment, resulting in potential uncertainty or misconception regarding the boundaries of prohibited conduct. The situation's complexity might provide difficulties for individuals who have experienced sexual harassment in recognizing and reporting these incidences and for organizations in successfully addressing such occurrences. Some organizations may lack specific protocols or designated channels for reporting sexual harassment. This may lead to a situation where victims are uncertain about the appropriate channels and methods for reporting or experience apprehension due to concerns of potential retribution or retaliation for voicing their concerns. In the absence of adequate reporting systems, there is a risk that incidents may remain unreported, allowing perpetrators to evade punishment. Many organizations may lack adequate protocols for examining sexual harassment accusations, which encompasses failing to conduct unbiased and comprehensive investigations. This phenomenon can give rise to partial or biased studies, yielding inadequate or ineffectual conclusions. Consequently, it can exacerbate the reluctance of victims to report their experiences.

Ethics and Norms: Victim-blaming and shaming are unethical practices that often occur in cases of sexual harassment. This can involve blaming the victim for their attire, behavior, or actions or shaming them for speaking up about their experiences. Such attitudes and norms can discourage victims from coming forward, perpetuate harmful stereotypes, and shift the blame from the perpetrator to the victim.

Cultural and Social Barriers: Cultural and social norms in public universities in Bangladesh may pose challenges to addressing sexual harassment and assault. Victims may face stigmatization, victim-blaming, or fear of retaliation, which may deter them from reporting incidents to sexual complaint committees or seeking support. The new campuses in Bangladesh most of the universities are not appropriate for cross-culture or mix-culture.

Lack of Awareness: Public university campus individuals may lack awareness about the existence and functioning of sexual complaint committees in Bangladesh. This may result in underreporting incidents and limited utilization of the committee's services. Even with a Lack of camping, some students face sexual harassment in the university.

Lack of Sexual Committee Independence or Autonomy: Sexual complaint committees may face challenges in maintaining independence and autonomy from institutional or external influences, which may impact their ability to carry out their responsibilities objectively and impartially. As a result, some sexual harassment criminals didn't give punishment for the lack of independence of the sexual harassment committee. In public universities, many complaints don't take legal action against the criminal.

Lack of Respect for Consent: Consent is a fundamental ethical principle in any interaction involving sexual activity. When there is a lack of respect for consent, such as engaging in sexual activity without explicit and enthusiastic consent, it constitutes sexual harassment. Ethical norms around consent should emphasize respecting personal boundaries and ensuring that all parties involved in any sexual activity have given explicit consent.

Misuse of Power and Authority: Ethical issues arise when individuals in positions of power and authority misuse their influence to engage in or cover up acts of sexual harassment. This can include using their power to intimidate, coerce, or exploit others for their gain. When such unethical behaviors go unchecked, it can contribute to a toxic culture where sexual harassment is perpetuated.

7. Discussion

The results of this study shed light on the patterns, trends, and factors related to Gender-Based Violence (GBV) in Bangladesh's Tertiary Educational Institutions (TEIs) and underscore its consequences on academic performance. Gender-based violence is a pervasive issue affecting women even within higher education, and its prevalence appears to be on the rise (Makhene, 2022). In this discussion, we critically examine the findings to gain a deeper understanding of the phenomenon of gender-based violence in the context of higher education.

One striking revelation from our study is the lack of responsibility among many university sexual harassment complaint committee members. Some committee members appear disengaged or indifferent, leading to a lack of confidence among female students in the committee's effectiveness. This absence of commitment has failed to take legal action against perpetrators due to a lack of knowledge about sexual harassment rules and regulations.

Furthermore, the abuse of political power in the context of sexual harassment emerges as a significant concern. This abuse occurs when individuals in positions of political authority or influence misuse their power to engage in sexual harassment or assault. Such misconduct can have profound and enduring effects on victims, including psychological, emotional, and professional harm. Reporting such incidents may prove challenging, especially when the perpetrators hold substantial political power or influence.

Our study also highlights the absence of clear and comprehensive definitions of sexual harassment within organizations, leading to confusion and misinterpretation of unacceptable behavior. This lack of clarity and the absence of formal reporting procedures deters victims from coming forward and allows incidents to go unreported and unpunished. Inadequate procedures for investigating complaints further exacerbate this issue.

Ethical concerns regarding victim-blaming and shaming are also prominent in the discussion. Such practices discourage victims from reporting their experiences and shift blame from the perpetrator to the victim. Cultural and social norms in public universities in Bangladesh can further exacerbate these issues, as they may stigmatize victims and deter them from seeking support.

Lack of awareness about the existence and functioning of sexual complaint committees is another challenge identified in our study. This lack of awareness results in underreporting of incidents and limits the utilization of committee services. Even within the campus environment, some students continue to face sexual harassment.

Independence and autonomy of sexual complaint committees within institutions are essential for effective functioning. Our findings reveal that these committees may face challenges in maintaining independence, impacting their ability to carry out their responsibilities impartially. As a result, some perpetrators of sexual harassment go unpunished, particularly in public universities.

Respect for consent is an ethical principle fundamental to any sexual interaction, and our study emphasizes its importance. Lack of respect for support, such as engaging in sexual activity without an explicit and enthusiastic agreement, constitutes sexual harassment. Ethical norms must emphasize respecting personal boundaries and ensuring that all parties involved in sexual activity provide explicit consent.

Lastly, the misuse of power and authority in cases of sexual harassment raises ethical concerns. When individuals in positions of power exploit their influence to intimidate, coerce, or cover up acts of sexual harassment, it perpetuates a toxic culture that allows such misconduct to persist unchecked.

8. Recommendations

Combating GBV is a difficult task that will necessitate a diversified response in the shape of a national action plan with a committed budget (Rana, 2016). Awareness of the variables contributing to gender-based violence

and developing ways to combat this scourge will help reduce gender-based violence at higher education institutions (Makhene, 2022).

Institutional Accountability: Public universities must provide a secure and inclusive environment for their students, faculty, and staff. The absence of a sexual complaint committee or its ineffective operation may indicate a lack of institutional commitment to addressing sexual misconduct and protecting community members' rights.

Need for Action: You can consider bringing up the matter with the proper university representatives, such as the administration, human resources division, or office of student affairs. Additionally, you might seek assistance from organizations or law firms focusing on sexual assault or harassment. Change can also be affected by working with other students, faculty, and staff to spread awareness and promote the creation or improvement of a sexual complaint committee.

Importance of Sexual Complaint Committees: To handle problems with sexual harassment, assault, discrimination, and misconduct on college campuses, sexual complaint committees are essential. They offer a way for staff, academics, and students to report these instances and seek redress.

Mental Support: Giving victims a secure, judgment-free place to express their feelings can be beneficial. Empathetic listening, which involves actively listening without interrupting or passing judgment, can help victims feel heard and validated and be a crucial emotional release.

Increase Awareness: Students, teachers, and incoming new students should be aware of the sexual organization committee's existence. The campus's culture and standards will only be adequately upheld with public awareness. Therefore, the sexual committee members occasionally take the initiative to promote camping and sexual harassment awareness.

Involve extra activities: Students at public universities should engage in social activities and other pursuits to lessen sexual harassment. Different organizations may be involved in raising students' awareness of sexual harassment.

Support Financial Crisis*:* Public University most pupils come from middle- or lower-class families. To help with the financial crisis, they want to create an online business or offer tuition.

9. Conclusion

Universities serve as public arenas where gender inequalities persist and perpetuate, taking shape via various forms of inequality, epistemological marginalization, sexual misconduct, and psychological harm. In the context of Mexico, the issue of gender-based violence (GBV) has gained prominence within several societal spheres due to the active engagement of women inside institutional frameworks. These women have effectively brought to light the prevailing culture of impunity and the absence of comprehensive legislation to address, penalize, and ultimately eliminate this widespread issue. This study sought to achieve its primary objectives by investigating the intricate landscape of Gender-Based Violence (GBV) within Tertiary Educational Institutions (TEIs) in Bangladesh. By exploring patterns, trends, and influencing factors, it became evident that GBV is a multifaceted issue deeply intertwined with social, cultural, political, financial, technological, and power-related dynamics. Examining existing online harassment and governance patterns revealed the prevalence of cyberbullying, inadequate organizational rules and procedures, and limitations in the activity of complaint committees.

This study also shed light on the profound consequences of GBV on academic performance and mental health, affecting academic results, extracurricular activities, and overall mental well-being. A critical revelation was the compromised autonomy of complaint committees and the disregard for consent, indicative of the systemic challenges impeding effective responses to GBV. To address these challenges, the study's recommendations

underscore the urgency of enhancing institutional accountability, engaging representatives, establishing robust complaint committees, fostering widespread awareness, providing essential mental support, actively involving students, and offering necessary financial aid. Emphasizing the need for swift and decisive action, these measures are pivotal in catalyzing cultural transformation, ensuring accountability, and empowering victims. By implementing these recommendations, TEIs can forge secure and inclusive educational environments that stand resilient against the scourge of gender-based violence. Through collaborative efforts, sustained commitment, and a comprehensive approach, the academic community can pave the way toward a more equitable and just future, free from the shadows of GBV.

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The Burden of the Past: A Comparative Study of F. Scott Fitzgerald's *The Great Gatsby* and William Faulkner's *The Sound and the Fury*

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Abstract
This paper contrasts *The Great Gatsby* by F. Scott Fitzgerald with *The Sound and the Fury* by William Faulkner, examining the burden of the past. The two novels explore how past experiences and events influence individuals and societies in distinct ways. By evaluating the critical responses, historical and cultural contexts, and literary techniques employed by the authors, this paper delivers a deeper understanding of how literature can reflect and remark upon the complexities of human experience and history. It demonstrates this through an analysis of the critical responses, historical and cultural contexts, and literary techniques employed by the authors, observing that while both novels deal with the burden of the past, they do so in different ways reflecting the historical and cultural contexts in which they were written. Fitzgerald's novel critiques the American fixation with the past and the perils of nostalgia, whereas Faulkner's novel reflects on the decline of the Southern aristocracy and the legacy of slavery and bigotry in the Southern United States. Literary devices, such as symbolism, imagery, characterization, and stream-of-consciousness narration emphasize the psychological effects of the weight of the past on both individuals and societies. This comparative analysis highlights the capacity of the literature to reflect and commentate on the complexities of human experience and history, exploring the significance of understanding the historical and cultural contexts in which it is produced and consumed.

Keywords: Burden of the Past, Comparative Study, *The Great Gatsby*, *The Sound and The Fury*, Critical Responses, Literary Techniques

1. Introduction

The burden of the past is a recurring motif in many literary works, one that has been examined by numerous authors throughout history. The past can have a significant impact on both individuals and societies, shaping identities, influencing actions, and affecting the present and the future. The weight of one's history is a key topic that has been widely investigated in American literature, not only by F. Scott Fitzgerald and William Faulkner. In American literature, the burden of the past is a fundamental theme explored by many writers, including Fitzgerald and Faulkner. Fitzgerald's *The Great Gatsby* and Faulkner's *The Sound and the Fury* are two of their most famous novels, both of which are renowned for their depiction of the burden of the past (Kobayashi, 13; Faulkner, 1973).

Fitzgerald and Faulkner are two of the most celebrated and studied American authors of the 20th century, and they are known for their study of memory, nostalgia, and the burden of the past (Gandal, 5). Fitzgerald's *The Great Gatsby* and Faulkner's *The Sound and the Fury* are among the authors' best-known works. These books are celebrated for their representation of the weight of history.

The Great Gatsby was first released in 1925 and is considered by many to be the pinnacle of literary achievement in the United States. The narrative depicts Jay Gatsby, a rich man who fell in love with Daisy Buchanan before the war, attempting to win her back years later by throwing extravagant parties. The story takes place in the 1920s, a decade that is often referred to as the Roaring Twenties, and which was characterized by significant social, economic, and cultural transformation (Gross, 162). *The Great Gatsby* explores the themes of love, riches, and the American Dream. It also serves as a critique of the excesses and moral decrepitude of the age (Bloom, 7; Fathoni and Thoyibi, 2).

Faulkner's novel, *The Sound and the Fury*, was first released in 1929, and is widely regarded as one of the author's most significant works. The book's narrative complex and multi-layered, it follows the lives of the Compson family over the course of many decades, witnessing the downfall of the family and the dissolution of their relationships. It is noteworthy for its experimental approach to storytelling, as it has numerous narrators and a non-linear framework. The themes of family, race, and identity are explored throughout *The Sound and the Fury*, which critics characterize as a meditation on time, memory, and the weight of the past (Sabo, 15).

Despite their disparate plots and writing styles, *The Great Gatsby* and *The Sound and the Fury* are underpinned by a common theme: the weight of the past. The past haunts the characters of *The Great Gatsby*, specifically their memories of World War I and the pre-war period. Indeed, Gatsby is propelled by his desire to recapture the past and win back Daisy, the woman he had adored before the war (Korkut and Elbir, 2006). In *The Sound and the Fury*, the past is a source of anguish and regret for the Compson family, who are attempting to navigate the repercussions of their actions and consequent decline in their social standing (Rațiu, 36).

The burden of the past is a multifaceted topic that can be approached from multiple angles, including psychological, sociological, and historical. This study employs a literary methodology to examine how Fitzgerald and Faulkner depict the weight of the past in the selected novels. We will investigate the similarities and differences with regard to this theme, the techniques employed by the authors to convey it, and the potential causes of these similarities and differences.

1.1. Research Problem

Both *The Great Gatsby* by F. Scott Fitzgerald and *The Sound and the Fury* by William Faulkner probe the experience of being burdened by one's past as a prevalent theme. However, each work approaches the topic differently. To date, there is a dearth of comparative studies exploring how these two books convey the weight of the past and the respective authors' motivations for doing so. Thus, the aim of this research is to carry out a comparative examination of the two texts to fill this void in the literature.

1.2. Research Aims

The aims of this research are to:

- examine how the weight of the past is portrayed in both *The Great Gatsby* by F. Scott Fitzgerald and *The Sound and the Fury* by William Faulkner through the lens of comparative analysis; and
- investigate explanations for the ways in which these representations are similar and different.

1.3. Research Question

- How do F. Scott Fitzgerald's *The Great Gatsby* and William Faulkner's *The Sound and the Fury* depict the burden of the past?
- What are the similarities and differences in their portrayal of this theme?

1.4. Research Significance

The study of the burden of the past is a universal theme that is relevant to numerous individuals and societies. By analyzing how this theme is depicted in two classic novels, *The Great Gatsby* by F. Scott Fitzgerald and *The Sound and the Fury* by William Faulkner, this research will advance understanding of how the weight of the past affects' individuals and societies, and in particular, how literature can be used to explore this theme. In addition, a comparison of the two novels can shed light on the differences and similarities in the literary techniques employed by the two authors as they convey the theme of the burden of the past.

2. Methods

This comparative literary analysis will be both descriptive and qualitative in nature. It will investigate how Fitzgerald and Faulkner depict the weight of the past in *The Great Gatsby* and *The Sound and the Fury*. To analyze the similarities and differences between the two novels' depictions of the burden of the past a close reading of the two novels will be presented, focusing on the characters, narrative, and setting, and analyzing the literary techniques (e.g., symbolism, imagery, and narrative structure) used by the authors to convey the theme of the weight of the past. We will first identify the similarities and differences between the two novels' depictions of the burden of the past, detailing how the past is portrayed in the novels, how it effects the characters, and how they carry its weight. In addition, we will analyze the roles of memory, melancholy, and regret as they manifest in the novels, underlining how these emotions contribute to the depiction of the burden of the past.

To support our analysis, we will refer to secondary sources, including literary criticism, historical and cultural studies, and the author's biographies. We will also examine how critics and readers received the novels when they were published, as well as how scholars have interpreted and analyzed them in the years since. We will also consider how the historical and cultural contexts in which the novels were written may have influenced their depiction of the burden of the past.

3. Literature Review

Both novels include motifs associated with the burden of the past, but formulate and convey them in different ways. The past is idealized in F. Scott Fitzgerald's novel *The Great Gatsby*, especially when depicting Gatsby's fixation with Daisy, his ex-lover. The story is driven by Gatsby's desire to reignite his connection with Daisy, as he is unable to let go of his memories of the times he had shared with her. The attendees at Gatsby's parties are likewise fixated on the past, clinging to the remains of the old world and the associated rituals.

In contrast, *The Sound and the Fury* presents a more negative reflection on past events. The Compson family is weighed down by their past, rendered unable to move on with their lives. The story is broken down into four parts, each narrated by a different character. These characters' recollections and viewpoints are used to explain what happened in the past. The history of the family triggers both shame and remorse, and is the primary factor contributing to their demise. The concept of the "American Dream" is addressed in both the books. The ambition Gatsby expresses throughout *The Great Gatsby*, focusing on improving his social standing, amassing a fortune, and regaining Daisy's affection is a metaphor for the American Dream. Nonetheless, towards the conclusion of the book, the reader is presented with evidence of the rottenness and hollowness of the American Dream. The money Gatsby has was obtained unethically, and the result is that his obsession with Daisy has a tragic outcome.

Similarly, the concept of the American Dream is depicted as challenging in the novel *The Sound and the Fury*, apparent in the Compson family's desire to maintain their standing in Southern society. Despite their best efforts, they are unable to cling to the splendor of their past, and ultimately, their own history will be their undoing.

The Great Gatsby and *The Sound and the Fury* have both been the focus of a multitude of critical analyses, many of which interrogated the significance of being burdened by one's history. *The Great Gatsby* has been

interpreted by some commentators as a critique of the United States' preoccupation with the past, focusing on the role that memory and nostalgia play in the novel. For example, in his essay *The American Dream Distorted: The Tragic Implications of Gatsby's Illusion*, James Callahan argues that Gatsby's quest to reclaim the past is ultimately doomed to failure because it is predicated on a distorted and idealized version of reality (Callahan, 4). Likewise, Wagner-Martin argues that the novel is a commentary on the destructive effects of nostalgia and the dangers of trying to recapture the past (Wagner-Martin, 149).

Other researchers have evaluated how Faulkner used a stream-of-consciousness narrative in *The Sound and the Fury* as a device to investigate the intricate psychological ramifications of trauma and memory in the novel. For example, Richard Gray argues in his book *The Sound and the Fury: A Reader's Guide to the Novel by William Faulkner*, that the novel employs a stream of consciousness narrative to explore the fragmented and unreliable nature of memory, as well as the ways in which language shapes our perceptions of the past (Gray, 450).

3.1. Historical and Cultural Contexts

In addition to literary analyses, a considerable amount of scholarly work has been conducted concerning the historical and cultural contexts in which these novels were written. The 1920s was a time of rapid social and cultural change in the United States, and many critics argued that *The Great Gatsby* reflects the cultural angst common to that time period. For example, Kirk Curnutt argues that the novel reflects the tensions that existed between the old and new worlds, between tradition and modernity, and between individualism and collectivism in the 1920s (Curnutt, 268). Similarly, Tavernier-Courbin argues in her book, entitled "Art as Woman's Response and Search: Zelda Fitzgerald's 'Save Me the Waltz" that the novel reflects the cultural and social changes of that time period. Some of these changes included the rise of consumerism, the emergence of new forms of entertainment, and the changing roles that women played (Tavernier-Courbin, 29).

On the other hand, the novel *The Sound and the Fury* has been read as a commentary on the decline of the Southern aristocracy and the enduring legacy of slavery and racism in the American South. For example, David Minter argues that the novel reflects Faulkner's critique of the Southern myth of the lost cause and is an attempt to come to terms with the legacy of slavery and racism in the South (Minter, 269). Minter's argument is that the novel reflects Faulkner's attempt to come to terms with the legacy of slavery and racism in the South. In support of this view, Richard Godden argues that Faulkner's novel reflects the fall of the Southern aristocracy and the ongoing difficulties embracing modernity in the South (Godden, 573).

3.2. Literary Techniques

Both *The Great Gatsby* and *The Sound and the Fury* investigate the concept of being burdened by one's history, and each employs a variety of literary devices to do so. Through the use of symbolism, imagery, and characterization in *The Great Gatsby*, Fitzgerald conveys the idea that the past is both a source of longing and nostalgia, as well as a burden that hinders progress and change in the present and the future. For example, the green light at the end of Daisy's dock symbolizes Gatsby's yearning for the past, as well as his desire to regain his lost love (Bloom, 52). In contrast, the valley of ashes represents the corruption and decay of American society. Additionally, the character of Jay Gatsby is presented as a tragic person, whose preoccupation with the past eventually leads to his demise, suggesting the weight of the past may be a harmful force preventing people from forging ahead in their lives.

The fragmented and unreliable nature of memory, as well as the ways in which language shapes our perceptions of the past, are both topics investigated by Faulkner in *The Sound and the Fury* through stream of consciousness narrative. According to Godden (442), the book is divided into four parts, each narrated by a different character. These parts each show the character's own viewpoint, relating the events of the past and the struggle to come to terms with tragic events. In addition, the book makes use of a non-linear narrative and a fractured structure, both of which reflect characters fragmented and disconnected memories. This serves to both emphasize the psychological repercussions of trauma and the ways in which the past may haunt the present.

4. Analysis and Discussion

4.1. The Burden of the Past in The Great Gatsby

The Great Gatsby by F. Scott Fitzgerald also examines the excesses and decadence associated with what is also known as the Jazz Age. This period was a time of significant social and economic transformation in the United States. It is Jay Gatsby, a mysterious and affluent man obsessed with regaining his lost love, Daisy Buchanan, who is the eponymous "Great Gatsby." The story concentrates on Gatsby's preoccupation with his own past, as Fitzgerald examines its weight through the lens of Gatsby's character.

The characterization of Daisy Buchanan is one way in which the weight of the past is portrayed in "*The Great Gatsby*." Daisy is presented as a woman held captive by her own past, notably her former love for Gatsby. Due to her inability to go beyond the memories of their past connection, she is eventually unable to give Gatsby her whole commitment in the here and now. This is shown by Daisy's statement to Gatsby, "I did love him once – but I loved you too" (Fitzgerald, 132). The reluctance of Daisy to let go of the past eventually leads to tragedy, as she faces her uncertainty and unwillingness regarding the choice between Gatsby and her husband, Tom Buchanan. Daisy's inability to choose between the two men also contributes to Gatsby's downfall.

The Great Gatsby makes extensive use of symbolism to convey the weight of one's history in a number of different ways throughout the novel. The story is filled with symbolism conveying the significance of the past and its influence on the present. For example, Gatsby's yearning for days gone by, and his desire to win back his ex-lover are represented by the green light at the end of Daisy's dock in *The Great Gatsby*. Ruin and immorality from the past continue to plague the present, and the valley of ashes, which is a dismal wasteland located between West Egg and New York City, is a metaphor for this phenomenon.

4.2. Critical Responses to the Burden of the Past in The Great Gatsby

The portrayal of the "burden of the past" in *The Great Gatsby*, has been the focus of much critical examination. Some researchers suggest that Fitzgerald's depiction of the past is too idealized, such that he does not sufficiently investigate the more negative aspects of sentimental longing. For instance, Harold Bloom argues in an essay entitled *F. Scott Fitzgerald's The Great Gatsby* that Fitzgerald's idealization of the past is a form of escapism that eventually leads to the demise of his characters (142).

However, some reviewers maintain that Fitzgerald's depiction of the weight of the past is subtle and multifaceted throughout. For instance, Susan Resneck Parr argues in her essay titled *Individual Responsibility in The Great Gatsby*, that Fitzgerald's picture of the past is not nostalgic, but rather a criticism of a society that is mired in its own history (7). According to Parr's interpretation, symbols in the book, i.e., the green light and the valley of ashes, indicate ways in which the past continues to significantly impact the present.

4.3. The Burden of the Past in The Sound and the Fury

William Faulkner's *The Sound and the Fury* examines the deterioration of a once-respected Southern family, the Compson family. It is broken into four segments, each narrated by a different character. Each section investigates the central issue of the novel, which is the weight of one's history, introduced in a unique manner. The character of Quentin Compson represents one of the ways in which the weight of the past is portrayed in the novel *The Sound and the Fury*. Another approach is the use of flashbacks.

Quentin is unhappy and unable to break away from his troubled background and is ultimately finally pushed to take his own life. He gives a famous monologue that illustrates his preoccupation with the past; he says, "I offer you the mausoleum of all hope and desire... I give it to you not that you may remember the time, but that you could forget it" (Faulkner, 104). He continues, "I give it to you not that you may remember the time, but that you might forget it" (Faulkner, 104). Failing to reconcile the harsh reality of the present with his idealized recollections of the past, Quentin is eventually doomed to fail by his reluctance to let go of that past.

The use of stream-of-consciousness narrative in *The Sound and the Fury* is another method by which the weight of the past is conveyed. The reader can enter the consciousnesses of the characters and experience their memories and thoughts in a nonlinear manner through Faulkner's use of this literary device. It brings to light the ways in which the past continues to have a significant impact on the present, as the characters are continually being tormented by their memories, unable to free themselves.

4.4. Critical Responses to the Burden of the Past in The Sound and the Fury

The portrayal of the weight of the past, as shown in *The Sound and the Fury*, has also been the focus of a great deal of critical examination. The stream-of-consciousness narrative that Faulkner uses in the work, as well as the author's unnecessarily complicated depiction of the past, are two criticisms levelled by readers against Faulkner. For instance, Michael Millgate claims in his article *The Achievement of William Faulkner*, that Faulkner's representation of the past serves as a kind of nostalgia that eventually undermines the novel's critique of Southern culture (53)

Other critics, meanwhile, contend that Faulkner's use of stream-of-consciousness narration is an effective method by which to investigate the weight of the author's own history. For instance, Cleanth Brooks argues in *William Faulkner: The Yoknapatawpha Country*, that the author's use of this approach allows the reader to feel the characters' recollections in a manner that genuinely mirrors the complexity and subjectivity of human experience (251). Brooks further argues that the book's depiction of the past is a criticism of how Southern culture has failed to leave behind its own history, and that Faulkner's use of stream-of-consciousness narration is a potent instrument for exploring this issue in the novel. Brooks's interpretation is further supported by the fact that Faulkner used stream-of-consciousness narration.

Faulkner's portrayal of the burden of the past in *The Sound and the Fury* has also been the subject of critical analysis. Some critics have argued that Faulkner's depiction of the South and its history has been overly romanticized, as he fails to fully explore the darker aspects of Southern history, such as slavery and racism. For example, Robert Penn Warren argues in his essay *Faulkner: Past and Future*, that Faulkner's portrayal of the South is a form of nostalgia that simply romanticizes a troubled past:

> We can, in fact, think of the poles of Faulkner's work as history-as-action and history-asritual. We may also see this polarity as related to another which he was so fond of – and so indefinite in his formulation of – the polarity of fact and truth. We may see it, too, in the drama of his outraged Platonism – outraged by the world and the flesh. (246)

Other critics, have however, argued that Faulkner's portrayal of the burden of the past is complex and nuanced. For example, in her essay, *The Burden of the Past in The Sound and the Fury*, Judith Bryant Wittenberg explains Faulkner's depiction of the past is not nostalgic, but rather a critique of a society struggling to confront its own history (2). Wittenberg also suggests the novel's use of stream of consciousness narrative represents the characters' inability to escape the past, writing:

> Faulkner's stream of consciousness narrative represents the characters' inability to escape the past. The past is always present in their minds and emotions, and they are unable to move beyond it. This is a critique of a society that is unable to confront its own history and move forward. (149)

4.5. The Diversity and Complexity of the Critical Responses to Fitzgerald and Faulkner's Depictions of the Burden of the Past

The diversity and complexity of the critical responses to Fitzgerald and Faulkner's depictions of the burden of the past in *The Great Gatsby* and *The Sound and the Fury* reflect the resonance of the novels. Indeed, a number of reviewers have focused principally on the function memory plays in the two narratives. Memory is a potent force in *The Great Gatsby*, one with a significant impact on the identities and goals of the characters. Memory is also a major theme in F. Scott Fitzgerald's *The Great Gatsby*, as explained by Martín Bullón (4), "Gatsby's entire existence is predicated on his memories of Daisy and his desire to reclaim the past." Memory is portrayed

in a similar manner in *The Sound and the Fury*, in which it functions as a fractured and unreliable force shaping the characters' perceptions of the past and the present. According to Cleanth Brooks, "Memory is a central theme of *The Sound and the Fury*, but it is a fragmented and unreliable force that distorts the characters' perceptions of the past and the present" (98).

Other critics have highlighted the role played by the use of language to construct and manipulate reality in the novels. For example, F. Scott Fitzgerald's *The Great Gatsby* revolves around a central theme centered on how Gatsby uses language to construct a false persona and thereby manipulate others. As critic James L. W. West III observes, "Language is a crucial element in *The Great Gatsby*. Gatsby's use of language to create a false persona and to manipulate others is a powerful commentary on the role that language plays in American culture" (159). In *The Sound and the Fury*, language is also presented as a medium through which the characters can simultaneously reveal and conceal their feelings and perceptions about the world around them.

By using the stream-of-consciousness narrative technique, Faulkner reveals the ways in which language shapes the thoughts and feelings that create the inner lives of the characters in the novel. According to Kherroubi and Benzoukh, "Language is a central element of *The Sound and the Fury*" (109). This is further explicated by Gray, who states, "Faulkner's use of stream of consciousness narrative enables readers to experience the inner lives of the characters and the ways in which language shapes those lives" (610).

Finally, a number of reviewers have concentrated their attention on the role gender plays in these books. Women are portrayed as both objects of desire and symbols of the past in *The Great Gatsby*. Daisy and Jordan, in particular, are included as representatives of the past. Daisy symbolizes Gatsby's lost love, while Jordan symbolizes the social and cultural changes that occurred during that time period. The critics Al-Badarneh and Amayreh write in their analysis of the novel, that "Women are central to *The Great Gatsby*, but they are depicted as objects of desire and as symbols of the past" (23). In Faulkner's *The Sound and the Fury* too, women are portrayed as helpless victims of the past and as symbols of the decline of the Southern aristocracy. As noted by the critic Ma, "Caddy is a victim of the history of her family as well as the restrictive gender roles of the time" (40).

5. Conclusion

As discussed in this paper, the burden of the past is a common theme in American modernist literature, and *The Great Gatsby* and *The Sound and the Fury* are two of the most prominent examples of works elucidating this theme. Both books investigate the notion that one's history may both haunt the present and create the future, with the result that people are frequently held captive by their own personal narratives. Some critics have also argued that Fitzgerald's depiction of the past in *The Great Gatsby* is romanticized, while others suggest it is a critique of a society unable to move beyond its own history. Certainly, Fitzgerald's depiction of the past in *The Great Gatsby* has been the subject of considerable critical analysis. Meanwhile, Faulkner's depiction of the burden of the past in *The Sound and the Fury* has been the subject of critical analysis, with some arguing Faulkner's portrayal of the South is overly romanticized, and others that it is a critique of a society unable to acknowledge its own history. The cultural and societal shifts taking place during the modernist period in America are reflected in the central motif of the burden of the past. At this time in history, people were struggling to come to terms with the rapidly changing world around them, while also bearing the burden of their own personal histories.

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Negative Consequences and the Direct Impact of Unstable Governments on the Neighbors (Iran): Afghanistan and the Failure of the Government - Nation Building and Peace

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Abstract
Iran's neighborhood with countries that most of them have experienced unrest, conflict or war due to internal conflicts or due to regional and international crises, has effected and consequences of such issues spread to Iran unintentionally. One of the most tangible of these often undesirable effects is the occurrence of crises and violent conflicts in the neighboring countries, which with the occasional influx of refugees fleeing from such crises (especially from the two countries of Afghanistan and Iraq) into the territory of Iran, the it has shown its adverse effects in different areas in Iran. In the meantime, due to several decades of civil war and international conflicts, the existence of numerous ethnic and religious divisions, a failed state and the lack of a real nation-state, Afghanistan remains a focal point of ongoing turmoil within both the region and the global community. Even though it was expected that this country would experience peace and stability over time following the international coalition's defeat of the Taliban in 2001, but after more than a decade, there is still no promising prospect for this. Therefore, one cannot be safe from the unwanted and inevitable side effects of being a neighbor with such countries, or simply avoid them. Since the fate of the neighbors has always been related to each other and somehow tied to each other, the future and fate of the neighboring countries and nations should be so important to Iran that the fate of Iran itself is important. Considering the history and the difficult and complicated situation of Afghanistan during the past decades and looking at the fragmented, heterogeneous and chaotic situation of this country today, we will definitely find that despite the apparent changes in the political and governance arena, there is not much change in the unstable nature and from Afghanistan has not come into existence and this means that until the unknown future, Iran will be affected by the effects and consequences of its neighborhood with this country.

Keywords: State-Nation Building, Failed State, Afghanistan, Iran

1. Introduction

Over the past years, Afghanistan has consistently remained a cause of concern for Iran as a neighboring country, and this situation is likely to persist in the foreseeable future. An analysis of the disputes, conflicts, and wars that have unfolded in the Middle East region over the past two decades reveals that this country has emerged as a significant epicenter of crisis and conflict, both within the region and on a global scale. Definitely, the root and origin of this chaotic situation of Afghanistan in the region should be sought in the internal issues of that country.

The numerous and intersecting ethnic and religious divisions and the lack of a real nation-state have caused the denial of our sense of belonging as a single country among the people of Afghanistan has always caused ethnic and religious strife and strife over power.

Iran's neighborhood with Afghanistan has always unintentionally and inevitably imposed its consequences and complications on Iran, one of the notable outcomes of this situation was the refugee crisis in Afghanistan, leading to a significant influx of Afghan nationals seeking shelter into Iran's borders.

Following the collapse of the Taliban and the initiation of the democratic process in this country, there was a belief that the security issues and the multitude of crises in Afghanistan had finally come to an end.

But in this article, we intend to examine the issues of Afghanistan and explain the realities of this country, to point out the fact that this country is still prone to new crises in the future, which is a sign of the establishment of a unified nation-state with stability is not seen in the short or even medium term.

This issue will be important for the Islamic Republic of Iran because it will be clear that there are still conditions for the occurrence of new crises and conflicts in Afghanistan, and the necessary forecasts and preventive measures in this area should be taken in determining the macro strategies towards the unstable neighbors, meant

2. Theoretical foundations: state-nation building in theory and practice

2.1. Nation building

Nation building is a sociological-historical process through which, with the dimming of ethnic, tribal, racial, gender, language and number of "people" distinctions, in a "certain land," it becomes a "common historical identity." They achieve and consider maintaining its values as one of their vital duties. The term nation building was popular among political science thinkers who had a historical approach in the 1940s to 1950s. The theory of nation-building has been used first to describe the processes of national cohesion and continuity that have led to the establishment of modern nation-states and are different from the various traditional forms of governments such as feudal and monarchical governments, church governments and empires (Riemer, 2005).

The historical development of nation-building in Western Europe starting from the sixteenth century onwards is a significant process that took place over time and based on a process from the past; That is, certain factors and foundations have caused nation-building to take shape as a modern phenomenon. Naturally, based on the developments that occurred in Europe after the feudal era and with the formation of the Renaissance era, as well as social, industrial and economic developments, we are faced with the concept of the nation and the modern state. The Treaty of Westphalia signed in 1648 serves as the foundation for the establishment of contemporary nations and later the concept of the modern nation, which we can recognize as the foundation for the establishment of contemporary nations within the state. But if we want to have the same historical view about Western Europe, we must say that the formation of nations in Europe preceded the formation of governments. To clarify, this can be attributed to the social, cultural, economic, and political transformations that transpired in Europe throughout the feudal era, people found themselves in the form of a group of people with common goals and ideals and actually created a nation. These nations formed governments so that they can distinguish between themselves and others within the framework of a geography and a specific political organization called the

government, and in this way to meet their political, security and economic needs. This self-awareness caused the correlation of a group of people based on linguistic, cultural, ethnic, historical and religious characteristics, and the nation is the crystallization of this historical process. Later, these nations formed their own governments, which became the foundation for the establishment of the national government in the Treaty of Westphalia. After the Treaty of Westphalia, loyalties shifted from the person of the emperor and the king to the land. This change shows that after that, we are faced with people who live within a specific geography and have loyalty to that land, and this is how the concept of the national government was formed. We can say that nation-building in Western Europe is a modern phenomenon, and this nation is the result of the self-awareness of the people who live in that territory. Therefore, in Western Europe, first the nation and then the state emerged (Riemer, 2005).

2.2. State building

It is not hidden from anyone that the stability, power, technological advances and authority of the western countries were the result of the successful process of nation-state building in the west and on the contrary, long tensions and wide-ranging conflicts in other geographical areas of the world including Africa, Latin America, the Indian subcontinent, South East Asia and even Eastern Europe was caused by not going through this process successfully. It is to emphasize the importance and role of governments that some thinkers have called the current era the era of nation-states.

State building is a process that involves the development of the connection between the government and the people is regulated and defined and institutionalized in the form of different political, economic, social, cultural and basically legal structures.

In a general view, one can argue that each society follows its unique trajectory when undergoing the state-nation building process, and without doubt, such a process cannot be generalized to other societies, in different terms, one can express that there are various state-building processes, It is equal to the number and variety of countries. But in order to facilitate the study of state building processes in different societies, it is necessary to categorize them and narrow down the scope of study as much as possible by identifying the common features. To determine state building models, criteria such as different geographical and cultural conditions, different historical conditions, or priority and priority of state building or nation building are important features (Arianfar, 2013).

However, three models can be considered for this, that the advance and delay of the state or nation, and the international state-building model are considered common and valid models for studying the state-nation-building process in today's world.

In the model of advance and delay of state and nation, they investigate the process of state-nation building with two methods. As stated before, sometimes nation building is considered prior to state building, similar to the situation in European countries where the concept of a nation was established prior, and these nations subsequently served as the foundation for state formation. Sometimes they also suggest the opposite of this process, such as the United States of America and many third world countries, where in the first stage, state building was carried out, followed by the process of nation building by the governments, the first of which was a bottom-up model. And the second one is also called top-down model.

But the third model, which is used more in the discussion of Afghanistan and countries like it, is the international nation-state-building model, which has also been called nation-state-building from outside and even imperialist nation-state-building.

In this model, an external agent (such as foreign countries or international organizations) tries to intervene in this process, and the necessary planning is guided by the support and supervision of the external actor (Zarger, 2016). The international state-building model was initially employed after World War II in the cases of Germany and Japan. At this stage, the United States of America began to build a state in these two countries. Germany and Japan had very successful experiences for government and nation building.

However, this process was not done easily in Germany and the Germans went through many ups and downs in order to succeed and overcome the challenges of state building. The new experience of this model started in the 1990s in the Balkans, and today, state building in Afghanistan and Iraq is one of the clear examples of the international state building model.

3. Causes for the lack of success in the nation-building project in Afghanistan

Although many reasons can be listed for the failure of nation-state-building in Afghanistan, in below discussion, we shall state the causes that have had the greatest impact in recent decades and in the age of modernity:

3.1. Deep cultural and social gaps

The main characteristic of the Afghan society that has emerged in the political structure of this country is the multi-ethnic, religious and cultural structure of this country. The main and fundamental factors of inefficiency and challenge of this structure should be considered to be affected and caused by the unorganized and decomposable tasks and processes of such a structure.

The population of Afghanistan is estimated to be around 27 to 40 million people (depending on the number of displaced people). It is estimated that 38% of this amount are Pashtuns (according to other sources about 50%), 25% Tajiks, 19% Hazaras, 6% Uzbeks and 12% other ethnic groups.

From a religious point of view, 84% of people are Sunni Muslims, 15% are Shia Muslims and 1% are other religious minorities. The languages of Afghanistan are Pashto, Dari, Uzbek, Turkmen and Arabic for religious ceremonies. The literacy rate (people aged 15 or more who can read or write) is 47% for men and 15% for women. (The World Fact Book)

Also, many and diverse ethnic groups and sub-groups live in the mountains of Afghanistan, the three main groups of which are: Hazaras, Shia Tajiks and Nuristanis. It is believed that the Hazaras, who are themselves a Shiite group, came here together with Genghis Khan, the great Mongol general who came to this region in the 13th century, and they have a completely Mongolian face. Tajiks are one of the ethnic groups of Afghanistan. The majority reside outside urban areas, while a limited few inhabit the Badakhshan mountains, and the Nuristanis dwell in the wooded regions of the challenging mountains to the east of Kabul. There are small towns on the banks of Hirmand river, but there is no densely populated center in the desert region of Afghanistan. The inhabitants of this area are predominantly Pashtuns, comprising a significant portion of Afghanistan's population, primarily concentrated in the southern regions. The primary Pashtun factions, Ghilzai and Durrani (Abdali), wield considerable political influence in the nation, and many of the political leaders have arisen from within these groups (Korna, 2004:14).

The majority of the population in the steppe regions consists of Sunni Tajiks, which are mostly concentrated in the districts of Kabul and Herat. Tajiks, whose language is similar to Persian, form the second major ethnic group after Pashtuns. Four million Tajiks live in Afghanistan. Another major ethnic group in northern Afghanistan are the Uzbeks and Turkmens, whose number exceeds 10.5 million people. Uzbeks and Turkmens are robust individuals primarily involved in agriculture and livestock farming, with their ancestry tracing back to the Turkic peoples of Central Asia (Korna, 2004: 18).

This mosaic structure is based on discontinuous and unorganizable foundations that show multiple, inconsistent and different features in the objective function of a structure. The bed that gives content to this structure is based on dissimilar and heterogeneous components. The mentioned features in the national structure of the Afghan society has exhibited pronounced elements of both discontinuity and fragmentation, and the emphasis on these structural characteristics and details has exacerbated social disarray and disintegration.

Ethnic, linguistic, and religious diversity constitutes a fundamental aspect of Afghanistan's national composition. The incomplete and uncultivated functions of these elements have made the foundations of consistency and

durability of the common national spirit weak and weak. Emphasizing tribal allegiances, insisting on descent values and subcultures, prioritizing religious ideas over religious affiliation rituals, and making tribal symbols taboo instead of national symbols are obvious manifestations of lack of education and lack of "national spirit." It is considered that it has crystallized the fragmented structural profiles in the political unit of Afghanistan. The continuation of this sick structure has led to the closing of the arteries of interaction between the elements and elements of the national elements, and the fragmentation of the elements into different parts, and the division of the elements into heterogeneous fabrics, to the further disintegration of the characteristics of the ethnic groups and elements of the formation. It has helped the social structure of Afghan society. The process of such interaction has been the prominence of signs and manifestations of culture and ethnic-tribal attachments in this country; In the end, this has blocked the platform for the multiplication of cultural diversity, and the opportunity for manifestation and re-cultivation, dialogue and national unison (Vaazi, 2002: 72).

Numerous significant factors have played a crucial role in shaping and solidifying this progression, among which two main factors of spreading the culture of poverty and the data of tribal culture can be mentioned. Continuous poverty has caused the dynamism and social mobility to decrease in the field of social interaction and it has occurred as a cultural-social problem in the field of relations and national structure. This phenomenon has evolved into a "subculture" within the fabric of social existence, perpetuated across generations, and yielding distinctive impacts and outcomes.. Social introversion and the lack of effective participation of people in the public arena, the prevalence of specific social characteristics, such as fear, despair, and the impact of environmental violence on social and political characteristics, discontent with the political system represents one of the outcomes of the "culture of poverty" in Afghanistan. it is possible. From within the data of tribal culture, we can also point to the insularity of tribal culture, resistance to rationality, the nurturing of biases and various ethnic, religious, racial, and local conflicts, and the unbelief in political inclusiveness. (Vaazi, 104-74: 2002).

A key factor contributing to the absence of a modern national state and the formation of a unified nation in Afghanistan is the lack of a clear definition of national values and common national interests. National values typically encompass universal or shared values that serve to foster a sense of collective purpose among a country's residents, promoting a common way of life. These national values should transcend the various ethnic, tribal, linguistic, religious, political, and social identities. However, in Afghanistan, these common national values and interests remain ambiguous and unattained. The presence of numerous ethnic and linguistic groups, each leading separate and diverse lives while adhering to tribal and ethnic traditions, hinders the establishment and recognition of shared national values and interests. National identity and national values are often defined by different ethnic groups based on their particular interests and objectives.

3.2. The special geographical location of Afghanistan

The physical and geographical characteristics of Afghanistan represent another factor contributing to the challenges and failures in the establishment and sustainability of modern national governments and the formation of a nation-state in Afghanistan. The geographical challenges faced by Afghanistan in the process of nation-state building have several dimensions and aspects. From an international perspective, Afghanistan, positioned as a buffer state between the competing colonial powers of Tsarist Russia, Bolshevik Russia, British colonialism, and later the United States of America, was consistently caught in their geopolitical maneuvers and rivalry. The involvement of regional countries in cooperation with these international superpowers further complicated the dynamics of this competition. The repercussions of this competition over Afghanistan are evident in political instability, a critical element in the development of a state-nation.

From an internal standpoint, Afghanistan's geographical structure poses another set of challenges for nation-state building. The mountainous terrain and the dispersal of the population across mountain valleys and rural areas, isolated from one another, render the process of nation formation in Afghanistan more challenging to achieve.

3.3. Political and economic obstacles

Over the past century, political factors in various dimensions have posed a significant challenge to the establishment of modern and national governments. The acquisition of political power not through democratic elections but through conflict and warfare for control has been a detrimental element in the nation-state building process and the formation of a modern national government. Afghan governments and rulers' reliance on foreign support, both in gaining political power and maintaining authority, to varying degrees during the last century, further compounds the challenges in the nation-state building process. The weakness or lack of legitimacy of ruling authorities resulting from violent power struggles renders them incapable of forming a modern national government.

Throughout Afghanistan's contemporary history, the tyranny and authoritarianism of rulers have consistently obstructed the path to establishing modern and national governments. While political participation and pluralism are essential for the development of a modern national government, political oppression and the monopolization of power based on ethnic, tribal, linguistic, and religious discrimination have eroded the foundation for such participation. The internal power struggles within Afghanistan have been a continuous impediment to the creation of modern and national governments (Akhlaq, 2015).

The power struggle, contrary to the concept of nation-building and the establishment of a nation-state, seizes every opportunity, both in theory and in practice, from governments and statesmen, hindering progress in this direction. Until the seventies of the 20th century, the power conflict was a tribal and clan conflict and a family conflict between the king and the princes of the ruling tribe. The conflict between the kings and princes of the tribes, the power struggle between the Saduzai and Muhammadzai tribes, and the continuous and endless war between the rulers of these tribes, were actually conflicts that continued continuously over access to power, maintaining power, and expanding power. Nevertheless, despite the alterations in the power acquisition process in Afghanistan following the fall of the Taliban in 2001, it's evident that a significant portion of the elections held in the country has been marred by disputes and accusations of electoral fraud. The system of transferring political authority remains ineffective, with a new form of reconciliation emerging among various groups, individuals, and tribes. This process is, in fact, considered the reproduction of an incomplete and inefficient tribal and clan structure from the past, leading to the production of modern inadequacies.

Conversely, economic destitution and profound vulnerabilities in the economic infrastructure present substantial barriers to nation-building in Afghanistan. The prevalence of economic poverty and the resulting fiscal constraints of the government have perpetuated a state of perpetual reliance on foreign aid, with the termination of this aid jeopardizing the stability of the government. Economic impoverishment also exerts a detrimental influence on society, diminishing the capacity and opportunity for the general populace to engage with national and social issues. People's inclination and enthusiasm for involvement in political and even social activities, which are vital components of nation-state building, do not naturally flourish in the context and ambiance of severe and ongoing poverty that has afflicted Afghan society. Poverty remains at an alarmingly high level in Afghanistan, with roughly 42% of the population falling below the poverty threshold, and a significant proportion of them facing severe hardships. Women and youth rank among the most vulnerable segments of the population in this country (World Bank, 2013).

Such circumstances breed distrust both within society and between the government and the populace. Undoubtedly, under the unfortunate conditions of scarcity and poverty, people struggle to attain the capacity for instigating change in both social and political spheres of life.

3.4. The failure of international state building (the failure of the international community in Afghanistan)

In the international state-building model, if the opportunities are used properly and accurately, the field of public order, people's values, and human rights will gradually be institutionalized and will come to fruition. Successful examples of this nation-building model can be seen in Kosovo, East Timor, and Sierra Leone, while there are also unsuccessful examples such as Somalia, Haiti, and Cambodia. As a consequence, the international state-

building model stands as one of the prevalent and successful frameworks that have been implemented and firmly established in numerous nations in the post-Second World War era. Presently, some of these countries lead the way in democratic systems and excel in technology and innovation, exemplified by nations like Germany and Japan, while others have had comparatively less success, lagging behind those in the vanguard.

Historically, Afghanistan's state-building process can be divided into five key phases:

1. The initial stage involved Afghanistan gaining independence and separating from Iran.
2. The second stage saw the Soviet invasion of Afghanistan and the establishment of a communist government.
3. The third stage followed the Soviet Union's withdrawal from Afghanistan, leading to the emergence of the Mujahideen Islamic government.
4. The fourth stage marked the formation of the Taliban-led government.
5. The current, fifth stage is characterized by the establishment of the government due to American intervention in Afghanistan.

In the context of state building, the initiation of the modern state-building process in Afghanistan, following a model of international nation-building or external involvement, should be attributed to the presence of the global coalition led by the United States in Afghanistan in 2001. The United States assumed a leadership role in maintaining global security and order, which entailed promoting political system democratization and the creation of stable governments that contribute positively to the world order.

Since 2001, terrorism has evolved into a global threat that endangers the stability and security of nations worldwide, causing everyone to perceive themselves as being at risk. The attack on the Twin Towers and the World Trade Center resulted in the loss of thousands of lives. Consequently, in the eyes of the international community, Afghanistan became a refuge and sanctuary for terrorists on that tragic day. From that day on, terrorism was present as a serious and new threat everywhere and at any time. The fight against this phenomenon was started by the international community, and after the presence of the coalition forces in Afghanistan, the practical basis for the defeat of the Taliban was provided, which at that time was believed to be the end of the establishment of terrorism in Afghanistan. Then, in order to prevent new terrorist attacks and move Afghanistan towards a system of democracy and global values and human rights, the foundations of the national government should be laid. This work was done with the help of different countries, including the United States of America, and now more than a decade has passed since that time. Although Afghanistan still had an incomplete and primitive democratic system, it could be claimed that the current system of Afghanistan would not be able to preserve the country and at least the democratic achievements in this country without international support. Despite the remarkable progress in this field, there is still a long way to talk about a real nation-state. The politicians, cultural and civil institutions of Afghanistan along with regional and international actors must work hard to remove Afghanistan from the list of bankrupt governments and save the Afghan society once and for all from the current course of regression.

From that moment onward, terrorism became a pervasive and significant threat worldwide, existing at any time and in any place. The international community-initiated efforts to combat this phenomenon, and with the presence of coalition forces in Afghanistan, a practical foundation was laid for defeating the Taliban, which was seen as a step towards eliminating terrorism in Afghanistan at that time.

Subsequently, to avert fresh terrorist attacks and guide Afghanistan toward a democratic system founded on global values and human rights, the groundwork for a national government was established. Multiple countries, including the United States, contributed to this endeavor, and over a decade have elapsed since that period. Although Afghanistan currently possesses an imperfect and rudimentary democratic system, it can be asserted that the existing Afghan system, along with its democratic accomplishments, is unlikely to be sustainable without international support. Despite notable progress in this regard, there remains a considerable distance to cover before Afghanistan can be characterized as a fully established nation-state.

The government, cultural and civil institutions, and the political elite of Afghanistan, in collaboration with regional and international stakeholders, must exert considerable effort to rescue Afghanistan from the ranks of failing governments and permanently steer Afghan society away from its current path of decline.

3.4. Bankrupt government[1]

The failure or bankruptcy of the government means that the government has failed in very important ways and instead of protecting the citizens, chaos and often civil war prevails. Laws are not made and if they are made, they are not implemented and order is not established. There is either an absence of central political authority or, if it exists, it is highly ineffective. Frequently, the economic system is powerless and unable to supply even the most fundamental necessities of well-being for the population. The government's failure in most cases happens to governments that were already fragile and weak. In comparison with the fragile state, the failure is only more intense and the problems of the fragile state are intensified. Therefore, to understand the government's failure, we must know the fragile and weak government from which failure comes out. Broken governments are ineffective in several ways. The first important problem of these governments is the economy. In fact, there is no coherent national economy capable of maintaining the basic level of welfare for the people. The second issue with corrupt governments is of a political nature and is linked to the government institutions and their legitimacy as perceived by the people. Effective governments perform many activities that their citizens take for granted, such as: ensuring the security of citizens against internal and external threats, establishing order and justice in the sense of the effective rule of law, and maintaining personal freedoms, including basic civil and political rights.

Fragile and failed governments perform such functions only to a limited extent or are unable to perform them at all. Government institutions, on one hand, exhibit a deficiency in capacity, competence, and resources, while on the other hand, power frequently becomes concentrated in the hands of elites who exploit the prevailing circumstances for their personal gain. For obvious reasons, corrupt governments lack legitimacy. Public legitimacy is low because large sections of the people do not see a reason to support the government and the government lacks authority. It means that people do not support or follow its rules and regulations. Horizontal legitimacy, which encompasses the sense of shared belonging among individuals within a nation, is also feeble. This is because the government is often dominated by specific groups and doesn't symbolize the entire population. Destructive governments entirely lack the capability to foster a sense of spiritual unity among the people (Rotberg, 2004).

The concept of a disruptive government is an ideal model and in the real world, governments approach this model to different degrees.

With this assessment in mind, the state of Afghanistan after more than a decade of international community presence in the country is a mixed one. Despite substantial aid and support from international institutions, including the United Nations, the European Union, and other nations, aimed at fostering development, peace, and stability in Afghanistan, there remains a significant disparity between the aspirations of the international community for Afghanistan's future and the current reality the country faces.

While the international community has made substantial financial contributions and deployed a significant number of soldiers, trainers, experts, and foreign organizations and companies in Afghanistan, it has struggled to meet even the basic security and development needs of the nation. Various statistics from international organizations indicate that over the course of more than a decade and billions of dollars spent, the impact on Afghanistan's overall situation has been limited, and in some cases, there has been a decline in the country's status.

[1] Failed State

According to the ranking of the Transparency International Organization in 2013, in terms of corruption and government mismanagement, Afghanistan is in one of the worst positions among 177 countries, i.e. 175. Of course, this country was in a better situation in 2005 than now (International Transparency, 2013).

According to various polls, after more than a decade, the feeling of insecurity and fear among the people is still presists in several parts of Afghanistan, and numerous incidents and terrorist attacks in different parts of Afghanistan, including the capital of this country, are still one of the It is the main problem. In 2001, Afghanistan was introduced as the most bankrupt state in the world (Miller, 2011: 54). However, despite many international efforts, this country still does not have a good situation and during the years 2010-2013, it was among the first seven states in the ranking table. It has been ranked among the most bankrupt governments (The Failed, States, Index, 2013).

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Afghanistan is still known as the largest producer and exporter of drugs in the world, and talks about the failure of programs to combat drug production in this country are heard through the reports of various experts[2]. The United Nations Office on Narcotics and Crime recently announced that the level of drug cultivation in Afghanistan increased by more than 36% in 2013 (UNODC, 2013).

Afghanistan continues to be regarded as one of the world's poorest and least developed nations. As mentioned earlier, a significant portion of the Afghan population, around 42%, still resides below the poverty line. In the field of human development index, this country ranks 175th among 186 countries and ranks 141st among 146 countries in terms of gender equality, despite years of spending and propaganda by western countries (UNDP, 2013).

Afghanistan still grapples with one of the highest rates of maternal and infant mortality and possesses one of the lowest life expectancies in the world (Transparency International 2013). They rely on agriculture and animal husbandry for their livelihood. Finally, in the latest UN report, the number of Afghan civilian casualties in the ongoing violence in this country increased by 14% during 2013, which is the highest increase since 2009. According to this report, the majority of the victims of this violence were women and children as in previous years (Afghanistan Annual Report, 2013).

All this shows that the Afghan government, despite the efforts made, is still considered among the bankrupt governments, which still does not see a promising and reassuring prospect ahead of it.

4. Past experiences and future possibilities

4.1. Consequences of instability in Afghanistan for Iran

As stated, the problems and consequences of neighboring bankrupt states like Afghanistan are not limited to the national borders of that country, and their problems and crises spread to neighboring countries (Starr & Iqbal, 2008). Different issues in such countries can be studied in different areas such as political-security, social-cultural and financial-economic.

But among the first tangible and far-reaching consequences of this neighborhood is the emergence of people with the title of refugee and a crisis called refugee. The presence of any foreign citizen in a foreign country can

[2] United Nations Office on Drugs and Crime.

have political and security consequences for him and the host society. Now, when these people are present in a society in the form of numerous refugees, the scope and depth of such problems will definitely increase. The spread of social insecurity, theft, various crimes, illegal entry and exit from international borders and the occurrence of border conflicts, the infiltration of terrorist groups and obstacles in the guise of refugees into the host society and changing the composition of the population have been some of the cases that have occurred throughout the year. In the past, it has been mentioned as political and security concerns caused by the presence of refugees in Iran. On the other hand, the refugee community is also deprived of special political and social rights such as participation in elections and special political and security protections due to the termination of the citizenship relationship with their respective government. Definitely, the most important part of the consequences of asylum for both parties should be sought in the social and cultural field.

The emergence of new social phenomena resulting from the interaction between the culture of the native community and the culture of the refugee group is considered one of the most significant complexities of such an unintended encounter. Cultural and religious conflicts, marriages between refugees and host society and its cultural consequences and other such examples have always been clearly observed in different periods of refugees' presence in Iran. The problem of providing the educational needs of the refugees is also one of the things that has caused problems for the host society. Simultaneously, neglecting the education of these individuals and the younger generation, alongside the financial burdens associated with their presence, creates a breeding ground for crime and a multitude of security and economic issues. The increase in the refugee population has consistently been a cause for concern in the region. In addition to the long-term security and political effects, this has also caused concerns in the field of deep cultural and social effects. With the presence of the first refugee in any country, the first need is financial resources for accommodation and provision of his general needs. Providing for the staggering expenses of refugees in Iran has been the first economic problem caused by their presence in our country.

But the economic problems of the refugee crises in Iran have gone beyond current expenses. Due to the lack of access and permission of this refugee group to the official labor market in the country, the informal and black labor market and the internal labor market were occupied by the refugees. On the flip side, the extensive border regions and the allure of markets on both sides create opportunities for the smuggling of goods, gold, and currency by the asylum seekers, and they establish connections with domestic and foreign businessmen. This has had a detrimental and destructive impact on the national economy. However, when will these crises, particularly the refugee crisis, come to an end? This is a challenging question to address. At the very least, it can be said that as long as numerous conflicts and divisions persist in neighboring countries and societies, including Afghanistan, and until a genuine nation-state is established in these nations, such crises will remain a formidable challenge for neighboring countries, particularly Iran. Even though more than a decade has passed since the fall of the Taliban and the presence of international institutions and nations in Afghanistan, the Minister of Interior of the Islamic Republic of Iran reports that there are still approximately 2.5 million Afghan refugees in Iran, both legally and illegally (Hamshahri 2014).

This clearly means that the Afghan people are still not confident enough about the security, stability and prosperity in their country to force them to return to their homeland, and it seems that this pessimism will continue until the unknown future.

4.2. Afghanistan and the future perspective

The process of nation-building and the establishment of a national government represent one of the paramount and foundational concerns in Afghanistan's political and social landscape. This issue has been continuously faced with different and even conflicting answers and views that there is a nation in Afghanistan? Are we a nation in Afghanistan? Do we have and have had a national government? And if we are a nation, what is the national identity and national interests in this structure? However, there is no common definition and belief about the Afghan nation and about the national identity and interests that require such a nation. If some people in the intellectual and political field still think that the phenomenon of the nation in Afghanistan is unformed and unformed, another group talks about the existence of the Afghan nation, whose roots even go back thousands of

years. Their belief and attitude speaks of the continuous existence of the nation in Afghanistan, but the permanent presence of the nation has been damaged by aggression and foreign interference.

Some people believe in the existence of the foundations and components of the nation in Afghanistan, which can be used to build the foundation of the nation and go through the process of nation-state building.

The owners of each different point of view about the nation and nation-building and the process of nation-state and nation-state formation in Afghanistan present their reasons and evidence. Some attribute continuous hindrances to the stability of the nation-state to external influences, while others point to internal factors, identifying ethnic dominance as an obstacle to the development of the nation-state concept. Another group considers various social, cultural, political, economic, geographical, etc. components to be involved in not being a nation and not completing the state-nation process (Andishmand, 2014).

A noteworthy and critical aspect in the discourse on national identity, nation-building, and the establishment of a nation-state is the extensive range and diversity of theories surrounding this discussion. It is possible that a theory and point of view in one society and country has more comparative fields and a better practical basis, but in another country, it works unsuccessfully. Or maybe it is possible to draw an easier and more practical map in this direction by combining all the theories of scientists or the experiences of countries that have gone through this process. The important point is that in nation-building and going through the nation-state process, objective and subjective conditions should not be ignored and should be dealt with ideologically and dogmatically. The discussion on this issue is not a discussion about a category and formula of mathematics and experimental sciences that can reach a conclusion with certainty.

But after going through different theories and in the field of reality, considering the turbulent and complicated history of Afghanistan and the bitter experiences that the people of this Afghanistan have gone through, now the main question is, what will the future of Afghanistan be like? Another important question will be, what will be the impact of developments and possibilities that are envisioned for the future of this country on Iran? Should we wait for the occurrence of other crises in Afghanistan, or will this country gradually go through the real path of nation-state building? How should the Islamic Republic of Iran prepare itself for the current and future developments in Afghanistan and with what approach should it take to welcome various possibilities? What are the possibilities we are talking about? While this article cannot comprehensively analyze and elucidate the impact of every potential scenario on Iran, but identifying specific examples can be a prelude to determining alternative strategies for preparing to face any new conditions in the country.

Following the collapse of the Taliban regime, the Islamic Republic of Iran has consistently endorsed the cohesion and unity of the Afghan nation and state, regarding the presence of a united Afghanistan as a safeguard for stability, security and prosperity in Afghanistan and subsequently in the region. In fact, the best imagined form for Iran and the region is the existence of a unified country with aligned groups and to a large extent agree on affairs. This model will definitely reduce many of Afghanistan's internal crises and minimize its effects on Iran and the region. But this is considered an ideal example for this country, and during the past decade, the hope to reach a unified powerful nation-state has not strengthened much. At present, the full realization of such an ideal model appears overly optimistic, and it is not reasonable to expect it, particularly in the short term. Nevertheless, even if achieving an ideal Afghanistan in practice may be challenging, the country is currently striving to preserve its unity and work towards national reconciliation to reestablish a nation-state in its original configuration. Although the new government was formed and finally all groups agreed on its formation, it is still far from reaching the minimum required to talk about a national government in the full sense. There is still a serious possibility that with a new and not so severe crisis, this coalition will break apart and Afghanistan will face a serious and vital challenge. Still, the governments formed after the Taliban not being able to find their effectiveness and strength in a comprehensive national agreement and prove it to the world community.

But against the most optimistic scenario for the future of Afghanistan, there are other options that have the possibility of real and full-fledged development in the political life of this country. In fact, some are so

pessimistic about the political future of this country that they consider it impossible to create a stable democracy for this country (Sale, 2013).

Now, if we leave aside the return of Taliban-type extremism or the domination of a foreign country over Afghanistan as not very likely options, the most pessimistic possibility will definitely be the strengthening of separatist approaches in Afghanistan, which will have different and profound consequences and effects for this. This process will involve the country and its citizens on one side and the region and its nations, particularly Iran, on the other side. Although now this option does not have much support among public opinion, but some actions, statements and behaviors point out that it should not be neglected and even its potential possibility should not be overlooked. In the middle of these options, there is the granting of autonomy to different sectors or the creation of federal governments in Afghanistan. If such options are implemented completely and definitively, they will have their effects and consequences, which can be seriously considered. Indeed, each of the scenarios mentioned should be treated as a potential outcome, each with varying degrees of likelihood, and appropriate measures and preparations need to be undertaken for each one. Although in the end it is the people of Afghanistan who must determine their own destiny, but the Islamic Republic of Iran must also have the conditions and readiness to face any fundamental change in this country and not be influenced by the events and actions that have the least consequence. It could be the extension of the current refugees' presence in Iran and even the occurrence of a new refugee crisis in the country.

5. Conclusion

The neighbors of any country are considered the most important friends or enemies of that country. In this sense, stability, security and prosperity in the neighbor of each country means stability and security in that country, and on the contrary, any tension and instability in the neighbor will threaten the security and stability in the neighboring country. Unfortunately, Iran has had two unstable and insecure neighbors in its east and west for the past decades. Two neighbors who have sent millions of refugees to Iran. The common feature of these two countries, namely Iraq and Afghanistan, is the existence of bankrupt governments in them, which have not left their hostages until today. An examination of Afghanistan's historical, cultural, ethnic, and religious contexts suggests that in the short term, there may not be much hope for escaping the current predicament. The government of the country remains ensnared in a cycle of crisis and turmoil. This means that these countries still have a great potential to spread the effects of their internal crises to their neighbors, and the latest example, the presence of ISIS in Afghanistan and Iraq, confirms this. Despite over a decade of fundamental changes in Afghanistan's political structure, a genuine and effective nation-state remains elusive in this country. Given this situation, it can be argued that Afghanistan still possesses the potential to generate regional crises, and any crisis can serve as a catalyst for its adverse repercussions spilling over into neighboring nations. It is still premature to forget the memory of the influx of Afghan and Iraqi refugees into Iran and assume that such a scenario is a thing of the past and cannot recur. Such countries with bankrupt governments and devoid of any real sense of nationalism, can still be pregnant with unforeseen events and incidents, the lack of serious attention to which can have serious consequences for the region and Iran.

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Yapio Patai as a Clan Confederation of *Negeri-Negeri* in Customary Governance on Seram Island, Eastern Indonesia

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Abstract
Seram Island has a community of indigenous peoples who live in a particular form known as "Patai" in the Wemale language. This alliance is a means of bringing together customary law communities as well as a type of customary governance alliance that is not legally controlled in the current *Negeri* governance system, particularly based on statutory regulations. The purpose of this study was to investigate the position of *Yapio patai* as a clan confederation. The findings revealed that *Yapio patai* is an association of clans that promise to continue to exist as an alliance even though these clans have dispersed and settled separately in seven *Negeri* in the West Seram region, with that oath they entered into a social contract. The examination of the confederation's elements leads to the conclusion that *Yapio patai* is a clan confederation.

Keywords: *Yapio Patai*, Confederation of Clans

1. Introduction

Indonesian laws and regulations recognize the existence of the Customary Law Community (abbreviated as MHA). In Indonesia, numerous national legal instruments recognize the existence of MHA. The recognition and respect for indigenous peoples are enshrined in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states, "The State recognizes and respects the unity of customary law community units along with their traditional rights as long as they are still alive and following the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law."

This article establishes MHA's constitutional standing concerning the state, as well as the constitutional basis for state administrators to choose how MHA should be treated. The article is a declaration regarding:

1. The state's constitutional obligation to recognize and respect MHA, and
2. MHA's constitutional right to obtain recognition and respect for their customary rights.

Article 18B paragraph (2) of the Republic of Indonesian Constitution of 1945 is a constitutional mandate that must be followed by state officials to govern the recognition and respect for the existence of MHA in the form of legislation. The provisions of Article 18B paragraph (2) of the Republic of Indonesia's 1945 Constitution state that the state recognizes and respects the unity of MHA, as well as the rights of origin and traditional rights, as long as they are alive and do not conflict with the Unitary State of the Republic of Indonesia and the laws and regulations.

The elaboration of the provisions of Article 18B paragraph (2) of the Republic of Indonesia's 1945 Constitution is further regulated in various laws and regulations, including Law Number 6 of 2014 concerning Villages that accommodate customary law communities as customary villages; and the Minister of Home Affairs Regulation Number 52 of 2014 concerning Recognition and Protection of Customary Law Community Units, which substantially and technically regulates custodial law communities and their recognition in regent/mayor decisions.

MHA on Seram Island is a community of people who live in groupings in a particular form known as "Patai" in the Wemale language. This alliance also serves to bring together communities with customary law. The establishment of Law Number 6 of 2014, regulates traditional villages (known as N*egeri* in Central Maluku) as a kind of alliance of customary law communities to organize administration based on customary law for the welfare of indigenous peoples. As an MHA communal alliance in the form of a "Patai," it is not precisely controlled under the current state government system, particularly in terms of statutory regulations.

This research was conducted with legal issues that were raised to be researched, studied, and analyzed, namely "Can the *Yapio patai* customary government system be categorized as a clan confederation?". This study aims to analyze and find arguments for the *Yapio patai* customary government system as a confederation.

2. Research Methods

This research is of the empirical law type, which is research-based on field data by collecting data from a sample and assessing positive legal provisions and legal principles. This is because this is legal research, and the science of law has a unique nature (it is a sui generis discipline) (Hadjon 1997). This is an investigation into the rules and regulations, particularly those about the issue of establishing the customary government system on Seram Island. In this study, a statutory method and a conceptual approach were applied.

3. Results and Discussion

3.1. State Recognition of Customary Law Community Units

Following the amendment to the Republic of Indonesia's 1945 Constitution, the recognition of customary law communities is governed by Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution. According to the provisions of Article 18B paragraph (2) of the 1945 Constitution: "The state recognizes and respects customary law community units and their traditional rights as long as they are alive and following the development of society and the legal principles of the Unitary State of the Republic of Indonesia." This is also governed by Article 28I paragraph (3) of the 1945 Constitution, which states: "Traditional communities' cultural identities and rights are protected following the development of the times and civilization."

The People's Consultative Assembly of the Republic of Indonesia was prompted to amend Article 18B paragraph (2) of the 1945 Constitution by governance entities at the village level such as *gampong* (in NAD), *nagari* (in West Sumatra), *dukuh* (in Java), *desa*, and *banjar* (in Bali), *negeri* (in Ambon) and numerous community groups in various regions live based on adat with their rights such as ulayat rights, but only if the customary law community groups truly exist and live, rather than being forced to exist; not turned on. As a result, the group must be further regulated in a regional regulation provided by the DPRD in its execution. Furthermore, the stipulation comes with a caveat: it must not contradict the principles of the unitary state (Indonesia 2009).

About the formulation of the provisions of Article 18B paragraph (2) of the 1945 Constitution, Jimly Asshiddiqie (Asshiddiqie 2006), stated that "The affirmation of recognition by the State is carried out (a) on the existence of a customary law community and their traditional rights; (b) the existence that is recognized is the existence of customary law community units; (c) the customary law community is indeed alive (still alive); (d) in a certain environment; (e) the recognition and respect is given without neglecting the measure of eligibility for humanity according to the level of development of the nation's civilization; and (f) such recognition and respect may not reduce the meaning of Indonesia as a country in the form of the Unitary State of the Republic of Indonesia".

Before explaining further the term Customary Law, it is first explained about the term "custom." The term adat comes from Arabic, namely "*Aadatth*" often referred to as "*urf*," meaning something that is known, known, and repeated and becomes a habit in a society, in the form of words or various forms of actions (Hasan Shadily 1980).

These habits are institutionalized and imbued with societal norms or beliefs. The act must be performed and/or not performed; if performed or not performed, the leader of the community may impose sanctions. Because the presence of sanctions, community leaders, or the community stipulates it as law, it is known as "customary law," which applies in community organizations and binds the community.

"Customary law communities are legal subjects, because they are autonomous, which is then called village autonomy; meaning that the legal community carries out legal actions, such as making decisions that bind citizens, administering justice, regulating land use, inheriting, and so on," Soerjono Soekanto stated (Soekanto and Taneko 1983).

According to Ter Haar, as quoted by Budi Riyanto, "customary law communities are regular human units, settled in a specific area, with rulers and tangible and intangible assets, where the members of the unit experience life in society as a natural thing according to the nature of nature, and none of the members have the mind or inclination to break the bond that has grown, or leave it, in the sense of breaking free from that bond for good." (Riyanto. 2004).

According to R. van Dijk, the term "custom" is derived from Arabic, but it is widely recognized in all Indonesian languages. This phrase originally meant "custom," but it has since been acknowledged as decency and custom for Indonesians in all aspects of life, including all standards governing any type of living conduct by which Indonesians behave. It also includes legislative laws that govern and govern living with Indonesians (Riyanto 2004).

Customary law is used as a branch of legal science. This stems from the efforts of a customary law professor named Cornelius van Vollenhoven who raised customary law into a separate branch of science and used the term customary law as the best one to be the center of attention for the development of law in the life of the Indonesian people. This is because, in the words or terms of customary law, there is an understanding that Indonesian 'law' and other people's morality, customary law, and other customs, are "not separated by a black line." H. Hilman Hadikusuma (Hadikusuma 2003) states that "custom" is the habit of the community and community groups, gradually making it a custom that should apply to all members of the community, so that it becomes "customary law." So, customary law is an accepted custom and must be implemented in the community concerned. These two terms, adat and adat law (customary law), go hand in hand (two in tandem) and cannot be separated, but may only be distinguished as existing customs that have and do not have legal consequences.

Soepomo went on to describe the customary law community/customary law association, stating that legal associations in Indonesia can be divided into two (two) groups based on their composition, namely: a) based on genealogical ties; and 2) based on the fundamentals of the regional (territorial) environment (Hadikusuma 2003).

It is a notion of recognizing and honoring indigenous peoples' unity and traditional rights, according to Bagir Manan. Furthermore, it is said that "What is meant by customary law communities is legal communities

(*rechtsgemeenschap*) based on customary law or customs such as villages, clans, nagari, gampong, meunasah, huta, negorij and others. A legal community is a community unit - territorial or genealogical - which has its wealth, has citizens who can be distinguished from other members of the legal community, and can act either internally or externally as a legal entity (legal subject) that is independent and governs themselves. Manan 2002).

Based on the reference to Law Number 6 of 2014, the existing system of customary government is formalistic-normative. The system of customary government has experienced significant changes, and an original form following customary law is required. There was a state penetration in the record of legal developments connected to customary law communities and customary villages, which was previously the Dutch colonial penetration. According to Yayan Hidayat and his colleagues, "...the regulations and laws that have been issued by both the colonial government and the early independence government clearly show the penetration by the State or the government. to the life of indigenous peoples in West Sumatra, which has existed since the 14th century" (Hidayat, Febrianto and Mahalli 2017).

This research focuses on the role of *Yapio patai* as a sort of customary government system on Seram Island concerning Law No. 6 of 2014. Article 18 B paragraph (2) of the Republic of Indonesia's 1945 Constitution and Law Number 6 of 2014 both provide scope for customary law community units to administer customary government based on rights of origin.

On Seram Island, the customary government system was established through a community coalition known as "Patai." This indigenous community alliance sparked the development of an indigenous government alliance, which was followed by the dispersal of indigenous peoples along the coast and on other small islands.

As the character of the customary law community in the form of representatives and collectives, the customary government system based on the *Yapio patai* form can be considered to be in the form of a federation or confederation. This is consistent with the presence of Minangkabau cultural actors in the past (Yunus 2013), as the penghulu council is a penghulu federation.

This activity has the status of Competency-Based Research, which aims to increase lecturers' competence in research following the field of law as the scientific basis of researchers. The researcher hopes that the results of this research will contribute to the development of legal science, especially those related to the field of study of the customary government system in Maluku and nationally related to the formulation of national policies for the protection and fulfillment of the rights of origin and traditional rights of indigenous peoples according to the mandate 1945 Constitution of the Republic of Indonesia.

A researcher who interacts with science through research should have high expectations that the outcomes of his research will be used to solve societal problems. For a researcher, societal problems and the occurrence of policy changes are applications of previous research findings. Even if the discoveries are not absolute, because scientific advances will always be made to keep up with human requirements, they will always be relative.

The researcher assumed that the findings of this study will be utilized through the implementation of policies that benefit the interests of the nation and the state in general, and specifically for increasing the welfare of the entire community. The existence of Law Number 6 of 2014 concerning Villages (Law Number 6 of 2014) allows customary law communities to create customary governance following their rights of origin and traditional rights.

3.2. The Early History of the Formation of Yapio patai

MHA is an indigenous entity that has lived in the same place for generations, established from a royal or state political body (Lawalata 2017). MHA live in a region in group living and employ a system to manage their lives. These MHA groups, however, can disperse and establish in new places. The history of the *Yapio patai* clan feud exemplifies this circumstance.

Yapio patai is a society that is made up of clan alliances. *Yapio patai* begins with a broader population that is a Wemale tribe and lives in the hilly hills of West Seram. Wemale means "live in the forest" in the local language.

This large alliance began in Tamenasiwa and later moved to Waraloin Sapula Latale. Suanamasela was founded in Waraloin Sapula Latale (because sin still exists). One of the faults was that everyone on the mountain killed Hanuwele's daughter while still in Tamenasiwa. Other historical occurrences are the result of the acts of the inhabitants on the mountain, who frequently fight and kill. These fights and killings occurred as a result of a huge number of people with diverse interests, which led to the occurrence of the aforementioned fights and murders. The traditional leaders then burned 9 (nine) pigs in the 9 burners that were provided. The exact purpose for using the number 9 is unknown. The goal of carrying out burning activities in 9 stoves as a gesture of peace is indicated by each clan participating in the burning stove and spreading it to the designated location. The *Yapio patai* Guild did not descend, but instead saw and looked at other clans who had descended and went to another location, while the *Yapio patai* clans remained on the mountain to guard and watch their descended brothers, *Uli Patai* (*Lumalatal, Lumapelu, Uweng* combined) and *Nuwetetu Patai (Hunitetu, Ursana Rumatita*, and others), and Hunitetu serves as *regentschap. Yapio patai* clans, including:

1. Haikuty,
2. Katayane,
3. Lumamina,
4. Tomalepu,
5. Lesiela,
6. Kapitane,
7. Rumauru,
8. Kasale,
9. Lapate,
10. Laale,
11. Taniwele,
12. Rumamina,
13. Lasuine,
14. Kasilale,
15. Latekay,
16. Pesinai,
17. Watimole,
18. Paturia,
19. Rumamite,
20. Taniwele,
21. Saparuane,
22. Mesinai,
23. Laamena,
24. Lapate,
25. Rumaluwane,
26. Tayane,
27. Walakone,
28. Lalu,
29. Yaman Upui,
30. Lasapatai,
31. Manuwamasi,
32. Lumalatene,
33. Nambele,
34. Mehune,
35. Selete,
36. Lumasewane,
37. Kesatomole, and
38. Insyaluwa.

'Yapio' means 'to look at or 'to see,' while 'Patai' indicates 'association' or 'union.' The word 'Patai' also means 'huge tree trunk,' and is analogous to clans clutching or hugging the trunk of a large tree together. This means that *Yapio patai* can be described as a group of clans who stay on the mountain in a brotherhood bond and watch or view others going somewhere else and coming down from the mountain.

The Yapio government is well-established, and it consists of *Upu Latu* (King) *Solisau Watimole, Kapitan Haikuty, Machineay, Watimole, Negotiator Latekay,* and *Mauweng* (customary priest) the great *Laamena.* The government's job is to keep an eye on the community as well as *Yapio patai*'s leadership. Aside from that, *Yapio patai* has a *Teong* named *Heleyapi*, which means "watching" or "seeing).

Further developments saw the dispersal of clans in *Yapio patai*, with each tribe scattering to the coast or remaining in the mountains. Because they did not want to be ruled by the Dutch, *Yapio patai* split away. For almost 3.6 years, *Yapio patai* battled the Dutch. After battling the Dutch, who were located in Hunitetu (the first Dutch fort). Yapio Patao suffered a military setback because the Dutch damaged the community's logistics, such as gardens and sago trees, as part of their battle strategy.

Interviews with traditional elders who are the original descendants of *Yapio patai* yielded knowledge that the clans inside *Yapio patai* gathered together before dispersing, and the Sapulalatale area became the last gathering place for clans within *Yapio patai* before they parted and scattered. This clan then decides on a suitable location, such as:

1. Clans in Waraloin, namely: Haikuty, Katayane, Lumamina, Tomalepu, Lesiela, Kapitane, Rumauru;
2. Clans in Sahulau are: Kasale, Lapate, Laale, Tanuwele, Rumamina, Lasuine, Kasilale
3. Clans in Pokloweny are: Latekay, Rumauru, Haikuty, Pesinai, Watimole, Paturia
4. Clans in the Stone Tree are: Rumamina, Rumamite, Kapayate, Taniwele, Soparuane
5. Clans in Tala are: Latekay, Watimole, Machineai, Haikuty, Paturia

Yapio patai fraternity with the motto:
"*Sou Yaule Sou Nuele, Soo Hetale Sai Tana Yani-Yani Mau Yaule Yo Sai Teki Poi-Poi Mo Nuele Hunui Sai Tana Puei-Puei Mau Maluku Lumei Hapahe Newele Hunui Yaule Soo Hetale*"

(The law of bamboo is the law of coconut, no one should take one bunch of arrows one by one, no one should take one stick of bamboo one by one, no one should take one sign, no one should take one piece of fruit, Katong Bakumpul is the same as one sign coconut, one bunch of arrows, one stick of bamboo).

The ties of brotherhood in the oath above demonstrate that, even though the clans inside *Yapio patai* will separate at some point to choose a new region to dwell in, the clans will stay in a brotherly bond. The *Yapio patai* clan's fraternity tie is a type of social agreement that is carried out and applies to the *Yapio patai* clans to become an ancestral promise that must be kept.

3.3. Yapio patai as a Social Contract

A social contract is defined as an agreement formed between two individuals that results in obligations for the persons who bind themselves to the agreement. The duties arising from the agreement are political, with the specifics of these political obligations depending on a variety of factors, including what is agreed in the contract. Persons are assigned a status as subjects in the social contract, whereas institutions other than individuals, such as the state, are artificial constructs owned by individuals through agreements. A new state is real in this sense if each individual agrees to form a state. This view of the social contract was developed by four figures, namely Thomas Hobbes, John Locke, Jean Jacques Rousseau, and John Rawls.

Humans, according to Thomas Hobbes, are creatures who dwell in a place known as *'homo homini lupus, bellum omnium contra omnes*.' Humans are described as wild creatures in this condition. In his book '*Leviathan*,' Thomas Hobbes suggested that the preceding circumstances supported the establishment of a people's

agreement, in which the people's agreement gave over their rights to the authorities (Appadorai 2005; Chand 1994).

This viewpoint was slightly disputed by John Locke, who stated that persons do not completely abandon their rights to an authority. Other rights remain unaffected by the assignment of rights connected to state agreements.

Treaties of Civil Government. One of the divisions called the first treaty is an agreement between individuals and individual citizens aimed at the formation of political society and state. In John Locke's parlance, it is referred to as the *'Pactum Unionist,'* arguing that:

"*Men by nature are all free, equal, and independent, no one can be put out of this estate, and subjected to the political power another, without his consent, which other men to join and unite into a community for their comfortable, safe and peaceable, living one amongst another. . . .*". (Locke 1953)

According to Rousseau, the basic problems that can be solved by the social contract are:

> "Looking for a type of organization that maintains and defends the personal and property of each member of the organization with all of the common authority, and in that organization, each person who joins the group is only obedient to himself and remains free as before. Meanwhile, the contract's "articles" can be reduced to one: the total alienation of each member of the association and all of their rights to the entire community." (Rousseau 2010)

The essence of Jean Jacques Rousseau's Social Contract thesis is that each delegates all of his particular rights to the community as a whole. Thus, all natural rights, including complete freedom to do anything they like, that people have in natural life are transferred to the community, or, in political terms, the sovereignty of the people resides in the community as a whole, and this sovereignty cannot be split. (Rousseau, Social Contract, translated by Sumardjo, Social Contract 1986).

Jean Jacques Rousseau's viewpoint was followed by John Rawl's concept of direct democracy through the formation of a council. A council attended by all residents is not a council that represents the people.

John Rawls reformed Jean Jacques Rousseau's direct democracy by proposing a "purely fictional conference" in which citizens vote freely and equally. John Rawls also proposed the justice principles that regulate people's interactions. It is referred to as a hypothetical encounter by John Rawls (Basri 2021).

According to John Rawls' social contract, agents have previously made decisions concerning their society's core charter or its original position. Rawls proposes that a society ruled by a set of principles chosen in this basic position can be a voluntary system, fulfilling a set of principles on which equal and free individuals would agree under equitable conditions. Individual membership is thus autonomous, yet the obligations imposed on them are acknowledged (Basri 2021).

By reference to the concept of the social contract (social contract) and the philosophy of the oath or vow in the *Yapio patai* brotherhood's motto: "*Sou Yaule Sou Nuele, Soo Hetale," Yani-Yani Sai Tana Yaule, Mau Yo Sai Teki Poi-Poi Mo Nuele Hunui Sai Tana Puei-Puei Mau Maluku Lumei Hapahe Newele Hunui Yaule Soo Hetale",* the oath or vow with the phrase above can be stated to be a social compact formed by the clans inside *Yapio patai*. The carried out social contract intends to protect and preserve the kinship relationships between clans in *Yapio patai*, which may at some point spread to a new location to their present and future generations. That is the law of bamboo, the law of coconut, no one should take one bunch of arrows, one stick of bamboo, no one should take one segment, no one will take one sign, no one will take one piece, we gather together like one coconut, one sign, one bunch of arrows, one stick of bamboo. Brotherhood relationships cannot be severed and cannot be severed by anything.

3.4. Yapio patai as Confederation of Clans

The term confederation has a meaning related to the federation, therefore starting the discussion in this section, the meaning of the two words in question will be presented. Federation comes from the Latin *foeduratio*, which means 'agreement.' The federation was first used to mean the 'treaty' of the Roman Empire with the Germanic tribes who settled in the province of Belgium, around the 4th century AD, at that time, they promised not to fight each other, but for the same work (Triyadi 2018).

The definition of the federation in the Big Indonesian Dictionary online (The Great Indonesian Dictionary online) is conceptualized as:
"1. a combination of several associations that work together and act as if they are one body, but still stand alone: the *All Indonesian Badminton Association is incorporated in -- international badminton;* 2. *Pol* several states coordinated by the central government which takes care of matters concerning the national interest entirely (such as finance, foreign affairs, and defense)" (Setiawan n.d.)

As the second definition offered in the online KBBI, the federation is currently used to construct a type of governance comprised of countries that work together to form a single entity. This type of collaboration between these countries is known as a federal state, or 'bondstaat' in Dutch, in which each country has some high specific autonomy and can administer it freely, but the central authority supervises those items considered national.

The definition of Confederation in the online Great Indonesian Dictionary is defined as, "1. a combination of several countries formed to regulate common interests, such as defense, but each remains fully sovereign; 2. a combination of several organizations, for example, a hunting organization" (Setiawan n.d.)

Confederation is defined as a type of union formed by treaty or law between sovereign countries to pursue a common policy. Because each country that forms a confederation still has international standing as a sovereign state, the form of a confederation is not recognized as a separate sovereign state in international law or what is referred to in Dutch as a 'Statenbond.' The confederations include the European Economic Community (EEC), ASEAN, and the Arab League.

According to the preceding definition, the difference between a federation and a confederation is that a federation is a country with a federal constitution in which there are several countries, each with its constitution. The purpose of the federal constitution is to limit the authority of the center (federal), and the rest is left to the regions (states) to handle. Meanwhile, a confederation is an alliance of independent and sovereign states that have a constitution and self-government but agree to form a loose union called a confederation. A confederation of states is a grouping of sovereign states with only one instrument, the congress.

Borrowing the definition of a confederation (statenbond) above, this study tries to draw closer to the meaning of a confederation (statenbond) as an alliance of independent countries with their constitution, with Yapio patai.

The definition of Confederation in the online Great Indonesian Dictionary is defined as, "1. a combination of several countries formed to regulate common interests, such as defense, but each remains fully sovereign; 2. a combination of several organizations, for example, labor organizations" (Setiawan n.d.)

Confederation is defined as a type of union formed by treaty or law between sovereign countries to pursue a common policy. Because each country that forms a confederation still has international standing as a sovereign state, the form of a confederation is not recognized as a separate sovereign state in international law or what is referred to in Dutch as a *'Statenbond.'* The confederations include the European Economic Community (EEC), ASEAN, and the Arab League.

According to the preceding definition, the difference between a federation and a confederation is that a federation is a country with a federal constitution in which there are several countries, each with its constitution. The federal constitution regulates the limitations of central (federal) jurisdiction, leaving the rest to be governed

by the regions (states). Meanwhile, a confederation is an alliance of independent and sovereign states that have a constitution and self-government but agree to form a loose union called a confederation. A confederation of states is a grouping of sovereign states with only one instrument, the congress.

Borrowing the definition of a confederation (statenbond) above, this study tries to draw closer to the meaning of a confederation (statenbond) as an alliance of independent countries with their constitution, with *Yapio patai*.
The definition of Confederation in the online Great Indonesian Dictionary is defined as:

a. unity
b. among the independent countries
c. by agreement or law
d. as a joint policy

To place *Yapio patai* as a clan confederation, each component is characterized as follows:

a. Unity

As previously noted, the word 'Patai' means 'huge tree trunk' in the local language, which is analogous to the clans of *Yapio patai* clutching or hugging a large tree trunk together. 'To cling or embrace the trunk of a huge tree together' is regarded as a clan affiliation that remains in one brotherhood even though each clan in *Yapio patai* will divide at some point.

b. Among the independent countries

Clans are the smallest group in a kinship system. According to the online KBBI, one of the clans is *Antr* clans: 1. exogamous and unilinear kinship groups, both matrilineal and patrilineal; 2. a rather large area (a group of hamlets) (in South Sumatra) (Setiawan n.d.). The clans in *Yapio patai* are exogamous kinship groups formed by matrilineal or patrilineal marriages.

c. By agreement or Law

The oath is a form of kinship between the clans in *Yapio patai* with the motto: "*Sou Yaule Sou Nuele, Soo Hetale Sai Tana Yani-Yani Mau Yaule Yo Sai Teki Poi-Poi Mo Nuele Hunui Sai Tana Puei-Puei Mau Maluku Lumei Hapahe Newele Hunui Yaule Soo Hetale*," indicating that there is a promise that has been made and has binding power for all clans in *Yapio patai* to keep their promise to remain together even though in time each of the promised clans split up and settle in a new territory (seven *negeri*). The agreement that is made becomes a kind of social agreement that is carried out and applies to the clans in *Yapio patai* to continue to be held.

d. As a joint policy

Yapio patai's oath of brotherhood with the motto: "*Sou Yaule Sou Nuele, Soo Hetale Sai Tana Yani-Yani Mau Yaule Yo Sai Teki Poi-Poi Mo Nuele Hunui Sai Tana Puei-Puei Mau Maluku Lumei Hapahe Newele Hunui Yaule Soo Hetale*," is a policy with all clans in *Yapio patai* to keep familial links between each clan even if they are no longer altogether in one area.

Even though the clans of *Yapio patai* have lived in seven *negeri* with their customary laws, the customs and habits of *Yapio patai* have not changed. The *Yapio patai* alliance is still maintained and protected in clan life, particularly in addressing customary law problems like land, marriage, disputes, and others.

As previously stated, Yapio has a Teong as well as a governance structure comprised of *Upu Latu* (King), Kapitan, Negotiator, and *Mauweng Besar*. This means that *Yapio patai* possesses features of a state or organization. Each clan has its leader. As a result, the *Yapio patai* alliance can be classified as a Clan Confederation. It is called a clan confederation because each clan has been separated and settled in seven regions (*Negeri*) and has formed a national alliance with other customary law communities. Clans descended from *Yapio patai*, on the other hand, continue to employ the *Yapio patai* customary law community alliance system for matters relating to customary law in a bond according to the pledge or promise.

4. Conclusion

Based on the above research results description and analysis, the following conclusions are presented: The *Yapio patai* alliance and other patai can be classified as clan confederations because each clan has been separated and settled in 7 regions (*negeri*) and together with other customary law communities in the *negeri* alliance. Clans descended from *Yapio patai*, on the other hand, continue to employ the *Yapio patai* customary law community alliance system for matters relating to customary law in a bond according to the pledge or promise. This indicates that these seven *negeri* are inextricably linked.

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Investigating, Importance and Impact of the Contemporary Silk Road on the Geopolitics of Central Asia

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Abstract
With the rise of China in the 1990s and the stability of its remarkable economic growth in the new millennium, the Contemporary Silk Road, as the most important international initiative, has been placed in the geopolitical center of Asia. "Contemporary Silk Road" or "One Road, One Belt" is the most high-flying mega-project in the present time, which is the manifestation and symbol of China's power beyond its borders. Meanwhile, in the eyes of China, Central Asia is the focal point of the new cloud road, which controls its routes to Afghanistan, Iran, West Asia, South Asia, and South Russia. In addition, Afghanistan and Xinjiang also have important positions in the process of forming new land routes of the Silk Road. The pioneering research, from this perspective, explains its main question about the actors and trends influencing the land belt of the Contemporary Silk Road on the geopolitics of Central Asia. This article mentions the specific details of the Central Asian governments and their policies. Also, the scope and scope of Beijing's investments and policies in this region will be examined.

Keywords: Silk Road, Geopolitics, Geoeconomy, Central Asia, China, Eurasia, Macro Strategy

1. Introduction

With the emergence of China as a major power in international politics in the 1990s and the stability of its impressive economic growth in the new millennium, the Contemporary Silk Road became the geopolitical center of Eurasia. In October 2013, Xi Jinping and then Prime Minister Li Keqiang unveiled the new cloud road megaproject. In 2015, a national document entitled "Aspirations and Actions for the The State Council of China released documentation on the establishment of the "Silk Road Economic Belt" and the "Twenty-First Century Maritime Silk Road. "On May 16, 2017, the Contemporary Silk Road was opened in China in a ceremony attended by the leaders of nearly 30 countries of the world to clear the path for the greater economic ambitions of this Asian power. The Contemporary Silk Road, or the plan of one belt, one road of China, is a plan of investment in the economic infrastructure of more than 60 countries of the world and the development of two

trade routes of the Silk Road[1] Economic Belt and the Maritime[2] Silk Road. After five centuries, it seems that the Silk Road will once again become the economic, political and cultural center of the world.

After announcing this plan in 2013, China has promised to allocate 1 trillion dollars to provide loans for infrastructure investments in more than a thousand. The rebuilding of this road will cover 65% of the world's population, 40% of the net national production, and 68 countries (Time, Griffiths, 2018: 2018).

The support of this plan is the industrial power of China's economy and the investment power of this country. By implementing this plan, along with China's military power, it can lead to the hegemony of this country in East Asia and by controlling land and sea trade routes. The great expanse of Eurasia makes Beijing a new economic superpower. Introduce the future world that will have important consequences in the political, military, security fields, as well as ideological, normative (normative) culture. In short, the Contemporary Silk Road will be the most important symbol of China's power beyond the country's borders in the coming years and decades.

The importance of the new cloud road in international security and power arrangement in the environment around Afghanistan in Central Asia cannot be ignored. There are numerical changes of such intensity and extent and duration, especially in the post-Cold War era, that can change the geopolitics of Eurasia, the new world order, and also the power structure around Iran. even make an impact.

Considering Afghanistan's historical and geographical links with the Silk Road, it will be important and necessary to examine the trends of the Silk Road. These cases represent the integration of the Contemporary Silk Road with regional and transregional transformation.

"The dry route of the new cloud belt, how and with what mechanism will it affect the geopolitics of Central Asia?" This is the fundamental question and the focus of the advanced research that shows the analytical desire of the actors influencing the trends of the Contemporary Silk Road.

2. Research background

Many theoretical and practical issues in the knowledge of international relations and geopolitics depend on the proper and systematic understanding and explanation of the interweaving of geography, history, and theory for the analysis of international politics. From this perspective, there will be influential writings based on these three pillars. In the meantime, we can mention some writings that have analyzed the cloud road and its consequences for international politics. "China's Asian Dream: Building an Empire Along the Contemporary Silk Road", written by Tom Miller (Miller, 2017), is one of the brilliant writings about the Contemporary Silk Road.

Quoting from Napoleon Bonaparte, who sees China as a sleeping dragon that will wake up and shake the whole world, Miller considers the consequences of the rise of the Contemporary Silk Road on Asia and sees it as a step to achieve hegemony. Richie knows China in Asia.

Miller begins his geopolitical analysis based on "One Belt, One Road[3]" and then focuses on Xinjiang, Central Asia, and Russia. Miller is of the opinion that the "One Road, One Belt" plan is a plan in the direction of globalization with the Chinese model, which intends to reshape the world's economic system and place countries and companies in the orbit of China's economy. The second book, "China's Eurasian Century", written by Nadge Rolland (Rolland, 2017) also focuses on China's "One Belt, One Road" high-flying plan.

Rowland considers this plan as the concept and symbol of the organizer of China's foreign policy and grand strategy in the era of Xi Jinping. Rowland shows that the "One Belt, One Road" plan reflects China's goals and aspirations to shape Eurasia from a perspective and a worldview, and it shows its desired features. By studying and examining the source of the concept and idea of this plan and China's domestic and international goals,

[1] Silk Road Economic Belt-SREB
[2] Maritime Silk
[3] One Belt One Road or OBOR

Nadje has reached the conclusion that the "One Belt, One Road" plan is only a single list of infrastructure plans. It is not economic and commercial, but it is China's grand strategy to dominate Eurasia.

The book "Belt and Road: What does China offer to the world with its rise", written by Wang Yiwei (2016), is the first important book about China's Contemporary Silk Road written by a Chinese thinker and strategist. Wang believes that the plan " "One Belt, One Road" contains the inherent logic of China's openness, which shows the inevitable process of the survival of human civilization, represents the prerequisites of globalization, and reflects China's fundamental turn from a participating country to a country leading the globalization program. Also, he has examined China's peripheral policy, regional cooperation, and global development. In the end, Wang also points out the dangerous consequences of this plan in the security, economic, moral, and legal fields.

Another important book, "The Contemporary Silk Road Now and the Future of the World", is written by Peter Frankopan (Frankopan, 2018). In this book, Frankopan has attempted to trace the trajectory of the New World Order based on the Contemporary Silk Road. It is subject to a deep turn and this turn can be seen in the isolationist policies of Trump and Barghazid; While in Eurasia, the Contemporary Silk Road emphasizes cooperation between the countries along the route, such a turn has led to a transformation in power centers at the international level.

Another important study is "The Contemporary Silk Road: Challenges and Responses", written by Richard Griffiths (Griffiths, 2019) He is holds the view that this mega-project should not be considered a Chinese-only project and the participation of Eurasian countries along the route of this ancient highway should be considered important and decisive in launching this route.

Another important book is "One Belt, One Road: China's Long March of 2049" by Michael Glentz (Glantz, Ross & Daugherty, 2019). This book describes the Belt and Road Initiative, a Chinese initiative for global trade and infrastructure innovation, and considers it a program to help developing countries achieve economic development.

Every country that is on the path of this mega project has a special story of China's support for its infrastructure projects. China expands its influence by providing large loans, construction materials and labor force to these countries. To put it more clearly, this megaproject is a winning game.

The authors also follow the consequences of Trump's "America First" policy and his isolationist decisions for China's grand strategy and the resulting geopolitical vacuum. In short, this book traces the scope and rotation of the world power equilibrium through the opening of a belt, a path.

Another new book on this topic, "Emperor's New Way: China and Projects for the Century", written by Jonathan Hillaman (Hillaman, 2020) the head of the project, "Asia Link[4]" in the center of strategic and international studies[5]. In this book, Hillman has collected numerous, first-hand, and up-to-date data about the grand project of the Contemporary Silk Road. He emphasizes on the important role of Chinese President Xi Jinping in the formation of this project. Hillman called this project ambitious projects, and simultaneously, the most perplexing and difficult to understand geo-economic project, and in the end, he has argued that if China succeeds in advancing this mega project, it will change the world anew. He wants to place himself in the center of this new system.

As a result, Thomas Zimmerman, in his report entitled "The Contemporary Silk Road: China, America, and the Future of Central Asia" (Zimmerman, 2015), at the Center for International Cooperation[6] at New York University, the consequences of creating the road He has checked the new cloud.

[4] Reconnecting Asia Project
[5] Center for Strategic and International Studies (CSIS)
[6] International Cooperation

Zimmerman holds the view that the Contemporary Silk Road, despite the similarity with the historical silk road, was more than a trade route. This multi-faceted strategy covers various aspects of China's domestic politics and economy. According to Zimmerman, the Contemporary Silk Road is an attempt by Chinese political circles to balance the American policy of "pivoting to Asia[7]" and to neutralize America's efforts to dominate the region.

The mentioned researchers have investigated and analyzed the influencing variables on the trends of the Contemporary Silk Road. The focal point of these important writings, directly or indirectly, is focused on the geopolitical competition between China and America and the effect of the Contemporary Silk Road on achieving global supremacy. In spite of such previous literature and the importance of the Contemporary Silk Road, scarce information is available about the role played by the Central Asian states along the Contemporary Silk Road belt with extensive details and close analysis. Even in the few writings that have studied this issue in a way, this belt is only accepted as an assumed route from China to Europe, and there are references to the special and distinctive activity of the Asian countries.

In order to fill this research gap, advanced research with a comprehensive view and in-depth investigation will examine in detail this overlooked component that has an influence on the modern silk road belt.

3. The theoretical framework of the research

The theoretical foundation of his advanced research relies on a three-dimensional interpretation of the international system along with geopolitical components. Geopolitics seeks to examine the influence of geography on politics.

Geopolitics is about the impact of geographical factors on the relations between governments and the effort for world power (Foster, 2006); Therefore, "geopolitics of power", geography and order, connect the world power. Geopolitics emphasizes the role of geographical limitations and opportunities in policy implementation. Such a set of threats and opportunities also has political, cultural, and economic aspects. From this perspective, Mohyaluddin Masbahi's theory provides a powerful framework for the evolution and dynamism of the Contemporary Silk Road. This framework provides a tripartite view of the international system "with three distinct political-military, social-normative, and economic structures" (Mesbahi, 2011).

Apart from the geographical factors, every government interacts with the three-level spheres. Such a framework shows that the traces of the roots and consequences of this megaproject is present in the three spheres of geopolitics, geoculture, and geoeconomy, and at the three levels of "international," "regional," and "domestic." Therefore, the progressive theoretical framework shows the role of important historical periods, forces (internal/external), and actors (decision-makers/elite/institutions) that play a pivotal role in the route of the modern Silk Road. This proposed framework represents the importance of geopolitical, geoeconomic, and geocultural components in the creation and evolution of the land corridors (Belt) of the new Cloud Road.

Of course, this importance is dual-sided; from one perspective, the mentioned components can be considered as driving forces of the Contemporary Silk Road belt, and from other perspective, the consequences and effects of the establishment and expansion of these corridors can be found in these three areas and three levels. In other words, the geopolitical, geoeconomic, and geocultural components at three national, regional, and international levels cause the formation of highways and their lines; Therefore, the establishment of these highways will have geopolitical, geoeconomic, and geocultural consequences in these three levels. This ambivalence of road and geopolitics can be called "road geopolitics[8]".

The geopolitics of the road is based on the coordination and consultation of geopolitics and the road[9]. Here, geopolitics is used in a general sense and includes the fields of geoculture and geoeconomy. In short, the

[7] Pivot to Asia
[8] Road Geopolitics
[9] Reciprocity

geopolitics of the road refers to the role of geopolitical elements in the creation and course of the road, especially international highways, and also to the influence of road construction on our geopolitics. Tiki focuses regionally and internationally.

4. Research methods and sources

The pioneering research is based on the descriptive-analytical method in explaining the Contemporary Silk Road and has used the sources and data of libraries and documents to show the layers of the Contemporary Silk Road and its influence on Central Asia.

The main sources of this research are written sources, documents, and strategic reports; Therefore, by using library studies and collecting data published on the Internet, we have explained and analyzed the ruling trends on the Contemporary Silk Road and its influence on the geopolitics of Central Asia.

5. Activists

The formation of Contemporary Silk Road lines and routes depends on the intertwined interactions of domestic, regional, and international actors.

These activists, with their decisions and actions, influence the direction and final direction of the Contemporary Silk Road. The significant aspect is that the strategies of these actors are based on their special perception of the Contemporary Silk Road and its possible consequences for the internal and external context of their regions. These influential activists include three groups of governments, rebel military groups, and intra-governmental institutions.

The first category, i.e. "government actors", includes governments whose decisions will affect the direction and future of the Contemporary Silk Road. Activist governments include Central Asian regional governments, trans-regional powers beyond Central Asia, and great powers.

The "regional governments" of Central Asia incorporate the former republics of the Soviet Union in Central Asia that gained independence in the early 1990s. These governments are: Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, and Turkmenistan. All these governments are more or less supporters of the establishment of the Contemporary Silk Road.

The Contemporary Silk Road brings them economic prosperity and increases the importance of their geostrategic position in the international system. In addition, the Contemporary Silk Road will reduce Moscow's traditional influence in Central Asia and provide a platform for diversifying the strategic partners of the Nubian republics of this region. However, this mega project can increase their dependence on Beijing even more.

Besides the Central Asian regional governments, there are "transregional powers" that influence the dynamics of the Contemporary Silk Road with their policies. In addition to Iran, the three countries Turkey, Pakistan, and India, each with different points of view, have tried to use their influence in the Central Asian region and based on their national interests on the Contemporary Silk Road plan.

Unlike Turkey and Pakistan, who have shown their happiness with the new Cloud Road plan, Indian leaders perceive it as a threat and see it as a way for Beijing to penetrate more and more in Central and Western Asia. Apart from the Central Asian regional governments and transregional powers, the "big powers" can also change the dynamics and course of the Contemporary Silk Road by using their economic, political, military, and cultural power. These powers are America, Russia, European Union, and of course, China. America is the most important opponent and critic of the Contemporary Silk Road. Amidst the countries of the European Union, there is still no consensus to start a comprehensive cooperation with China; Although the countries of Italy, Greece, and even Germany evaluate it positively. Putin's Russia has also maintained its positive position, although with ambiguity.

The leaders of Moscow consider the Silk Road as a tool for economic prosperity, even in the middle of the economic sanctions of the West; Of course, Moscow is worried about China's influence in Central Asia and even regions of its territory in Siberia and the Eastern Asia.

Apart from the state actors, the effective activism of "non-state military groups", i.e. political, revolutionary movements, and militias can also challenge the basic assumptions of realism and international politics. Question the state-oriented and traditional claims of nation-states and cephalospories about governance.

Meanwhile, we can refer to the Taliban in Afghanistan, the Baloch separatist groups in Pakistan, and the Uyghurs of Xinjiang. All these non-governmental groups are against the construction of the new cloud road. The Uyghurs view it as a threat to their collective identity, because the development of Western China will be accompanied by the increasing cultural, economic, and political control of the Xinjiang Uyghurs. The Taliban also consider the Contemporary Silk Road as a strategy for stability and stability in Afghanistan. Since this plan provides a more stable place for Kabul leaders and brings stability to this war-torn country, the Taliban oppose this plan. Unlike the Uighurs and the Taliban, the Balochs of Pakistan supported this plan at the beginning, because the economic corridor of the Contemporary Silk Road to Gwadar port can lead to the advancement of the deprived state of Balochistan of Pakistan. But the construction of another route in Pakistan, which passes through the states of Punjab and Sindh and bypasses Balochistan, has fueled the tensions inside Pakistan. Until in November 2018, Balochistan Liberation Army militants attacked the Chinese consulate in Karachi and accused China of exploiting Pakistan's resources (Meher,& Masood, 2018).

Since this research focuses only on the Belt and not the Contemporary Silk Road, only the influence of regional players in Central Asia and Afghanistan, as well as Xinjiang, on the formation of the Silk Road trends.

6. Central Asia: the focal point of the Silk Road

Central Asia is the most important region that, because of its closeness to the western borders of China, will be under the constant pressure of the large, long-standing, and deep impacts of the Contemporary Silk Road. This effect is rooted in the neighborhood of Central Asia with China.

In the past, due to this geographical proximity, the historical silk road always passed through Central Asia. In fact, Central Asia has been the historical-geographic link of China with two important regions of Russia and West Asia. It is because of such a combination of geographic and historical importance that Central Asia is called "the center of the Silk Road" in the 20th century. In the words of Carl von Clausewitz, the famous Prussian strategist, the center of the Silk Road can be called "expensive[10]".

Chinese strategists consider Central Asia the center of the Silk Road and the center of Belt and Road initiative. The geo-strategic position and the historical role of Central Asia, in addition to having large oil and gas resources, has doubled the importance of stability in this region.

Despite their short lifespan, the countries of this region have enjoyed high economic growth and political stability due to huge investments. In the past three decades following the dissolution of the Soviet Union, the newly independent republics of Central Asia have encountered comparatively fewer internal and external threats in comparison to other global regions.

The armed conflict in Tajikistan in the 1990s and the unrest in Uzbekistan in the previous decade were among the few cases of instability in the region.

The most significant perspective is that China has the least geopolitical tension with Central Asia. In other words, in the long history of relations, there have been few threats in Central Asia that have endangered China's national security. With such a historical background, China's Silk Road will soon move towards Europe, the

[10] Center of gravity

Middle East, and Africa. With the rise of China in the international scene and the expansion of this country's influence in Central Asia, the geo-economy of this region has changed; As China has become the most significant player in the fields of energy, trade, and transit in this region.

China's requirement for energy in the Central Asian region has made this country the most significant player in the geopolitical field of energy. In this direction, Beijing has made extensive investments in Central Asia to acquire and control energy resources; Therefore, the streaming of oil and gas exports of this region is intertwined with the world's largest consumer markets.

Beijing has dominated the gas resources of all three countries with the Central Asian gas pipeline that starts from Turkmenistan and reaches China through Uzbekistan and Kazakhstan. Also, China has established a 960-kilometer pipeline that connects the center of Kazakhstan to the northwest of China at a cost of 700 million dollars.

On the other hand, Beijing has made the most investment in the energy sector of this region. The most crucial issue is that, by paying large loans to the Nobanian countries, this region has become the largest trading partner of these countries; The place that Pishazain chose was Moscow. With the increasing expansion of China's economic and energy exchanges in the region, its political influence will also increase.

In other words, the consequence of deepening China's increasing influence in Central Asia will be the spillover of its geo-economic[11] influence to geo-political influence. Among the countries of this region, the two countries of Turkmenistan and especially Kazakhstan, have more interest in joining this plan.

Favorable geography and wealth of natural resources provide the best opportunity for Kazakhstan to become a pole. Kazakhstan is a country that shows that the two Eurasian plans and the Belt and Road endeavor work in a complementary way; Astana is a member of China's Belt and Road initiative and is also a member of the Eurasian Economic Union. The volume of Beijing's investments in this most extensive and richest country in Central Asia has been such that many observers have called Almaty, the largest city and the former capital of this country, "new Dubai" (Shepard, 2016).

Khorgos[12], on the border of China and Kazakhstan, where it is called the "accessible Eurasian point" (Castellanos-Garcia & Lombardo, 2007). It has become a symbol of Astana's customs cooperation with China. Khorgos was replaced by Dostik, who is opposite Alashanko in China. For an extended duration, Dostik was the host of the only link between China and Central Asia, but due to the tensions among China and the Soviet Union, this link remained unused for years. Until finally, the restrictions ended in 1990 and the first freight trains passed through this border in 1991. However, compared to Khorgos, Dostik has older infrastructures (ktzh-gp.kz, 2018). Having advanced equipment, Khorgos can move the train twenty hours faster than the old possibilities in Dostik (Hillman, 2020: 52). Actually, the railway route between Almaty and Khorgos is four hundred kilometers shorter than its distance by two sticks. The paramount aspect is that Khorgos has a support in China. In 2017, at the Belt and Road Forum in Beijing, China Ocean Transport Company acquired 49% of the shares of this center. Zhou Lirong[13], the head of this company[14], promised to turn Khorgos into "a regional pole" (Kazakh-TV, 2017). Kazakhstan's cooperation with China in this grand plan is to the scope that the Kazakh authorities half-jokingly say that their country intends to be a "bucket" in China's belt (Hillman, 2020: 54).

In addition, Kazakhstan has two ports, Kurik and Aktayu, located along the Caspian Sea coastline. The share of the ports of Kazakhstan in the export, import, and transit of goods and in the total operation of the harbors along the Caspian Sea is about 25 percent annually on average, about 12.3 million tons of goods through the ports. It is carried in Kazakhstan. By the end of 2019, Kazakhstan has passed four and a half million tons of goods through Kurik port, which is three times more than last year. The operation of Octayo port in 2016 was 5 million and 842

[11] Spillover
[12] Khorgos
[13] Xu Lirong
[14] China Ocean Shipping Company Limited or COSCO

thousand tons. Kurik port, which is one of the most active harbors in Kazakhstan and the closest sea route to the ports of the Republic of Azerbaijan, is also a connecting point for the transit corridor of wheat, coal, oil, metals, fertilizers, chemicals, and other goods. But it has worked from China and Central Asian countries. This port has unloaded and loaded more than 420,000 tons in 2016 through two rail wharves with a current capacity of 4 million tons, which will increase to 7 million tons in the near future. Kazakhstan is considering to increase the capacity of its ports to 25 million tons by 2020, and also, aiming to establish a dry goods transit zone, to the extent of 20 million tons by 2022 from China to Europe, through the sea. It is Caspian. Astana has tried to use its geographical location and use of abundant gas reserves to generate prosperity and, consequently, enhance national strength. The land route of the Contemporary Silk Road has forced the Kazakh leaders to design their own native master plan. In November 2014, Nazarbayev unveiled his plan to improve Kazakhstan's infrastructure and called it "clear path[15]". This plan aims to turn Kazakhstan into one of the commercial centers of East and West (Hillman, 2020: 54).

For this very reason that Nazarbayev called it "a turning point for Kazakhstan to start a completely new page in its economic development" (Zakon.kz, 2018). The leaders of Ashgabat have also shown their desire to join this plan. To achieve this goal, Turkmen leaders have avoided regional conflicts. Also, they have tried to take advantage of their geographical location and use of their abundant gas reserves to generate prosperity and, consequently, enhance national strength. The Republic of Turkmenistan has 4 ports, including Turkmenbashi International Port, Turkmenabad River Port, Alaja Port, Khazar Port, and Akram Port.

Turkmenbashi port is the most important port of Turkmenistan, which was established in 1896. This port, situated in the southwest of Turkmenistan along the Caspian Sea coastline on the Contemporary Silk Road, is the largest port under the sea level and the largest artificial island below the sea level in the book of records. Honey Guinness has been recorded. The new international port of Turkmenbashi, which has an area of one million and three hundred and fifty-eight square meters, has several cargo and passenger terminals and canteens. This port was founded with the aim of loading 26 million tons of goods, and in addition, it has shipbuilding factories and a ship repair shop. Upon the project's completion in 2018, the new international port of Turkmenbashi will be one of the substantial ports in the Caspian Sea region and also in Central Asia. The total area of this port is more than 105 hectares. This port will have 5 terminals (container terminal, bulk and general goods terminal, passenger terminal, and propylene and oil derivatives terminal) with wide capacities. The yearly capacity of the port will be 17 to 18 million tons. The capacity of this port will be 25 to 26 million tons. Also, this port has shipbuilding and ship repair facilities. The paramount function of the port of Turkmenbashi is to connect Turkmenistan with China from the east and, of course, with Europe in the west. The paramount point is that the port of Turkmenbashi provides the most important route to bypass the territory of Iran. Turkmenbashi port provides the possibility of rail and sea communication among both sides of the Caspian Sea, Asia, and Central Asia in the East and the Caucasus and Turkey in the West and has shortened the connecting route between Europe and Asia. This port, following the Caspian Sea and the link with Baku and then, Tbilisi and the Black Sea and finally, Europe and also, the link with the port of Astrakhan on the Black Sea. The operation of the port of Turkmen Baxi will also increase the volume of goods transported between China, Afghanistan, and India.

At the same time, Afghanistan also intends to connect to its northern neighbor, Turkmenistan, from the north through the Lajurd Corridor, and from there to the Caucasus, Turkey and Europe by using the port of Turkmen Bashi. In addition to this, Central Asian countries are also trying to establish their simultaneous link with China, Russia and Turkey through routes outside the border of Iran and through the harbors of the Caspian Sea coastline. Follow

The important point is that this port has been improved and developed with the investment of 1.5 billion dollars by the Turkish holding company Chalik Holding. These conditions show that Ankara, contrary to the promises of friendship and apparent cooperation with Tehran, is seeking to bypass Iran on the Contemporary Silk Road and, in general, weaken Iran's presence in West Asia, Central Asia, and the Caucasus. Although Kazakhstan and

[15] Nurly Jol

Turkmenistan are on priority of the list of China's trade and investment partners in the region, other Central Asian countries are also seeking to attract Chinese investments.

Imam Ali Rahman, the President of the Republic of Tajikistan, said: "Tajikistan can be a communication bridge between China and other countries" (president.tj, 2018).

Shokat Mir Ziaif, the president of the Republic of Uzbekistan, has also stated that "Uzbekistan sustained the Belt and Road project from the beginning and its implementation is a crucial factor in the enduring progress of our country" (president.tj, 2019).

Almazbek Atambaev, the president of the Kyrgyz Republic, has pointed out that " we can emerge as a proficient hub for transporting Chinese goods to Eurasia and Europe" (CA-portal, 2017).

Also, in 2017, the President of Turkmenistan, Qurbanguly Bardimahmoud, released a book titled "Turkmenistan is the center of the grand silk road" (Government of Turkmenistan, 2019) and made this phrase the official slogan of his country.

The downfall of the yuan to the region has stolen sleep from the eyes of Central Asian leaders; However, like the 2016 uprising in Kazakhstan, ordinary people are sometimes suspicious of the growing presence of the Chinese. The emergence of the Contemporary Silk Road has helped to increase regional security. The leaders of the regional nations have endeavored to reach an agreement to address the border disparities (for example, through land exchange between Kyrgyzstan and Uzbekistan) (Interfax, 2018) (Astana Times, 2018).

In March 2017, Ashgabat launched a rail bridge connecting Turkmenabad-Farab on the Amu Darya River (Turkmenista.ru, 2017). The drivers of these efforts to eliminate regional tensions are economic interests; For example, Kyrgyzstan has worked to secure the safety of the Bishkek-Tashkent route by establishing several railway stations in Osh, Batken, and Jalalabad (AKIPress, 2018).

Huge investments in Central Asia have also affected regional trade; For example, in 2017, trade between Kazakhstan and Uzbekistan increased by 2.31 percent (Omirgazy, 2018). This process has accelerated with the signing of numerous agreements between the two countries (Uzbekistan National News Agency, 2017). The formerly strained relations between Uzbekistan and Tajikistan have also ameliorated (AzerNews, 2018). This continuous political-economic stability can accelerate the process of integrating this emerging region into the Contemporary Silk Road; This means that the Central Asian republics, while trying to prevent the mistrust of Russia and America in particular, are seeking to increase cooperation with China.

The importance of Central Asia as an expensive center has not been covered by American strategists. For this very reason that the weakening of China's influence in Central Asia, along with China's containment in the South China Sea, has been the most important positive response of America's strategy. In fact, the big powers in Central Asia play different games. Before the unveiling of the Contemporary Silk Road, Eric McGlinchey rightly pointed out that "China is playing the monopoly game, Russia is playing the risk game, and the United States is playing the solitaire game. For the politicians in Beijing, this game is commercial, for the politicians in Moscow, it is existential, and for the politicians in Washington, it is secondary. For Beijing, Central Asia is material-oriented. If Central Asia's natural resources and infrastructural investments decrease, China can easily take a backseat. Central Asia is an empire for Moscow.

If the influence of this country is questioned, Russia will not back down from there. For Washington, Central Asia is not vital. Now that the attention is away from Afghanistan, the United States has forgotten about the region" (McGlinchey, 2015), but with the launch of the Contemporary Silk Road, China's retrograde image of the region will be simple.

In 2009, the China-Central Asia gas transmission pipeline was completed, passing through Turkmenistan, Uzbekistan, and Kazakhstan. China has also become the main lender to the countries of the region. This country

has used resource transactions for loans to ensure access to Turkmenistan's gas and Kazakhstan's oil. In short, as much as China's investment in this region increases, the importance of Central Asia in China's national security strategy will also increase.

7. Xinjiang: long-standing insecurity and China's internal security

In the long history, China has been in a drought, insecure, and the security of the northern borders of this country has always been unstable. China, in all eras, has been under the rule of various peoples such as Huns, Turks, Mongols, and Manchus from the north, and today it sees its only historical insecurity in the dry borders in Xinjiang. The presence of Western powers in Hong Kong and Macao has been removed and the humiliating symbols of foreign interference in China's internal territory have disappeared. Mongolia, which was the seat of destructive forces for centuries, has come under the control of China's economic interests and Tibet has also lost its political and cultural autonomy. Despite the delay of the Chinese Empire, Eastern Turkestan or Xinjiang (the modern region in Chinese) was Only in the mid-18th century, during the Qing Dynasty (Manchu) that it was completely under the permanent rule of Beijing. Since then, Xinjiang has said that Fitzgerald has become a land of constant unrest in China (Kaplan, 2018).

Although the establishment of the Contemporary Silk Road is based on a set of economic and political diplomatic interventions of China in Central Asia, and it has made the Muslims of the former Soviet republics the focus of its macro strategy, but the Muslims The Uyghur deserters see themselves in Xinjiang as the main threat. Indeed, China's objective is to counteract the "three evil forces of terrorism, extremism, and separatism." (Zimmerman, 2015); For this reason, the key to establishing the Silk Road on land and sea is the security of Xinjiang.

In the grand strategy of Beijing leaders, Xinjiang is the gateway to the Eurasian land bridge that connects China to Central Asia and finally to Europe (Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road, 2015).

All transportation, trade, and energy routes between China, Asia, and Central Asia, and then West Asia and Russia on the other side, will pass through Xinjiang; For this reason, the control of the Uighurs, especially in the cultural field, is the backdrop for the initiation of the Belt and Road initiative in Eurasia, as well as the South China Sea and the Indian Ocean (Kaplan, 2018).

Being the gateway to the Contemporary Silk Road to Central Asia, Xinjiang is one of the most underdeveloped parts of China. From this perspective, the Belt and Road initiative will also address China's internal security concerns. The policy of suppressing Muslim Uyghurs and even keeping more than one million of them in secret camps (nytimes, 2019) is a part of this strategy. In the meantime, the establishment of security in Xinjiang and its stable control will be the starting point for the formation of Great China in Eurasia. This moment will be the moment of liberating China's strength and power to exercise power in the Central and South China Seas. For this reason, the control of Xinjiang in the land area of Eurasia opens the gateway to the Indian Ocean for Beijing and is a strategic key to maintain and expand its maritime power through the establishment of new ports in Myanmar. It will be Sri Lanka and Djibouti. From this standpoint, the Belt and Road initiative is also a part of China's domestic strategy.

In his report, Zimmerman emphasized on the reconstruction of less developed western regions (Zimmerman, 2015); Therefore, the progress of the Contemporary Silk Road from the Xinjiang region will disappear with the sustainable development of the fields of instability and instability (as well as poverty and unemployment).

The control of radicalism among the Uyghurs of Xinjiang by increasing the investment in the infrastructure of Xinjiang and also changing the composition of the population will be stable and consistent in following the plans of the modern Silk Road. This issue shows that the Contemporary Silk Road will not only create a framework for the exercise of China's power beyond its borders, but more importantly, it will protect its national security and territorial integrity. China can deter competitors from meddling in its domestic affairs only by continuing

economic growth and relying on unbalanced progress, and the formation of the Contemporary Silk Road is the only and most important tool for Beijing to continue this growth and development.

From this perspective, the Contemporary Silk Road, rather than being based on the aggressive intentions of Beijing's leaders, as the United States and other competitors of China think, is based on China's defense intentions and security demands; For this reason, the Contemporary Silk Road will not remain only as a nominal plan, because it will be the most important guarantor of China's independence and territorial integrity. In short, this program is a way to achieve security in the insecure Xinjiang region through development-based economic plans that connect coastal China to Western China and Central Asia.

8. Afghanistan: breaking security and the presence of America

In the past, the region of present-day Afghanistan, as a part of Greater Khorasan was among the most significant regions through which the southern ancient route of the historical Silk Road passed. However, it has been decades that insecurity has gripped the country of Afghanistan. From this perspective of the leaders of Beijing, this long-standing insecurity is considered a potential threat to the security of Xinjiang and also to the trade routes of Central Asia. In other words, Beijing's leaders consider China's policy in Afghanistan to be intertwined with the security of Xinjiang and its presence in Central Asia.

This concern is not unfounded. In the 1980s, many of the forces of the East Turkestan Islamic Movement[16] and the allies of the Mujahideen of Afghanistan joined Al-Qaeda in the 1990s.

The interesting point is that China itself had sent these Uighur forces to Afghanistan in the 1980s to help the Afghan Mujahideen in the war with the Red Army; A decision that later turned into the most important internal problem for the national security of China and its eastern borders; Therefore, Afghanistan has been the source of the most important external threat to the Contemporary Silk Road and China's security, because according to the Chinese, a weak Afghanistan will be a haven for terrorists.

Despite the consensus of Chinese strategists on the significance of the role and position of Afghanistan in the Contemporary Silk Road, there is no agreement among them for the type of relationship with Kabul and its integration with this master plan. To put it more clearly, the most important drivers for China's policy in Afghanistan are the security of its western regions and its territory in Xinjiang; Therefore, China's security priority in Afghanistan means that China's view of Afghanistan in the final stage is not economic, and for this reason, the possibility of the Contemporary Silk Road passing through Afghanistan is very low.

In addition, Afghanistan will be the most important foothold of Americans in the region to contain China. Many Chinese strategists are of the opinion that if America was not involved in the war in Afghanistan after its conquest, it would have controlled China sooner and with more force (Zimmerman, 2015); This means that America's presence in the East, in the South China Sea, and in the West, in Afghanistan, completes China's strategic encirclement ring. The conflicting point of Afghanistan's author is that China does not want America to leave Afghanistan at once, because a security vacuum will be created (Starr, 2009).

This security gap will be a strategic location for the forces of the Islamic Movement of East Turkestan. There are even important signs of the Taliban regaining power and the rise of Daesh in Afghanistan. It is in such a situation that Wang Yi, the Chinese Minister of Foreign Affairs, emphasized during his visit to Kabul that China firmly believes "the peace and stability of Afghanistan is crucial for the security of Western China, and more significantly, for the overall peace and development." It affects the region" (Reuters, 2014).

The consequence of not solving the insecurity issue in Afghanistan will be the weakening and breaking of the potential cooperation between Kabul and Beijing. Also, the issue of China's security priority in Afghanistan, from China's economic point of view, reduces this country; For this reason, the passage of the new silk route

[16] ETIM -- 1. Eastern Turkistan Islamic Movement

from Afghanistan is less likely. Despite the possibility of the main route of the dry belt of the Contemporary Silk Road passing through Afghanistan, Beijing has tried to launch plans related to its master plan. In this direction, the Chinese undertake the renovation of the infrastructures. In advance, the 75-kilometer Mazar-e-Sharif to Hirtan train, which plays an important role not only in transportation, but also in the extraction facility for mineral materials in Afghanistan, established in 2011, was constructed with a loan from the Asian Development Bank (ADB) (Army, 2013).

The World Bank and the Asian Development Bank, forerunners, had started a series of feasibility studies for railways and rail lines within Afghanistan and also between Afghanistan and its neighbors. This railway, which is financially supported by the Export-Import Bank of China and the Asian Development Bank, passes through six provinces of Afghanistan (Kunduz, Balkh, Jozjan, Faryab, Badghis, and Herat), and the feasibility studies show that it is an Iranian company. has done Asia Plus, 2014). The World Bank also conducted a feasibility study of the same route in 2012. Based the World Bank report, the route between Kunduz and Iran's border is the most likely and the most promising option; as it has the ability to "strengthen economic development across the northern border of Afghanistan" (Harral, Winner, Thompson, Sharp & Klein, 2012).

In this direction, effective steps have been taken to implement the agreements between Kabul and Monday and to protect the border security between the two countries (Pahjwok Afghan News, 2018). In short, the leaders of China do not consider Afghanistan to be an important player for the implementation of the Contemporary Silk Road grand plan, simultaneously, they have endeavored to enhance the level of relations with Kabul.

9. Conclusion

At present, the Contemporary Silk Road is the most powerful macro-strategy that has the ability to transform the international power structure. This transformation affects the geopolitics of Eurasia and other regions of the "Island of the World[17]" (Mackinder, 1904). In the meantime, the Central Asian region will be the first and most important region that will be under the pressure of the transformations resulting from this master plan. Geographical neighborhood, historical entanglement, and the emergence of Central Asian republics will all be the foundation for the consequences of the rise of the Contemporary Silk Road in this region.

Considering the importance of Central Asia in the foreign policy of Afghanistan and Iran, geopolitical changes in this region will affect the power structure in Iran's surrounding environment; Therefore, this research tries to reveal the dominant trends and routes of the Contemporary Silk Road, and to achieve this goal, it lists the actors of the Contemporary Silk Road who can change the geopolitics of Central Asia. take away.

Contrary to many published writings about this master plan, which have only focused on its consequences at the international level and the Beijing-Washington rivalry, the leading writing, the impact of the actions of important players in the heart of Eurasia is goat. showed the vein; Therefore, check here China's investments in Central Asia and the policies of these countries regarding this plan.

We also pointed out China's occupations in Xinjiang and Afghanistan. As history has shown, the expansion and strengthening of the Silk Road is accompanied by war and conflict. The ancient silk road was spread in Europe only after the crusades and then the invasion of the Mongols and the complete conquest of Eurasia. In the latter half of the 19th century, the competition between Russia and Great Britain and the "Great Game" took place in this heartland of the world island, and today the new great game between China and America is also ongoing. The center of this big game, once again, will be Central Asia.

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[17] World Island

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Combating Islamophobia through International Law: An Analysis with Human Rights Framework

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Abstract
This article explores the intricate problem of Islamophobia and how it affects religious tolerance and human rights. It begins by defining and analyzing the causes, current trends, and manifestations of Islamophobia to highlight its numerous difficulties. This article then examines international legal frameworks addressing this challenge by presenting case studies from India, France, Denmark, Korea, and selected nations that illustrate various approaches to combat Islamophobia. This article investigates the prospects for promoting religious tolerance and human rights in the face of Islamophobia, emphasizing the critical roles of civil society, education, interfaith dialogue, and policy recommendations as it offers a roadmap for future directions, recommending ways to build international consensus, strengthen legal mechanisms, and combat discrimination while calling for a collective effort to safeguard the principles of human rights and religious tolerance. Additionally, through a multidisciplinary approach, this article shall serve as a resource for policymakers, scholars, and activists committed to fostering a more inclusive and equitable society.

Keywords: Islamophobia, Human Rights, Muslim, Challenges, Religious freedom

1. Introduction

In a world that aims for peace, fairness, and rights for everyone, the ongoing problem of Islamophobia is a troubling issue. It means treating people who are thought to be Muslim unfairly because of their religion, and it's causing lots of problems for many individuals (United Nations, 2021). This is not only harming people but also challenging the idea that everyone should be allowed to practice their religion freely and be treated with respect. So, dealing with Islamophobia using international laws is a very important task. It is something that needs a careful look, deep understanding, and taking action to solve.

Generally, Islamophobia can be defined as the presumption that Islam is inherently violent, alien, and inassimilable (Beydoun, 2016). Combined with this is the belief that the expression of Muslims identifies as correlative with a propensity for terrorism (Beydoun, 2016).

Islamophobia remains an ongoing worldwide concern, marked by unfounded fear, bias, and unfair treatment of people or groups perceived as Muslim. This problem continues to grow due to various reasons, such as the media promoting stereotypes, politicians using divisive language against Muslims, online platforms reinforcing biased opinions, associating Islam with terrorism after notable events, concerns about cultural shifts and immigration, and economic instability. To combat this issue, it is vital to take broad actions, including educating people, enhancing their ability to analyze media critically, encouraging intercultural conversations, and having leaders who support inclusivity, all aimed at fostering tolerance and diminishing the persistence of Islamophobia.

Human rights are a set of fundamental rights and freedoms that are inherent to all individuals by virtue of their humanity (United Nations,1948). These rights are universal, inalienable, and indivisible, meaning they apply to every person, cannot be taken away, and are interrelated (Sepulveda, M. et al., 2004). They encompass various rights, including civil, political, economic, social, and cultural rights, such as the right to life, liberty, equality, freedom of speech, and access to education and healthcare (United Nations, 1948). Human rights aim to ensure that everyone is treated with dignity, fairness, and respect, regardless of their background, beliefs, or circumstances, and to promote a just and equitable society (Australian Human Rights Commission, 2019).

This paper contributes to a better understanding on the problem of Islamophobia and how it affects religious tolerance and human rights. It explores the ways and possibilities of encouraging and promoting religious tolerance and protecting human rights when dealing with Islamophobia. It highlights the important contributions of civil society, education, interfaith dialogue, and policy recommendations. This includes the outlines of a plan for the future, suggesting methods and strategies to achieve global consensus, strengthen legal instruments, and combat discrimination. It calls for a collective effort to safeguard human rights and religious tolerance. This multidisciplinary article aims to assist policymakers, scholars, and advocates in creating a more inclusive and just society.

2. Islamophobia

2.1. Defining Islamophobia

As mentioned before, Islamophobia can be defined as when some individuals are treated with bias and unkindness simply because they are perceived to follow the Islamic faith (United Nations, 2021). This kind of discrimination has widespread negative consequences, not only for the people directly affected by it but also because it contradicts the fundamental principle that everyone should have the freedom to practice their religion without hindrance and should be treated with dignity and fairness (United Nations, 2021).

The world is facing many challenges, including the threat of Islamophobia and interfaith harmony. Islamophobia is an unnecessary and baseless culture of fear against Muslims and Islam. Recent events indicate that Islamophobia is on the rise all over the world. This has serious repercussions not only for the Muslims but it's also a major concern for the non-Islamic states. Furthermore, Islam has been facing many challenges for many years from the wider world, and every Muslim is considered a terrorist. The hate against Islam and Muslims is not new and has its roots in historical events such as the Crusades and early interaction between Muslims and the West (Pervaz & Asad, 2022).

A 2002 study by Elizabeth Poole found that many people in Britain see Muslims through a shared viewpoint. This viewpoint is often considered more of a cultural difference than skin color. Surveys about British attitudes toward Muslims show that many Britons believe that Muslim values do not match their own (Carruthers , 2011). These surveys, discussed in Clive Field's article "Islamophobia in Contemporary Britain," reveal that a significant number of people think that if more Muslims come to the country, it could change British identity. This indicates

that many people feel Muslims prefer to keep to themselves, and some even view Islam as a threat to Western democracy (Bakali, 2016).

2.2. Background & Historical Roots

The origins of Islamophobia can be traced back to early encounters between Europe and Islam, predating the relatively recent coining of the term itself. Its historical underpinnings can be segmented into distinct phases, each contributing to the development of prejudices and fears toward Muslims (Bakali, 2016).

During the early interactions, Western perspectives on Islam began to take shape around the 7th century (Bakali, 2016). The Islamic faith expanded into the Byzantine Empire, prompting apprehension in Western Europe (Bakali, 2016). Islam was viewed as a multifaceted challenge, with the potential to disrupt religious and social stability, challenge the dominance of the Roman Church, and even supplant Christianity itself.

The Crusades, which unfolded by the 11th century, marked another pivotal phase in the evolution of Islamophobia. (Abdulhadi, 2018) The Catholic Church strategically harnessed the perception of Islam as an ominous "Other" to gain political authority and dominance. The Crusades were portrayed as a militaristic pilgrimage aimed at reclaiming Jerusalem from what were perceived as Islamic heathens, and the narratives relayed by returning crusaders fueled misapprehensions and stereotypes about the East (Bakali, 2016).

The colonial era further deepened these misconceptions. European colonial powers, under the guise of civilizing missions, regarded Islam as a civilization condemned to perpetual backwardness. These notions persisted through the colonial era and beyond (Bakali, 2016).

2.3. Contemporary Manifestations

During the Post-9/11, the world witnessed a significant shift in the dynamics of Islamophobia (Pervaz & Asad, 2022). The tragic events of September 11, 2001, were a watershed moment, ushering in the "War on Terror" (Cvek, 2009). This era brought about heightened scrutiny and bias against Muslims, particularly in Western societies. The aftermath of 9/11 saw Muslims often unfairly targeted (Cvek, 2009).

Media outlets have played a substantial role in perpetuating Islamophobia, especially in the post-9/11 climate (Terman, 2017). Negative portrayals of Muslims in various media forms have reinforced stereotypes and biases, further contributing to the problem (Cvek, 2009).

Politicians across different nations have leveraged anti-Muslim sentiment for political gain. Divisive rhetoric and discriminatory policies have been implemented, exploiting fears and prejudices against Muslims (Bilz, 2021). This has not only fueled Islamophobia but also exacerbated social divisions.

The advent of the internet and social media has provided a platform for the amplification of Islamophobic views. (Khamis, 2021)Online platforms have facilitated the creation of echo chambers, where individuals with similar beliefs reinforce each other's biases, deepening the problem (Alatawi, Sheth, & Liu, 2023). Online radicalization has played a role in shaping and spreading Islamophobia.

These factors, including post-9/11 events, media influence, political rhetoric, and online radicalization, have collectively contributed to the persistence and spread of Islamophobia in the modern era.

3. Legal Frameworks

The primary strength of formal legal adjudication is the structured adherence to procedures, which ensures predictability and equity and prevents arbitrary decisions. Creating a legal framework for a justice platform bestows legal legitimacy, making the platform's processes legally scrutinized (justiciability) and guaranteeing

accountability of the overseeing body (Ahmad & Lilienthal, 2023). In the context of Islamophobia, there are no explicit mentions of legal frameworks specifically on it, but there was something relevant that could be addressed.

Universal Declaration of Human Rights (UDHR) is a landmark document resulting from the collaborative efforts of representatives with diverse legal and cultural backgrounds worldwide. It was endorsed by the United Nations General Assembly in 1948 and is regarded as a global benchmark for human rights (United Nations, 1948).

About the issue of Islamophobia, the UDHR Article 2 has served the rights to freedom of religion, which underscores the core principle of non-discrimination, emphasizing that individuals have the right to these rights and freedoms regardless of their religion. Discrimination, prejudice, or persecution based on a person's religion, such as Islam, is contrary to this fundamental principle of human rights outlined in the UDHR. It serves as a foundational document in addressing and combating Islamophobia and promoting religious tolerance.

Secondly, The United Nations International Covenant on Civil and Political Rights (ICCPR), adopted in 1966 and effective since 1976, safeguards civil and political rights. Along with the International Covenant on Economic, Social, and Cultural Rights and the UDHR, the ICCPR and its two Optional Protocols form the International Bill of Rights. It aims to uphold every individual's dignity and create conditions within nations to exercise civil and political rights. Nations ratifying the Covenant must protect these rights through legal and judicial measures, providing effective remedies.

Article 2 values the issue of non-discrimination, which includes respecting one’s religion. Most importantly, Article 18 summarizes that there shall be the right to freedom of thought, conscience, and religion, allowing individuals to choose, practice, and teach their religion or belief openly and privately. There will be protection against coercion that could interfere with one's freedom to choose a religion or belief. The recognition that limitations on religious expression may be imposed by law when necessary to protect public safety, order, health, morals, or the rights and freedoms of others. States Parties are committed to respecting the freedom of parents and legal guardians to ensure their children's religious and moral education is in line with their convictions (United Nations, 1966).

It could be concluded that this framework primarily emphasized the freedom of religion, yet it indirectly addresses issues of religious discrimination, including discrimination against Muslims (Ahmad & Haji Asmad, 2020). It also upholds the rights of individuals to practice their religion and protects them from coercion and discrimination based on their beliefs (Petersen, 2022). In this sense, it provides a legal framework that can be used to address and combat Islamophobia under the broader context of religious discrimination.

It is to be noted that the legal framework is not limited to those two mentioned earlier; a national law should be recognized to combat this issue. National law, commonly known as domestic law, comprises the legal regulations applicable exclusively within a specific country or state. It reflects the state's authority, originating from its local governing bodies, which may include legislative institutions (Kingdom H, 2016). National law against discrimination and hate crimes targeting specific religious groups like Muslims exists in many countries.

For example, the United States has several laws on this, especially when President Obama signed The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act into law in 2009. This legislation is a significant milestone in the fight against hate crimes. It provides federal support for prosecuting violent acts directed at individuals due to factors such as race, religion, sexual orientation, and gender identity, recognizing that hate crimes have unique and lasting consequences. This act became a crucial step forward in addressing these issues. It acknowledges the unique nature of hate crimes and aims to provide support and protection for victims, their communities, and allies (Ahmad & Lilienthal, 2023). Another example would be the one in the United Kingdom, with the introduction of The Racial and Religious Hatred Act of 2006, which marks a notable advancement in British legislation. It broadens the offense of inciting racial hatred, outlined initially in the Public Order Act of 1986, to now encompass inciting hatred against individuals based on their religious beliefs (Brown, 2008).

Regional Organizations then came into the picture. In the last ten years, regional organizations worldwide have been showing a growing interest in addressing the issue of internal displacement. Their engagement is well-founded because conflicts and displacement situations typically do not stay contained within one country's borders. They often spread into neighboring nations, potentially disrupting regional stability and necessitating a collective regional reaction. The United Nations has encouraged the initiatives of regional organizations (Cohen R. , 2002).

To relate it with the issue of islamophobia, The Organization of Islamic Cooperation (OIC) adopted agreements and resolutions to combat Islamophobia and promote religious tolerance in member states. It emerged from a conference in Rabat, Morocco, in September 1969, following the Rabat Declaration. It was primarily driven by concerns of Islamic countries, sparked by incidents like the burning of Al-Aqsa Holy Mosque in 1969. The OIC's expanded goals include enhancing solidarity among member nations, promoting cooperation, supporting global peace and security, safeguarding Islamic holy sites, and aiding the Palestinian quest for independence (Ministry of Foreign Affairs of the Republic of Indonesia, 2022).

The OIC consistently highlights the issue of hatred, racism, and discrimination against Muslims and its diverse forms, which have a significant impact on Muslims worldwide. Through this observatory, the OIC aims to monitor instances of violence directed at Muslims and anything related to Islam as a religion. It seeks to document these cases, intending to present them to the Council of Foreign Ministers of OIC Member States. On a broader scale, the OIC aims to raise global awareness about the evident threat of Islamophobia, along with discriminatory policies and actions against Muslims (Organisation of Islamic Conference, 2022).

In summary, the OIC's observatory focuses on the global problem of hatred and discrimination against Muslims, documenting and reporting instances of violence or discrimination to the Council of Foreign Ministers. The broader objective is to raise awareness about the dangers of Islamophobia and discriminatory actions against Muslims.

Moving on to the Hate speech laws that exist worldwide, they are a subject of debate with principled arguments both in favor and against them. These arguments involve various moral factors like liberty, health, autonomy, security, and human dignity, and practical considerations like their effectiveness and potential chilling effects (Brown A. , 2017). The core objectives of hate speech laws are to protect the rights, dignity, and safety of individuals or groups targeted by such speech and to maintain social harmony (Tsesis, 2009). Regarding Islamophobia, hate speech laws are instrumental in confronting and countering instances of hatred and bias directed at Muslims.

The impact of hate speech laws in addressing Islamophobia differs significantly based on the legal and cultural environment of a given nation. It is to be noted that Hate speech is generally defined as speech that expresses hate for a specific group (Levine, 2018). Furthermore, laws against hate speech can act as a preventive measure and play a role in reducing hate crimes against Muslims. Hate crimes, characterized by violence or hostility driven by prejudice, can inflict significant harm on individuals and communities (Considine, 2017). By making hate speech a criminal offense, these laws convey a clear stance against discrimination and violence aimed at Muslims. This can serve as a deterrent, dissuading individuals from partaking in Islamophobic hate speech and, consequently, lowering the risk of hate crimes.

For example, the part where a hate speech law aimed at combating Islamophobia can be found in France. France has laws that criminalize hate speech, including speech targeting religious groups, such as Muslims. In France, the law that criminalizes hate speech, including speech targeting religious groups, is primarily governed by the French Penal Code. Article 32-1 addresses incitement to hatred based on race, ethnicity, or religion, imposing penalties on those who incite discrimination or violence. Article 33 of the French Penal Code covers defamation, insults, and invectives targeting factors like origin, race, religion, ethnicity, nationality, gender, or sexual orientation, leading to potential legal consequences and penalties.

Nevertheless, the legal framework indeed plays a vital role in the fight against Islamophobia, serving as a foundation for addressing prejudice, discriminatory acts, and hate crimes targeting Muslims. Through a deeper

comprehension of the elements fueling Islamophobia and the adoption of comprehensive legal actions, policymakers can strive to establish inclusive and fair communities.

4. Challenges

Addressing Islamophobia involves grappling with a range of challenges across legal, political, social, and cultural dimensions. These challenges can vary from one country to another and are often interconnected. Such challenges include:

4.1. Legal Challenges

Legal Challenges encompass various aspects that need to be addressed when combating Islamophobia. A crucial aspect involves defining Islamophobia in a universally accepted manner, which is essential for crafting effective legal frameworks to address the issue (Anderson , Shahbazi, & Abid, 2021). Another challenge relates to the disparities in laws and regulations surrounding hate crimes and discrimination in different countries. Achieving consistency and effectiveness in legal frameworks at an international level is a complex task, given these variations. Additionally, balancing the imperative to combat Islamophobia with the preservation of freedom of speech poses a challenge. It can be intricate to strike the right balance, as some forms of hate speech may be protected by laws governing freedom of expression (Ariyanto, 2018).

For instance, in one country, certain forms of hate speech directed at religious groups may be considered protected under their interpretation of freedom of speech (Walker, 2018). However, in another country, similar things might be seen as clear instances of hate speech and subject to legal consequences (Walker, 2018). This makes it challenging to fight against Islamophobia all over the world because there are different rules in different places.

Furthermore, in the case of social media platforms such as Facebook or Twitter, a post or comment targeting a particular religion or group, including Muslims (Laub, 2019). In one country, this might be considered hate speech and protected speech in another due to different legal standards (Laub, 2019). This creates a legal challenge in regulating and addressing such content globally as the boundaries of jurisdictions become blurred in the digital age.

4.2. Political Challenges

Political Challenges encompass a set of complex issues that need to be addressed in the fight against Islamophobia. Populism presents a significant challenge as certain political movements exploit anti-Muslim sentiments for their own political gains, which can impede efforts to combat Islamophobia (Oztig, Gurkan , & Aydin, 2020). This challenge is further aggravated by the emergence of far-right political parties in some nations (Oztig, Gurkan , & Aydin, 2020).

Another facet of this challenge relates to Counterproductive Policies. Some political measures, such as the imposition of bans on religious symbols or attire, have the unintended consequence of being counterproductive. These policies may contribute to the stigmatization of Muslim communities, exacerbating the problem they seek to address (Muhammad, 2018).

Furthermore, addressing Islamophobia can be hindered by a Lack of Political Will. In certain instances, there may be a dearth of political determination to confront Islamophobia, particularly when political leaders themselves engage in anti-Muslim rhetoric. These political challenges are interlinked and require careful consideration and proactive efforts to overcome.

4.3. Social Challenges

The social dimension of addressing Islamophobia presents a multifaceted set of challenges that are interrelated and crucial to overcome. Prejudice and Stereotyping are deeply rooted issues that persist in society and can be

perpetuated through social interactions, media representations, and educational systems (Council of Europe, 2012). Combatting these biases poses a long-term challenge that requires a sustained effort.

Online Radicalization is another pressing concern in the age of the internet and social media (Binder & Kenyon, 2022). These platforms have the capacity to amplify Islamophobic views and create echo chambers that reinforce biases, making it difficult to counter the spread of hate online (Behr, Reding, Edwards, & Gribbon, 2013). The digital realm has become a significant battleground in the fight against Islamophobia (Behr, Reding, Edwards, & Gribbon, 2013).

Integration and Inclusion of Muslim communities is a critical social challenge. Ensuring the full integration and inclusion of these communities is essential, as alienation and exclusion can contribute to the perpetuation of Islamophobia (OSCE-ODIHR, 2008). It is imperative to address these social challenges through education, awareness, and fostering a sense of belonging and acceptance among diverse communities (OSCE-ODIHR, 2008).

An illustration of the difficulties associated with Islamophobia involves the way Muslims are depicted in media and popular culture. Non-Western films, in particular, have influenced how people perceive Muslims, especially in the aftermath of the events of September 11th (Al-Rawi, 2014). The representation of Muslims in these movies frequently propagates clichés. It strengthens narratives rooted in Islamophobia, ultimately leading to the sidelining and isolation of Muslims from broader political and social interactions (Al-Rawi, 2014). It focuses on how the portrayal of Muslims in media and popular culture can play a role in marginalizing and excluding Muslims from active participation in mainstream social activities, exemplifying a social challenge.

Furthermore, the issue extends beyond using the Islamic prayer called Adhan as background music for a dance reality show (Lopa , 2021) disrespecting Allah in song lyrics (Zi, 2021), or employing designs resembling the Quran for album covers (Hong, 2023). The core problem does not stem from their lack of awareness about the importance of respecting Allah and Muslims; rather, it is their deliberate disregard for these sensitivities, using unawareness as a mere excuse.

4.4. Cultural Challenges

Media Influence plays a significant role in perpetuating Islamophobia. Negative portrayals of Muslims in the media contribute to the negative stereotypes and biases against them (Mitchell, 2018). Challenging media bias and advocating for more accurate and nuanced depictions of Muslims is a cultural challenge that requires promoting fair and balanced representations (Mitchell, 2018).

Education and Awareness are vital components in combating Islamophobia. Raising awareness and enhancing understanding about Islam, including its diverse practices and contributions to society, is an ongoing cultural challenge. It involves revising educational curricula to promote intercultural understanding and presenting a more complete picture of Islam (Mitchell, 2018).

Community Engagement is another crucial cultural challenge. Fostering dialogue and collaboration between Muslim and non-Muslim communities is essential. Building trust and mutual respect among different groups is crucial for effectively combating Islamophobia and fostering inclusive societies (Mitchell, 2018).

In addressing these challenges, it is essential for governments, civil society, media organizations, educational institutions, and individuals to work collaboratively. This can involve implementing comprehensive anti-discrimination laws, promoting intercultural dialogue, enhancing media literacy, and engaging in community-building initiatives. It also requires a commitment to upholding human rights and religious freedom for all individuals, regardless of their faith (Ahmad, Lilienthal, & Asmad, 2023).

5. Case Studies

5.1. Islamophobia in India

Islamophobia in India has surged, driven by a complex interplay of historical events and contemporary factors. The partition of the Indian subcontinent in 1947, leading to the creation of Pakistan and India, resulted in significant suffering for Indian Muslims (Ahmad Sikander, 2021). This trauma laid the foundation for systematic Islamophobia in India, with particular targeting of Kashmiris and Indian Muslims (Ahmad Sikander, 2021). This discrimination has persisted over time, affecting Muslims across the nation.

The COVID-19 pandemic has further exacerbated Islamophobia in India. The social climate during the pandemic has contributed to heightened Islamophobia, with Muslims facing stigmatization and being unfairly singled out. The pandemic has become a breeding ground for xenophobia and discrimination, with Muslims disproportionately affected (Ahmad & Haji Asmad, 2020).

The rise of Hindutva as a political ideology in India has significantly fueled Islamophobia. Hindutva, which champions Hindu nationalism, has contributed to the marginalization and discrimination of Muslims. This ideology has fostered an environment where Islamophobia can thrive, intensifying the challenges faced by Indian Muslims (Ahmad & Haji Asmad, 2020). The emergence of Islamophobia in India is closely linked to the nation-building process (Sheheen, 2023). The construction of a national identity in India has often been exclusive, depicting Muslims as the "other" and a perceived threat to the nation (Sheheen, 2023). This portrayal has exacerbated Islamophobia and perpetuated negative stereotypes and biases against Muslims in India.

It is crucial to recognize that Islamophobia is not unique to India but is a global phenomenon affecting Muslim communities worldwide (Ahmad & Lilienthal, 2023). The presence and migration of Muslims have led to widespread discussions, but there is limited systematic evidence on the factors underpinning anti-Muslim sentiments (Savelkoul, Scheepers, Tolsma, & Hagendoorn, 2011). Islamophobia is rooted in racism, racialization, and intergroup competition. Reports of hate crimes, workplace discrimination, and various forms of Islamophobia have surfaced in different parts of the world.

The recent incident that happened in India was During a parliamentary debate in India, Bharatiya Janata Party (BJP) Member of Parliament (MP) Ramesh Bidhuri made Islamophobic remarks and derogatory comments directed at opposition MP Kunwar Danish Ali (Faisal, 2023). The offensive comments sparked outrage, with demands for strict action against Bidhuri. Ali expressed his disappointment and questioned whether such behavior is encouraged by organizations like the RSS, a far-right ideological mentor of the BJP. Opposition MPs stood up for Ali, and social media reactions condemned the incident as part of the BJP's culture. Defence Minister Rajnath Singh issued an apology, and the remarks were expunged from parliamentary records. Ali intends to file a privilege notice to seek action against Bidhuri. Observers noted that this incident reflects the broader issue of anti-Muslim rhetoric within the BJP and its supporters (Faisal, 2023).

In conclusion, addressing Islamophobia in India requires a comprehensive strategy that confronts the root causes of discrimination and fosters inclusivity and interfaith understanding among diverse religious and ethnic groups.

5.2. Islamophobia in France

Islamophobia in France has deep historical roots, stemming from the country's colonial past. Once a colonial power, France occupied predominantly Muslim territories in Africa and the Middle East during much of the 20th century (Pervaz & Asad, 2022). The contemporary relationship between the French state and its Muslim population is significantly influenced by this imperial history and economic exploitation (Pervaz & Asad, 2022).

Muslims started coming to France primarily as a result of French colonization in North Africa (Sinha, 2021). Despite this historical connection, the French state did not consistently extend citizenship rights to Muslim Algerian subjects (Sinha, 2021). The prevailing ideology in France promoted a strict separation of state and church, which often marginalized Muslims, perceiving them primarily through their religion (Pervaz & Asad, 2022).

The French political structure historically displayed hostility towards the Muslim population (Pervaz & Asad, 2022). The French invaders in North Africa sought to detach the population from Islamic culture and religion, at times forcefully promoting unveiled women and discouraging the use of the Arabic language in the private sector (Pervaz & Asad, 2022).

France now boasts the largest Muslim population in the Western world, with Islam being the second most widely professed religion (Pervaz & Asad, 2022). The roots of Islamophobia run deep in the history of the French Empire, shaping the perspectives of many French elites and locals. The perception of Muslims as second-class citizens is a lingering issue reminiscent of the days of French Algeria (Syeda & Louati, 2022).

France's relationship with Islam is complex. It has historically aimed to separate Muslims from their religion, viewing it as archaic and authoritarian. French institutions have sought to promote a modified version of Islam (Pervaz & Asad, 2022). This has created a contradiction in France, where anti-Muslim sentiment is prevalent in media discourse and even within the government.

The rise of Islam in France has further complicated this relationship. Recent events, such as the murder of Samuel Paty, a French teacher, and the crackdown on Muslim organizations, have exacerbated tensions (Pervaz & Asad, 2022). Some worship places have required police protection due to threats of violence. These actions come amid President Macron's statements about a plan against Islamist separatism and his assertion that Islam is facing a crisis globally (BBC News, 2020). This has been perceived by some as a form of political exploitation, using Islamophobia to fuel his political campaign. In 2004, the country banned headscarves in schools, and in 2010, it passed a ban on full face veils in public, angering many in its five million-strong Muslim community (Aljazeera, 2023).

In summary, Islamophobia in France has deep historical roots tied to its colonial past, and it continues to manifest in various aspects of French society, including political discourse, media, and government actions, contributing to a complex and contentious relationship with its Muslim population.

5.3. Islamophobia in Denmark

Denmark faces a notable problem with Islamophobia, which is substantiated by various studies. Studies have indicated that adverse sentiments towards immigrants and immigration in Denmark can be regarded as a manifestation of Islamophobia (Anderson & Antalikova, 2014). The public discourse concerning the establishment of a dedicated mosque in Copenhagen underscored the significant influence of Islamophobia within the Danish public (Simonsen, Neergaard, & Koefoed, 2019). Additionally, there is proof that Danish Muslims encounter prejudice and bias solely due to their religious identity.

In 2008, a report by the EU Fundamental Rights Agency revealed that Somalis and Turks in Denmark were among the top 10 minority groups most subjected to assaults and threats in the 27 EU Member States (European Network Against Racism, 2022). Danish reports from 2013 to 2015, conducted by the Danish Security and Intelligence Agency (PET), found that a significant number of religiously motivated hate crimes targeted Muslims. These crimes predominantly encompass verbal and physical harassment, along with written threats. Research also indicates that Muslim women and girls, particularly those who wear headscarves, face discrimination in various settings, such as public transport and shops, often due to their ethnic backgrounds.

A survey conducted in Copenhagen on the experiences of discrimination among young people revealed that 60% of female respondents had encountered verbal abuse. Many of these incidents were related to their appearance and clothing. Ethnic minority women experienced more incidents tied to their ethnicity, religion, and religious symbols.

In 2005, the Supreme Court made a ruling in favor of Danish Supermarkets, permitting them to prohibit employees from wearing religious headscarves during work hours. This decision sparked continued debates in the media. In 2013, a similar debate arose when Nada Fraije sought job training at Netto but was informed that wearing a

headscarf was forbidden. This incident led to the formation of the 'Boycott Føtex, Bilka and Netto' group, and as a result of ensuing media discussions, Dansk Supermarked removed its head scarf prohibition.

While in 2009, the Conservative party proposed a 'burqa ban' in public spaces, initially receiving support from the government. An official working group was established to investigate the use of the burqa and niqab in Denmark, leading to the controversial 'burqa-report.' This report concluded that only a limited number of women wore these coverings, and a significant portion of them were ethnic Danish converts. As the issue became a political dispute and legal experts identified constitutional conflicts, the government chose to rely on existing rules to minimize the use of niqab and burqa. In the same year, a law known as the Headscarf Act was passed, prohibiting judges from wearing religious or political symbols to maintain their neutrality and uphold public trust in the courts. This law faced criticism, including legal challenges and concerns from the lawyers' union DJØF, but it remains in effect.

The most heartbreaking event that happened was the burning of the Quran by Danish-Swedish politician Rasmus Paludan, known for his Islamophobic views, which elicited widespread anger and condemnation in the Muslim world (Ahmed, 2023). Paludan set fire to the holy book under police protection, demanding Sweden's admission to NATO. Turkey criticized the incident, emphasizing the importance of peaceful coexistence and the prevention of anti-Muslim attacks. Denmark, however, cannot prosecute Paludan due to the revocation of blasphemy laws in 2017. The incident raises questions about Islamophobia in Denmark, where Muslim immigration remains a contentious issue, and mainstream political parties contemplate relocating asylum facilities to other countries. Danish society is urged to set limits on freedom of speech to prevent the defamation of religious figures and scriptures.

While Islamophobia exists in Denmark, it is not entirely embedded in the nation's system, and actions like Paludan's are within the law, making it challenging to address. The Muslim community in Denmark continues to protest, advocating a balanced response to hate with love and respect. The incident highlights the tension between free speech and the well-being of the community (Ahmed, 2023).

5.4. Islamophobia in South Korea

Islamophobia presents a multifaceted challenge in South Korea, stemming from a range of factors. One influential element is the general Korean public's restricted and skewed comprehension of Islam and Muslim (Koo, 2018). This limited awareness can give rise to misunderstandings and stereotypes concerning Islam, consequently fostering Islamophobic viewpoints. The proliferation of Islamophobia in South Korea has also been shaped by global occurrences, including acts of terrorism by entities like the Islamic State (Koo, 2018). These events have amplified concerns and apprehensions related to Islam and Muslims.

In Daegu, South Korea, a longstanding dispute has unfolded between Muslim students from Kyungpook National University (KNU) and local residents over the construction of a mosque. The conflict escalated after residents voiced concerns about the mosque's impact on their neighborhood, leading to the suspension of construction (Gong, 2023).

Tensions further intensified when residents engaged in anti-Muslim rallies, distributed Islamophobic materials (offensive banners, rallies, and loud music added to the hostility), and organized provocative events such as pork barbecue parties and left pig heads at the construction site (Rashid, 2023).

The dispute underscores South Korea's challenges in handling increasing cultural diversity as it grapples with demographic shifts and aging demographics. While the country has been actively attracting international students and considering immigration to address these issues, it lacks comprehensive anti-discrimination laws and policies, resulting in limited government intervention in conflicts like the one in Daegu.

The case emphasizes the need for improved legal frameworks to address hate speech, promote social tolerance, and safeguard the rights of immigrants and minority groups in South Korea.

6. Diagnoses /Analysis

When addressing Islamophobia, there are several recommendations and prospects to consider for combating religious intolerance, promoting tolerance, and countering negative stereotypes. These encompass the role of civil society, media, international platforms, education and awareness, and legal reforms:

6.1. Religious Intolerance

Religious intolerance is when people don't respect or accept different religions (Ramadan, 2019). It is really important to change this and make sure that everyone respects all the different religions. We can do this by bringing people from different religions together to talk and understand each other better, focusing on the things they have in common. This act of promoting religious tolerance is vital. Encourage interfaith dialogue and understanding among different religious communities, emphasizing common values and shared goals (Ramadan, 2019).

6.2. Role of Civil Society

Civil society groups play a very significant role in the fight against Islamophobia. These are organizations made up of regular people, not the government (United Nations, 2019). They can plan events, run campaigns, and start projects to help people understand and accept each other. This helps to stop unfair ideas and brings different communities together (The Social Change Project, 2018).

6.3. Media's Role in Combating Islamophobia

In these modern days, the mass media, encompassing easily accessible platforms like television and the internet, has emerged as both a tool and a catalyst for the widespread dissemination of Islamophobia on a global scale. (Istriyani, 2016)This phenomenon is primarily propagated through the channels of news coverage that frequently link or equate Islam with violence, radicalism, and terrorism (Istriyani, 2016). Consequently, it can be argued that the media carries a distinct political agenda (Istriyani, 2016). It is important to recognize that the media doesn't merely reproduce objective reality or neutrally report events as they occur. Instead, reality is actively shaped and perpetuated through the language and framing employed by the media (Ricciardelli, Stoddart, & Austin, 2023). In essence, the media doesn't merely convey meaning; it actively constructs and defines the meaning of reality (Ricciardelli, Stoddart, & Austin, 2023).

Consequently, a substantial portion of the audience tends to internalize and accept the version of reality presented by the media, particularly through television and online platforms (Ricciardelli, Stoddart, & Austin, 2023). In fact, the media often amplifies reality to the point where it becomes hyperreal, blurring the lines between actual events and their media representation. This is especially evident in news coverage related to radicalism and terrorism, where these issues are frequently associated with extremist Islamic groups, consequently contributing to a global perception of Islam (Ricciardelli, Stoddart, & Austin, 2023).

The media has a pivotal role in shaping public opinion. Encourage media outlets to promote a mindset of acceptance and inclusion. This includes showcasing positive stories about Muslim individuals and their contributions to society, such as in fields like music, art, science, and humanitarian efforts.

6.4. International Media

International media outlets like the BBC, CNN, and Al Jazeera have global reach. They should take responsibility for fair and unbiased reporting, avoiding sensationalism that perpetuates stereotypes. Social media platforms like Facebook and YouTube can also contribute by implementing stricter policies to prevent hate speech, and people should refrain from commenting negatively and promoting hate online (Lai, 2022).

6.5. Education and Awareness

Include comprehensive educational programs that teach cultural diversity and religious understanding from an early age. Encourage academic institutions to revise their curricula to promote intercultural and interfaith dialogue. Promote awareness campaigns that debunk myths and misconceptions about Islam (Rounak, 2023).

6.6. Legal Reforms and Policy Recommendations

Advocate for legal reforms that address hate crimes and discrimination based on religion. Governments should implement stricter laws against hate speech and discrimination, while also encouraging reporting mechanisms for victims of Islamophobia (Shaheed, 2021).

By addressing these prospects and recommendations, we can work towards a society that is more inclusive, tolerant, and free from Islamophobia.

7. Future Recommendations

7.1. Strengthen Legal Mechanisms

Enhance legal systems to better address and prevent Islamophobia. This may include stricter laws against hate crimes and discrimination based on religion (Shaheed, 2021). Governments should also establish effective reporting mechanisms for victims of Islamophobia to seek help and justice.

It is crucial to reinforce legal systems to effectively address and prevent Islamophobia. This can involve implementing more stringent laws against hate crimes and discrimination that are rooted in religious prejudice (Shaheed, 2021). Additionally, governments should establish efficient reporting channels for victims of Islamophobia to access the support and justice they need.

7.2. Combating Hate Speech and Discrimination

Develop and implement strategies to tackle hate speech and discrimination. Encourage responsible use of social media platforms by monitoring and penalizing hate speech, ensuring that individuals who spread hatred and promote stereotypes are held accountable (United Nations, 2023).

To combat the spread of Islamophobia, it is essential to develop and put into action strategies that specifically target hate speech and discrimination (United Nations, 2023). Responsible use of social media platforms is a key area to focus on, involving monitoring and penalizing individuals who engage in hate speech (Yaraghi, 2019). This approach ensures that those who propagate hatred and reinforce stereotypes are held accountable for their actions.

7.2. Long-Term Strategies

Invest in long-term initiatives aimed at promoting understanding and acceptance of diverse cultures and religions. Develop educational programs that foster intercultural dialogue from an early age and challenge preconceived notions and biases. These strategies should be integrated into academic curricula and broader awareness campaigns to create a more inclusive and tolerant society in the future.

To achieve lasting change, investments should be made in long-term initiatives dedicated to fostering understanding and acceptance of various cultures and religions. This includes the development of educational programs that promote intercultural dialogue from a young age, actively challenging preconceived notions and biases. Such strategies must be seamlessly integrated into academic curricula and broader awareness campaigns, working collectively to build a more inclusive and tolerant society for the future.

8. Conclusion

In conclusion, addressing Islamophobia through international legal frameworks is a complex and urgent task. The historical backgrounds of countries like India, France, Denmark, and Korea have shaped the challenges faced today, emphasizing the need for region-specific approaches. Case studies from these nations have shed light on the diverse manifestations of Islamophobia, reflecting the multifaceted nature of the problem. The prospects for promoting religious tolerance and human rights in the fight against Islamophobia are promising but require a multi-dimensional effort. Strengthening legal mechanisms, combating hate speech, and investing in long-term educational strategies are essential components of this endeavor. Collaboration among governments, civil society, media, educational institutions, and individuals is key to achieving a future marked by religious tolerance and human rights.

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Law and Social Order: TNI's Role in Indonesia (Islam and Democracy), Post Suharto's Until Jokowi's Administration

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Abstract
This article argues the other dimension of discourse on TNI and significant role of Indonesian military to maintain the state integrity to defy the balkanization. TNI is the most effective and solid state's apparatus which to encounter the possible disintegration in Indonesia, especially during the critical period of the early of falling Suharto's new order. Mounting pressure to preserve the unity in the fragile situation was not to seduce TNI to take over the government' seat due to push the civilian presidency to fill in the position. Indonesian's transition to democracy to set TNI make concessions its privilege by scoping the back to basic. TNI's management conflict to curb the conflicts escalated in few provinces in Indonesia elevate trustworthy among Indonesians. Meanwhile there is still attracting from civil political players to push TNI to involve the political practice like nostalgia in new order period. This article also demonstrates that TNI is the most reliable institution to reformate internally to constrain the temptation of ruling administration. The research findings show the essential contribution of TNI to keep guard Indonesia's integrity with the calculated measure. TNI tried to shift the hard power approach to soft power approach by involving the nationality and security of national integration project was initiated by government.

Keywords: Indonesia, Social, Security, National integrity

1. Introduction

After getting independence, Indonesia was not free from infiltration was maneuvered by former Dutch colonial from 1945 to 1949, ending in Den hag tractate or in Indonesia is famous with "konferensi meja bundar" that forced the Dutch government to accept the Indonesia's independence.[1] The young nation must fight for defending independence, from 1950 to 1959, Sukarno's short government inevitably face the domestic rebellion which want to declare self-independence from Jakarta. (Dahm, 1969).

Despite the former colonial was reluctant to give Papua up, the country still attempted to overthrow Indonesia's independence. Dutch made a surprise maneuver did not want to release West Papua to Indonesia that triggered the war between Indonesia and Dutch again in 1963. President Sukarno channeled diplomacy to get the sophisticated weapons from elsewhere to anticipate the conflict with former colonial. The Dutch was stubborn to release Papua to disrupt Indonesia's confidence to defend its territory. Sukarno's foreign

policy was success to establish the international support to compel Dutch colonial expansionist policy to retreat, which was later to acknowledge that Papua was part of Indonesia territory.

Meanwhile after Papua came back, the domestic issue emerged due the foreign interventions instill agenda through their internal political wings in Indonesia (McGibbon, 2004). Over time, concern arose among Army Generals (Angkatan Darat) the strong tacit influence of communist countries was embolden within PKI / Indonesia Communist Party. Army Generals always dismantle the communist party to play the bigger role in national political stage. They were the staunchest figures to prevent PKI to influence national policy. Temple, J. (2003) pointed out that Indonesia face the growing trouble, especially, in 1960s because many powers intervened domestic affairs. The non-align movement was initiated by Indonesia along with other countries due irritate both two great blocks. Undeniable, the peak of PKI heinous crime to murder the generals as the hurdle to run the hidden notorious political agenda in 1965.

Sukarno's government had only two years Indonesia relatively peace because he must deal the tremendous threat the incoming colonialism and the fragile territory which want to separate from Jakarta. The fragile situation of the early administration was very hard for Sukarno's government to set development or build economy amid the vulnerable atmosphere, so it's not enough time to manage the social welfare in Indonesia (Crouch, 1979).

Undeniable, President Sukarno was success to save Indonesia from disintegration and unite all of territory from Sabang until Merauke. In his era, Indonesia was very respected by international community due the figure of President Sukarno inspired many countries to free from colonialism. The Asia Africa conference in 1955 to highlight the role of Indonesia to support the freedom from colonialism for Asia and Africa nations. Indonesia under President Sukarno took the initiative measure together with India, Yugoslavia, China, to form Non-Blok organization as the optional of world power which did not want to be part of NATO or Warsawa block in cold war era.

2. Early politics in Indonesia and TNI's role toward anti- Balkanization

Amid chaotic relentless bloody war spent many resources that trigger the cost of economy was very high in the period. The situation makes the daily life was very hard for many Indonesians due to burden almost every segment of life. Finally, with some incidents within internal politics that force President Sukarno to hand the power to General Suharto by the well-known presidential decree "Super Semar." This decree make General Suharto had power to maintain the security due as the instrument politic for him to take over the seat to become the next president. Super semar was one of the milestone of history of Indonesia because it the signal of emerging Major General Suharto took the commando to maintain security and scrutinize the communism element within Indonesia government.[2] The next episode of Indonesia political under president Suharto stage changed slowly turn open to western investment and try to attract Japanese Investor with the red carpet (Wie Thee Kian, 1994).

After Suharto became the ruler from 1967 to 1998, he focused three elements; stability, economy growth, and defense. Thus, on behalf to increase economy growth amid Indonesia economy was very damaged amid 1000% inflation to force Suharto to emphasize in economy sector. Chua (2008) argued that President Suharto chose to increase economy growth by restructuring the economy mobility by endorsing the businessmen to accelerate the economy sector. Many policies were designated to give access for businessmen to pursuit the economy opportunity to create jobs and income for government. This pattern of economy management creates some elites to control the large of business in Indonesia were called conglomerates. President Suharto used the certain businesspeople to accelerate the economy growing by giving insensitive and easy bureaucracy (Mietzner, 2009, p.106)

He assumed the result of excess of the development's income was described as cake of economy. The cake could be divided and delivered to all of Indonesian people by certain program as social safety net to distribute the cake of economy to the poor. Despite the economy development was intensified by government under President Suharto create many success stories in macro of economy growth. But the social gap was relatively vast to make

social economy was very fragile. The quasi of success theories was vulnerable because the transparent bureaucracy was far from the ideal mode and the rule of conduct was not like in developed country.

Not until 30 years inception many Indonesian conglomerates which are mostly from the elite group. In fact, the growing of Indonesian conglomerates was not based on competitiveness to run business due to make their capability so fragile to compete in international level. The result in 1998 when crisis was actually first from Thailand hit Indonesia to trigger economy collapsed because of the foundation of fragile of its economy. The inflation hiked before 1998 1 dollar equaled 2,400 rupiah to become 20,000 rupiah per 1 dollar. It couldn't be imagined the crisis hit the ordinary people who had income below 2 dollar per day. So, the sentiment within society grows everywhere in Indonesia, especially, in big cities which the social gap shows blatantly. The chaotic situation due consequently the privilege was given by Suharto's era for some elite groups were assumed as culprit of devastating Indonesia economy at the time.

The chaotic situation was vulnerable transition in Indonesia to make Indonesian people in inevitably asking again to Army force distinguish the fire to threat nation's integrity. The formation army in Indonesia is not like in many developing countries such as in Africa or some Asian countries with figure of central commando. The system of sharing power is internally within TNI to prevent the certain figures to use it as the instrument to dismantle the ruling government. Unity's doctrine is rooted in the army's ideology very sacred due must be prioritize as the ultimate goal. Since Indonesia's independence experienced many physical and ideology clash from external and internal prove the solid TNI to deal with any potential threat.

This article builds on field research conducted in Jakarta as the capital, North Sumatra, Aceh, Riau, as well as West Java besides personal experienced while the escalation tensions happened. This article also to assert the experience of some figures or students who staged protest to demand the falling of Suharto's regime was involving to dismantle the new order system directly as the main source of this research. In addition of the aforementioned sources of research also to include the secondary sources were added in the analysis from military report, official government, journals, books, and the personal opinion from ordinary people who prevail the period.

In term of scholarship contribution, this article aims to seek the balance view to perceive TNI's role in one of the fragile situations in Indonesia's history to deal the transition of democracy era. The secession of East Timor erupted the sporadic violence in Indonesia's former province usually screened by western media that TNI as the culprit of the unexpected tragedy. This article is to shows and to uncover the sociological hysteria to employ the security approach to reduce tension at the time. Army' sacrifice to relieve the intake privilege by prioritizing to save of national integrity amid to avoid the scapegoat of the potential disintegration to motivate themselves to be hero in the critical period. Indeed, the article want to boost the academic discourse to view the hidden variable in the transition era of Indonesia milestone of democracy. All of the literatures within this article to dedicate to contribute to the critical scholarship (Aspinall, 2014).

The shaping of conceptual and analytical theory toward Indonesia's condition post Suharto's era was to be exaggerated to become the second Balkanization (Ned et al., 2006). The western –centric bias to perceive or view a certain country as the threat or non-democracy just not to follow the concept of their policy (Guzzini, 2011). The concept of academic fairness will be valued by appeasing the people themselves to describe the period occurred to reflect in the current situation. To derail or to stigmatize other as non-western block as the failed states by using certain parameter of the theories was not matched.

Furthermore, the situation in the early of post Suharto era could not only reviewed just in the security approach. There are many elements insider in term of relation between TNI and people do not like western countries. The basic dogma of Indonesian army is "from people, by people, and for people." The concept was believed by majority of people because almost there is not clash military with ordinary people in term of military's role in Indonesia.

After the rebellion of communist party in 1965, Indonesia is relatively peace except few areas was the problem descended to be inflicted from colonial era such as Aceh, small area of southern Maluccas, Papua or East Timor. The peace agreement was brokered by former Finland Prime Minister Martti Ahtisaari in Helsinki 2005 between Indonesian Government and Aceh Independent Movement / Gerakan Aceh Merdeka (Aspinall, 2003). Indonesian government sent Hamid Awaluddin as the minister of law and human right, Meanwhile GAM was represented by Malik Mahmud Alhaytar as vice Supreme Leader in GAM (Aspinall and Berger, 2001).[3]

Beyond the aforementioned areas are relatively living peace that why new order's government could engage to develop the priority of vital infrastructures to invite many investors to involve the development many sectors. Hence a few prominent international organization such as UN gave Avicenna award because of the success story to self-sufficient producer to feed its people. Or Asian tiger Asia was labeled by World Bank to appreciate what President Suharto took the correct policy to run the country.

President Suharto also quiet success to curb the potential threat from transnational ideology to damage Pancasila which the binding value to connect all of elements in Indonesia such religion, ethnic, or social status (Nothofer,1990). TNI curved the fluctuated relation up to Muslim community after the independence in 1945. As the guard of national unity which has the slogan *bhineka tunggal ika* always unwavering support to secure the national integrity. Army did not tolerate any separatist movement to harm the harmony within society such as DITI Karto Suwiryo in West Java or Kahar Muzakar in South Sulawesi. The principal of national integrity was the priority one due the laying foundation of founding fathers as the inspiring power to prevent any potential threat in Indonesia.

Diversity in unity is the daily jargon even implement it to be institualized to keep guard the spirit of nationality preserved. in fact, the crucial reason that the balkanization did not happen in Indonesia the role of Indonesian Army to keep close to people such as the program of *ABRI masuk desa* (Army enter to village) regularly. This program initiated from Suharto's era to empower Army to participate the critical infrastructure in village especially from lower income.

Undisputable, the long time the totalitarian political atmosphere to create the distance of social expression to become artificially. Freedom to express is likely difficult amid the media control to curb the opposition to give a high sensitivity issue in Suharto's era. Actually, political instruments are determined with power not yet accommodating the interests of the existing elements within their society. Political openness of past experience was used to rigid as a tool of repression by putting symbol of individual leader. The closed relation between TNI and Suharto's administration stigmatized in the eye public as the new order backer (Ufen, 2018). The dominant role blatantly seen in the political stage triggered sentiment among civil politicians. The maneuver to topple the new order was persistently curbed because TNI still perceive Suharto's administration still accommodate the national interest and unity.

The security doctrine of Indonesia is Pertahanan rakyat semesta / totally holistic of people defense. This doctrine to position all of Indonesian people as the security guard not only the Army that why Indonesia not to oblige to observe the military mandatory for civil amid the concept of security always melted in society's role. In Indonesia the biggest concern is not the balkanization like assumed by some western scholars but communism. The two times of rebellion in Indonesia and the most shock one was in 1965 which almost to success to change the ideology. Even the film of Pengkhinatan (betraying) G 30 S PKI held in tribunal ceremony for the victims (Setiawan, 2009). Fortunately, Western was at the beginning to support Indonesia to integrate the East Timor as part of its territory to prevent the communism to build its influence in the tiny island in the warming of cold era (Etkind, 2013). But the same block also to push Indonesia to release the youngest province by designated poll was sponsored by UN (Tiwon, 2020).

Commonly, like in most of developing countries that the role of army dominated in many stages of socio, economy and politics. Due the establishing of the civil society was not yet settled well to harness the transition after getting the independence. TNI's role is very significant to contribute the country with tantamount challenges. Since Japan formed PETA (National Defender of Mother Land) to anticipate the Pacific War with

special skill of combat and high discipline. The alumnae of PETA become the high assets for the young nation to build the country. The relentless war with Dutch who want to recolonize was ended in December 1949 but not release Papua until 1963 to be freed with intense war. The political maneuver of Dutch passed the divide et empire to create the *Republik Maluku Selatan* (South Malucca Republic) and Pasundan was dismantled by the high determination of President Sukarno and some Indonesian elites at the time. The Arafuru War to contested Papua embark the TNI consolidation to defend Indonesia's territory. The pressure from outsiders not to stop to break the solidity of Indonesia by infiltrating communism into certain elites in 1960s. The peak of treachery of PKI in 1965 when kidnaped some prominent of high rank officers in Indonesian Army who doesn't like them. Later the bodies of them was found in Lubang Buaya is near Halim Perdana Kesuma airport Jakarta.

After Lubang Buaya event decreased the power President Sukarno because the situation was fragile due many rumors to destabilize the president's power (Roosa, 2008). The dire condition to force President Sukaro to give Supersemar to Major General Suharto as the Pangkostrad (Chief of Reserve Strategic Command) to take measure the concrete steps to eliminate the hurdle especially in Jakarta as the capital. Destroying the communist movement following the coup plot. He further convinced more Western block. Finally, Suharto became president to face the enormous pressure with skyrocket inflation to need all of human resources to accelerate to the normal. Amid the fluctuation of security concern not to give time to Indonesia to prepare the professional civil to serve. The most available human resources were army to be distributed to many sectors was called dwifungsi ABRI. At the first time, the military role could elevate and accelerate the development rapidly.[4] Almost all of the strategic positions were involved the figures from army indicated the lack of human source from the civilians.

Table 1: The Role of Socio Politic of TNI / ABRI (Indonesia Army) after Suharto's

	President BJ Habibibi	President Abdurrahman Wahid	President Megawati	President Susilo Bambang Yudoyono	President Joko Widodo
Army Fraction in People Assembly (Fraksi ABRI DPR)	Yes	Yes	Yes	Not	Not
Defence Minister	Military Background	Civil		Civil	Military Background
Chief of Social Politic Biro of TNI (Kepala Sosial dan Politik ABRI/TNI)	Yes	Not	Not	Not	Not
National Intelligence Agency (BIN)	Military Background	Military Background	Military Background	Military Background	Military Background and the current is Police background
Territorial staff Chief of Army (Kepala Staf Teritorial ABRI)	Yes	Not	Not	Not	Not
Coordinator minister of Politic, Security and Law (Menko Polhukkam)	Military Background	Military Background	Military Background	Military Background	Military background and the current is Civil
Vice Chief Army (Wakil Panglima ABRI / TNI)	Yes	Not	Not	Not	Being Activated

Source: created by author 29 October 2021

3. Narrative Construction of Ontological Security Theory

Based on the concept of Ontological Security Theory due to leverage the projection of national identity through the development of autobiographical narrative. The glory story of the monumental history was engaged to perceived as the milestone to present the desired identity of a nation. The state's conception of self-identity continues to grows and change to accommodate the inner dynamic to face the outside threat. The ontological security theory tried to see multi-full fluctuation threat to force to define and redefine the self-identity of state. The continuous of the different threat to challenge the concept of security in the frame of a state. The ontological security theory develops to ground the self-identity in narrative designated concept.

Thus, the designated concept would not test during the crisis hit the country. To characterize the state self-identity will embolden how the manner of the agents of the state to deal the crisis (Giddens, 1991). Sometimes internal security threat also the dominant factor to position the state self-identity to promote itself. For Indonesia cases, the development of Ontological Security Theory embraces the two front dominants agent which promulgate to deal the insecurity threat. Subotic (2016) described that Ontological Security Theory manage to the unpredicted insecurity threat both internal and external. For case of Indonesia the insecurity threat is not military confrontation but the more danger also how to maintain the coherent of multi-full orientation in ethnic and religious diversity as well as the transnational ideological threat.

Ontological Security Theory maintains to analyze the kind of security to be perceived by a nation. The value of security concept which to be pursuit need to describe the concept of value intake it. The esoteric and exoteric values must be extracted in the applicable instrument by explaining the esoteric and exoteric in term of security in scope of nation. Esoteric security tends to explore the essential concept in general or universal approach for long term to manage the goal. This approach will be used to empower the ideological perception internally and seek the equal ideology coalition externally (Nissen and Rebecca, 2014). Meanwhile the exoteric security tends to use the ad-hod security available instrument to manage the potential threats. The artificial security approach could be useful to keep the status quo due to develop a nation need the stable condition.

The memory or nostalgia embolden in the people mind set the crucial role to reclaim the ontological security through period of era by setting as sense of bridge between past and the present allowing anyone to perceive the historical continuity (Browing, 2016). The historical highlight stored in personal and social sense embedded in their subjective perspective to elevate the motivation to justify the chosen action. Meanwhile everyone to seek argument to prove the choices to be accepted by the others by articulating the choice to create the social bond among them. The amalgamation of social awareness to trigger to shape the new identity of society to establish the compromising point was committed within collective memory.

The strength of nostalgia power to represent the social identity was forced by political intervention. Every political actors try to redefine the concept of current and future by collecting data from the past due to control people mind by providing the security narrative. The existence of social identity reflects the strong narrative to convince people memory to reject or accept the idea was offered. On the other hand, the political will to deal with current and amplify the issue become the collective awareness could magnify the concept of security to be internalized in public mind. The ontological security concept to scrutinize the politics within public memory to be set as the infiltration mechanism to defend against all of both internal or external threat by forming the convinced narrative to exclude the contending arguments.

Globalism to force each country to define its nationalism to maintain their identity instead of diminishing the immense pressure to whole over the world (Heiduk, 2014: Berenskoetter, 2014). For long time, the perception of Muslim World is represented by Arab countries due the largest Muslim population is Indonesia which has more diversity challenges in religion and ethnics. The construction of ideology of Indonesia was explored from the rich of moral value of ancient Indonesian kingdoms especially from ancient artifact of Sutasoma's work "bhineka tunggal ika."[5] Because it has an exoteric value (see Pancasila) which can be the glue for all elements of society (Do Thu Ha, 2019)

The nation must continue to build nationality concept because it maintains social harmony laboratory due it must survive in diversity. Nevertheless, they live side by side amid the different religions, ethnicities, and languages. Uniquely, certain Muslim conservative countries have begun to follow Indonesia in an effort to unite Islam with exoteric values because of Islam was internalized with culture (Akhtar et al., 2019). Extraction of the normative values within the society could develop the way out for many obstacles within communities. The study of social identity in recent studies will be useful to make breakthroughs that are expected to provide real answers for the future.

The world is currently experiencing depolarization which leads to a form of apparent formality. Each party is forced into an alliance to survive because without collaboration with other parties, it is impossible to stand alone. Likewise, it is also common in the formation of new cultures that occur in society because there is a tendency to start shifting patterns of community change from strengthening identity in metropolitan areas to being adapted to new forms. The trend has begun to be abandoned by the pattern of regional kinship to the pattern of symbiotic relationships in areas where the level of community competition is very high.

Surging dilemma when the concept of development of nationalism is also a legacy from the colony itself. When the spirit of nationalism is interpreted in the form of a vast expanse of territory which was formerly a colony of a particular country's colony. It is a natural practice that the spirit of nationalism arises from the history inherent in a nation. However, if the spirit is only based on the territory of the former historical events as above, it will create a false identity. Especially when the concept of nationalism is only based on the perception of the dominant ethnic group that will make a minority a pariah in their own country. Therefore, a concept of nationalism will only survive if it can get out of the narrow perception of those who consider the value of patriotism only in the form of physical struggle to carry out or defend from expansion. Because nationalism will still exist if each individual feel heeded equal and special so as to create a spirit of togetherness.

It’s impossible to clash between esoteric and exoteric values when conducting negotiations with the different social orientation. In the context of modern countries that how many countries are divided to disintegrate and to establish their own agenda. Because they do not have a strong foundation to bind all of the ideology within the society. Look at the collapse of certain countries without military invasion or political intervention from other nations such as the Soviet Union, Yugoslavia or countries that have the potential to separate themselves because there have been a kind of referendum to separate from the main capital.

TNI was perceived as the most loyalist of nation ideology of Pancasila due has the binding instrument the country like Indonesia which has a lot of races, and religions. The founding philosophy of this nation (Indonesia) which has been handed down by the ancestors to the next generation. Because of the manifestation of exoteric values that can unite all parties in a diverse society. Internally, those who still question about Pancasila or even try to clash it with a creed are those who do not understand history. The value was derived from it is a tangible form of the exoteric value to bind all parties in one frame of togetherness. Pancasila is also an exoteric value carried out by the "Founding Fathers" to unite all the energy of this nation to be able to survive in a very long period of time.

Indonesian society who has a plural background from various aspects has its own uniqueness. Gratitude to Java ethnic as the major culture but appeasing for not being used as the language of "lingua franca" made Indonesia's national security relatively strong. It has never been found in any part of the world where there are majority groups of people who are willing to make ethnic minority language as the national language. The spirit of diversity framed in brotherhood is a tool to magnify the unity (Saifuddin, 2019). It created its own trust for people who are beyond the majority group not to worry about their identity. Because it will develop more "trust" to those who have a minority culture because there is no attempt to penetrate dominant culture through official language. Variations of ethnic language, traditional ritual is the cultural wealth in Indonesia is no longer considered as part of the threat even as valuable assets that have positive implications for the progress of the nation. Whereas the diversity conditions could trigger friction to weaken the integrity as like Indonesia can cause a prolonged conflict.

The ability to combine the power of local values with the designated nationality provides the beauty of the harmonization. Herein lies the power of Ontological Security Theory to leverage dramatization the history of glorious day into nationality identity to be considered as the factual perception. The problem of how to move the supporting elements today to create the capable agents to bring and adapt the fluctuation. Despite experiencing a bitter reality in the colonial era for centuries but the values of local wisdom was compounded within society to survive the self-identity in the next period.

4. TNI and Politics in Indonesia

The conjugation between designated nationality concept was introduced by the elite agents of nationality and the values of local wisdom makes it even stronger. The assimilation of designated nationality concept with local traditions creates an emotional bond. Colonial experience proved how strong the ties between the designated nationality concept and local traditions amid the efforts of the colonial government to separate nationality from local traditions had not been successful.

The problem emerged while a nation must deal with the reality of globalism gradually stalled because they couldn't quickly to respond the changes. The stagnation within a nation is not suddenly happening which initially reluctant to hail the diversity of thought, theology, and races. The gesture to hint the melting pot society as the strong indication to reflect a hidden fracture of a society by framing one color of theology, school of thought, or primordial. Criticism shed highlights to the coercion or oppression of those who are marginal amid forcing the formation of a false identity is melting pot society. During new order, the government tried to postulate the melting pot society in term of Golkar political domination (Aufen, 2008). The motivation to endorse Golkar as the dominant player was assumed to secure the development process. Undeniable, without the support military was impossible for new order could run the administration for 32 years. Later the political postulate of melting society was played by Golkar is not success even to create the dictatorship to spark people rage. TNI realized its mistake to take some measures to reposition the military role gradually to listen people aspiration.

Melting pot society is a form of coercion to display the dominant identity patron. Just look many the great nations had begun to downfall when the spirit of adopting the variety declined. A downward cart any countries because the spirit of togetherness that used to form it lost. The strength of a civilization could last for long time whenever a variety of ethnicities and nationalities to move forward to form a new identity.

It means that a country that can realize the dream of many people who want to build a trust which is binding all of the elements. While this pattern changes amid the ego within the elements emerge. Whatever the story of togetherness that is realized in the concept of equality is something that cannot be bargained if you want to take off towards progress (Davidson, 2009). Both in the context of the country or any institution due if the spirit of "diversity in unity" is still held, progress will remain in front of the eyes. Unfortunately, if the principle of "melting pot society" is used to derail the early spirit indicate the sign of a setback (declining). The tyranny of the majority becomes the scourge of all those who feel like no one so what emerges is a fake artificial attitude without sincerity because of hiding from the pressure to survive. Without denying the domination of TNI during President Suharto's tenure, the dwifungsi ABRI expanded beyond conventional military role (Heiduk, 2014).

Almost all of important strategic position was in military officers to make the situation odd to the growing civil intellectuals. The economy crisis 1997 hit Indonesia as the path to topple the new order administration. The unprecedented reformation era to make military must take quick measure to convince public that TNI to support the people power. In television broadcasted nationally, General Wiranto as the chief army offered the hat of nation's command to Amin Rais as the most prominent reformist figure.[6] But he reluctant to take it because for Amin Rais to take transitional power without democratic election will be easy cracked down by military and lack of legitimacy. But he forgot the chance was not coming the second time.

The composition Indonesian voters are some elements which has unofficial power in society such as military, NU, Muhammadiyah, ethnic groups, and campuses. Despite Amin Rais was known as the reformist figure who

generate hundred thousand students take the street and occupy the parliament building to demand the resignation of President Suharto. Finally, President Suharto resigned from his office after tremendous pressure to force him step aside to give the stick commando to his vice president BJ Habibie. He tried to refurbish Indonesia by appointing the first civilian defence minister Juwono Sudarsono (Sulistiyanto, 2007). This maneuver welcomed by USA and many big countries to support his administration (Doty, 1993). The short period of his administration to convince the world that civilian supremacy is going process.

In the test of water, how strong electoral magnet of Amin Rais was in the first democratic presidency election 2004. Due people could choose their president and vice president directly. Amin Rais took the third rank of contestation just collect around 30 million voters. The popularity of Amin Rais just in intellectual level and Muhammadiyah supporters who lesser than Nahdatul Ulama as dominant player.[7] Both Nahdatul Ulama and Muhammadiyah were the moderate Muslim continue to support government to maintain the integrality of nation. TNI or government always to maintain the good relation to two biggest Muslim organization as the patrimonial for many Indonesians.

Indeed, under Abdurrahman Wahid, as the first president in the reformation era made the breakthrough the relation between army and civil by separating TNI with Police. This step to downplay the expansive of military's role to the civilian administration across the country. In the reason to make TNI more professional just to focus the defence and national's integrity, this the milestone of the reformation in Indonesia because the growing role of civil society just start in political national stage. Although the friction within Military heard in the public due Major-General Agus Wirahadikusumah, described the territorial command structure as adamantly discourage democratization effort to carry out internal reforms. But even the prominent civilian political actors snubbed the maneuver because the high-risk cost to weaken Indonesian's integrity the proposal to disband the territorial command structure the draft.

Actually, Indonesian people never blame of the chaotic situation erupted in the peak of the massive demonstration to demand to topple the new order regime. The exaggerating of international media exposure to discredit TNI is very tendentious just to capture the specific moment to highlight in their media coverage to tarnish TNI globally. The pressure to force both Commander in chief General Wiranto and President BJ Habibie to apologize publicly for the action of military behavior was not rule of conduct. Meanwhile TNI also face dilemma to handle the situation, chaotic situation makes them must accept as the scapegoat of the tragedy. Media never want to know how the difficult the situation in TNI's perspective or how suffer what they experience to deal the dire situation. The chaotic erupted everywhere to push TNI to curb the riot with lesser cost due to face the disintegration.

However, human right commission (KOMNAS HAM) could not decide that TNI was the wrong side because everyone suffered and the victims of chaotic situation. In particular, the attempts to loosen the military's grip in civil service role that government increase the military budget year per year to improve the military hardware and software. The military toys make the elites in TNI busy to focus the defense posture to elevate the military status among regional or international arena. Further, to concern of current global security to push every nation to redefine their military concept to deal the current and future threat. It's not the time for military to play political practice with the different external threat. The growing power of China who claim some Natuna territorials is like the wake-up call to focus the territorial security doctrine (Hewison, 2020). The dispute of spratly island with some ASEAN countries with China to make every nation aware and caution to strengthen their military power (Rüland, 2009).

5. TNI and International Gunboat Diplomacy

TNI realizes the current threats are quietly different compared with the old days. The shifting power tend to Asia Pacific along the growing China to challenge the globalism are currently still control by U.S (Fels, 2016). The tense feuding between U.S. and China with taxation of many goods from china, or the property right make the world security unstable. For Indonesia the most concern of the current security is the expansive Chinese policy to reach Natuna territorial. Laksmana (2016) pointed out that Indonesia prepare the all of options to deal the

current threat due the growing influence of aggressive Chinese spark anxiety. The claim some parts of Natuna seas bothers Indonesia and to emerge the nationalism tagline, some politicians use it to push Jokowi's administration to stand firmly to defend territory. The replacement of Susi Pudjiastuti as the maritime minister in the second period of Jokowi's is unexpected by the public.[8] She attracted public support because of ordering to burn the illegal fishing ships more than one hundred of mostly from Chinese. Susi Pudjiastuti was the media darling due who got the most appreciation from public to secure the Indonesia's fishing territory. The Indonesian traditional fishermen support her policy to prevent the illegal fishing ship sail in it.

The cabinet meeting was held by President Jokowi on board of the naval ship to send the strong message "don't mess up with us." The Chinese government seems reluctant to more aggressive to grip in Natuna like they did in Sparatly island. If Chinese reaches limit of point diminish return amid they need partner to face the hard pressure from western block which want to irritate the growing Chinese.[9]

TNI's stand to prevent the annexation of Natuna to turn government policy focus to military building, but the gun boat diplomacy is not the good choice to face the giant expansionist threat. Meanwhile the sterner respond to step up the military present in Natuna to prevent frequent violation of the territory. The marine stands firmly to defend the crucial territorials due the Sipadan and Ligitan bad memory were haunted to hand over to Malaysia because of lack of gripping the small islands.[10] The contradictory claim are the most potential conflict between Indonesia and China (Inkiriwang, 2020). Off course, Chinese are currently refrain to maneuver aggressively as they did in Spratly despite the tremendous pressure from USA and its allies that could damage the Chinese reputation (Anwar, D. F., 2020). Indonesia foreign minister encourage all of parties to prioritize the cultural values and dialogue in ASEAN Regional Forum (ARF in Hanoi 14 September 2020) to pursuit the peaceful conflict resolution, especially, in the warming dispute south Chinese sea. They need the good manner to maintain the export commodity. If there is not the binding or official commitment about the territorial dispute, looming to explode in the future.

TNI knows that Chinese need Indonesia to block the threat from Australia to align USA to contest the south Chinese sea freedom of navigation (Hayton, 2019) TNI tries to prevent the rising tension in south Chinese sea go further to Natuna. Under the circumstances, Indonesia would be wiser to hold to exacerbate the dispute and let's talk in diplomacy path. Further Retno as foreign minister stressed all countries must bind the internationally recognized principles upheld, including the 1982 UNCLOS (United Nations Convention on the Law of the Sea). TNI understand the surging regional issues must be solved by the diplomacy in time to accelerate the military capability to deter the upcoming threat.

TNI repudiates the emblematic of human right violation as it fumbles the proportional measure to rejuvenate its reputation. The military diplomacy of prestigious shooting competition such as Australian Army of Skill Arms at Meeting (AASAM) in the 12th consecutive time in last competition in March 26 – April 2019. Due to win people heart and mind, TNI want to build the new image of the professional soldiers to send their soldiers in many regional or international prestigious military competition. Indonesian government also send TNI under UN peace keeper in many conflict countries to leverage the international image. The relation between TNI and Civil government gains momentum to shed mutually beneficial, since the tense of Natuna surges to change policy closer to military. Chinese remain adamantly in standoff South Chinese sea dispute to isolate themselves in international arena. Many international actors are intransigent to snub Chinese claim because of disturbing the freedom of navigation. But Chinese is enough smart not to exacerbate the conflict in Natuna due to keep in closer a good friend to secure the emerging Chinese massive investment in Indonesia.

After decades the reformation, civilian government gained the greater control of the army make the relation quietly different like in Suharto's era. Now days, army still busy to reconstruct the all day's image to show the people that they are the good one. Although there is still post power syndrome phenomena but there is the dilemma of positions from high rank army in massive colonel level. The composition of high rank army who don't have the proportional position is fragile. Meanwhile to elevate the colonel ranks to brigadier general need the new military structure which has crowded. Former chief command of army Marshal Hadi Thahjanto make a statement to restructure to allocate the middle and high military officer to fill in the government's institution by

creating 60 new post and revise the bill no.34 in 2004 about TNI. Chief command of army seems to reactivate dwifungsi ABRI to spark critics from prodemocracy activists likely ignite the new order era.

In the previous law to ban the active military to hold the government civilian position but resign from the army. The demand is likely to drag back the dark age of democracy in Indonesia. In other side, military want to leverage the bargaining position to government to accommodate the demand. Consequently, the crucial relation must be established in the concrete mutual relation without forgetting the dominant of military in new order era. The red line of the relation should be bound transparently to be supervised by people through powerful authority mandated by constitution.

Slowly, government takes some measures to respond military's demand to give more space for them to develop the career. Kodim or district military command used to colonel level become brigadier general and it embrace multi- effect players. But the reposition is few changes to see the crowded military officers should be allocated. Recently, during Jokowi's administration has cemented the policy to put ex-army general to the previous civil post, such as religious affairs of minister and some figures in departments. The policy to attract the army figures want to support the administration which lay the nationalism gauge as the main doctrine. The nationalism tagline is brought by Jokowi's administration to seduce TNI to support him due to face the multi-threat of national disintegration. Ex TNI figures and current generals try to build the good relation with civil government under Jokowi's because the nationalism tagline of his government to reshape the mutual benefit to exterminate the potential enemy of nation.

President Jokowi could barely attract TNI attention by putting the national integration as the main focus of his administration. The administration posture which blatantly show force to secure Indonesia's integration, especially while Jokowi run the cabinet meeting on board of Naval army in Natuna 2020 March 3. The president gestures to respond of Natuna issue which dismiss the overlapping Chinese claim have encourage TNI to maintain the territorial doctrine (McRae, 2019). The personality of perception the president is durably changing to persuade TNI closer to back up the security policy to counter the possibility threat. For Indonesia now, the current threat of disintegration surges from the terrorism from trans- national crime which brought the ideology was not suitable with Pancasila.

The terror boom shocked Indonesia such as Bali boom 1, 2 and later some terrorism action to alarm all parties (Booth, 1990, p.5). TNI sees the new recent challenges terrorize the peaceful country like Indonesia to make the symbiosis mutualism Jokowi's administration and TNI. The laying foundation of the mutual relation the both parties to endeavor the nationality concept to adapt the current challenge. Indonesian government tries to install the new concept nationality by four pillars of nationality to be the constitution. The four pillars of nationality are Pancasila, constitution of 45, NKRI (The Unitary State of Republic of Indonesia), bhineka tunggal ika.

In Indonesia, the atmosphere of people's lives cannot be defined simply because it has a high level of complexity. Indonesia, which is the largest Muslim country in the world, has several things that should be appreciated not only because it maintains the heterogeneity of its people from different religions, ethnicities, nationalities and island regions. It is due to the harmonious history of experience long enough for thousands of years ago to provide valuable lessons that have been maintained until now. Along with the development of the current era increasingly intense and even outside influences do not have a territorial barrier because easily all information freely in and out. Thus, where the maximum effort is needed so that social rhythm like that is maintained because it will benefit all parties to become role models for the world.

The mutual relation both Jokowi's administration and TNI form the new alliance to strengthen the nationality concept was endorsing the army doctrine to guard the national integrity. The border line strategy was proposed by TNI to build the vital infrastructures to decrease the crossing border such as in North Kalimantan. The new face of border line with Malaysia, East Timor, or Papua Nugini shows more elegant building and civil infrastructure such as hot mix asphalt and many modern facilities and sometimes as the photo spot. Meanwhile people in the border line feel more attention by Jakarta due to make the disintegration threat in the border line. In the second period of Jokowi's administration, TNI attitudes to embolden the nationality policy to pursuit the

balance power political stage. TNI always reinstate the full support of the current civil government to deal with the volatile regional situation.

After collapsing new order, TNI tacitly maneuvering to rebuild good image domestic and abroad by interpreting defense diplomacy (Blake, 2016) or (Cottey and Forster, 2004) argued the defense diplomacy that every nation try to leverage their posture or bargaining position to prevent the conflict. For Indonesia context, the current administration endorses the adamantly crass threat to national security, TNI highlight the dynamic situation in international or regional theater to put defense diplomacy as the new approach. as part of Non- Align block political policy, TNI does not put weight the tussle in regional dispute with Chinese in Spratly island.

But the amalgamation of western powers to prevent the rising star (Chinese) put some parties glimpse to take side. The invitation of Prabowo Indonesia Defense Minister from his U.S. counterpart Mark Spencer is the defense diplomacy due being played by both sided. For Indonesia, to play smart diplomacy is crucial to build strategic partnership without be trapped in the feuding giants (Murphy, 2010). The warm situation in southeast Asia is quiet challenging amid the growing Chinese to wake up call for USA to reshape the potential partner to bog down Chinese influence.

President Joko Widodo adopted a similar approach to engage with the U.S. and Chinese by signing a Strategic Partnership with the country in 2015. Jokowi tried to build the more trust toward the two-giant superpower. In term of approaching USA to dismiss the ban of Kopassus personnel to go to America to attend the U.S. military schools. Meanwhile, Jokowi also approached the Chinese government to keep maintaining the good relation due Indonesia need the investment and other giant Asian Japanese (Steven, 1988). Absolutely known, there are also the growing competition between Chinese and Japanese to attract Indonesia's policy. Jokowi's is smart enough to use this motion by appeasing both of them to invest significantly.

Surely, preponderantly setting of defense diplomacy is putting trust to other parties overtly showcasing the military capability and good willing not to intervene the others. Joint military exercises are the formation of defense diplomacy to elevate the military skill to face the unprecedented threat. The regular joint exercises between Indonesia and USA or Chinese to improve the confidence of TNI to play the defense diplomacy. The communication among the officers could boost the capability all of the soldiers to tackle the challenge. The individual skill of Army and the latest military technology will be good magnet for parties to understanding the new military circumstance. The belligerent notorious nation is not likely in modern situation but the proxy war is the new formation war.

TNI believes the new proxy war could dismantle Indonesia security due after the cold war is likely difficult to imagine to see one country to invade the other ones. The most common conflict is through the proxy war while other countries to invest and use the military capability toward the other actor to destabilize the target nation. The indirect intervention could be used by the military wing such as rebels or political agenda within actors who behave accordingly order from outsider. Every nation realizes the proxy war model which could detriment the security foundation through the dispute problems. Security problem emerges is not only mere invasion threat from outside but sometimes sparked with accumulated social problem. The proxy war is not only about mercenaries who involve internal politics by raging war but also the hidden hands of outsider to use the insiders to destabilize the country. The separatism or terrorism is the main threat of national security that needs to pay attention to control them. The good security humanity approach is the key to divert the social violence which could trigger the repercussion of multi-effect players.

Recent days, TNI represents the different image in the public eyes, if compared in a two decades ago. TNI is quietly success to play a good rhythm in the middle between government and people. Many cases to show that public blatantly support TNI more involvement in term of security matters. The recent one when the people assembly (DPR) approved the bill of new job creation (*undang-undang cipta kerja*) which sparked many protests by public. Labor, students and public see the bill is too hurry to be approved by the assembly in Covid-19 situation which should need to public participation to scrutinize the items of the bill.

Furthermore, protest erupted amid the labor and students perceive the legislation is not pro public. In fact, TNI involve to persuade the protesters more welcome without any significant clash. The outwardly posture of TNI to humanize the scheme of social approach to change the image of them become friendly in heart of public.

6. Conclusion

The aforementioned analysis has shown the position of TNI in dilemma between sole military role or dwifungsi, and over time, numerous political scenes of reformation. Multi-full ethnics, cultures, religions, and strategic location of Indonesia to weigh TNI in privilege role to keep guard the national integrity. Every political players always to maintain the good relation with TNI to secure their role in domestic affairs. Illusion or fact of threat of disintegration becomes the political commodity to prevail TNI as the core dominant player in Indonesia. Irrefutable, military role on state which transform from the militaristic to democracy system create dilemma in the short time. This study shows the role of military in many developing countries such as Indonesia still indispensable in any situation. Although, reformation erupted in 1998 to demand military give its political endeavor up, though embattling quasi status quo of its role in domestic affairs. Furthermore, TNI could not be snubbed my political parties because the tacit strategic immense power is emboldened to attract them to closer. The new threat of doctrine to positions TNI retain the real hidden power of state actor. The disintegration commodity frame was quietly success to convince public opinion that TNI is the only reliable actor who could dismantle all of the hurdles.

Notes:

1. After the proclamation of Indonesian independence in 1945, Indonesia's government under President Sukarno was ineffective quasi government amid the Dutch colonial tried to grip its muscle to dismiss the independence proclamation. Dahm, Bernhard. 1969.
2. Super semar was one of the milestones of history of Indonesia because it the signal of emerging Major General Suharto took the commando to maintain security and scrutinize the communism element within Indonesia government. The next episode of Indonesia political under president Suharto stage changed slowly turn open to western investment and try to attract Japanese Investor with the red carpet.
3. The peace agreement was brokered by former Finland Prime Minister Martti Ahtisaari in Helsinki 2005 between Indonesian Government and Aceh Independent Movement (Gerakan Aceh Merdeka). Indonesian government sent Hamid Awaluddin as the minister of law and human right, Meanwhile GAM was represented by Malik Mahmud Alhaytar as vice Supreme Leader in GAM.
4. Dwifungsi ABRI is the term refer to Suharto's administration which empower TNI to serve both in military and civil positions.
5. Sutasoma was Empu Tantular's work as the ancient Indonesian philosophy book which inspire many prominent figures in Indonesia due to teach the harmony in social life within different entities. The term of *bhineka tunggal ika* was derived from his work.
6. General Wiranto was the Chief of Indonesian Army announcing to Indonesian that TNI was ready to backed the prominent reformist figure Amin Rais to took the presidency' seat. The announcement was broadcasting through national television channels in 1998.
7. The winners of the first public election post Suharto were dominated by the old parties such as PDI, Golkar, and PPP. Meanwhile the new comers like PAN, PKB listed in the middle rank. Andreas Ufen (2008)
8. The Conversation, Research explain why Susi Pudjiastuti was left out of Jokowi's term cabinet, accessed in 18-11-2020.
9. Future Direction of Indonesia-China Comprehensive Strategic Partnership. (n.d.). *Indonesian Foreign AffairsMinistry*https://www.kemlu.go.id/Documents/RI-RRT/Joint%20Statement%20Comprehensive%20Strategic%20Partnership. pdf.
10. Interviewed with one of soldiers who patrol Natuna Territory.

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Balancing the Role of Foreign Investment in Economic Growth and Achieving Prosperity, Study in Indonesian Law and Experience

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Abstract
Foreign investment can increase economic growth and create prosperity in a country. However, sometimes foreign investment can increase economic growth and fail to create prosperity. This problem is of course related to the laws governing foreign investment. This article wants to discuss the regulations in law regarding the role of foreign investments in increasing economic growth and creating prosperity in Indonesia. Regulations in Indonesian law and experience show that foreign investment is widely open to enter Indonesia so it is felt to be able to encourage economic growth. However, Indonesia's experience in practice shows that things often happen that cause some people to suffer because of the presence of foreign investment. From the results of the research and discussion, it can be concluded that the regulations in the foreign investment law in Indonesia still prioritize economic growth, while the aspect of achieving people's welfare from the presence of foreign investment receives less attention. Therefore, it would be better if the investment laws were revised to create a balance between economic growth and prosperity. In other words, investment laws must be able to encourage economic growth and create prosperity simultaneously. There must be a balance between growth and prosperity.

Keywords: Balancing, Role of Foreign Investment, Economic Growth, Welfare

1. Introduction

Every area of human life has legal rules that regulate it, namely through norms in these rules. This is in line with the classic expression *ubi societas ibi ius* which means "where there is society, there is law" (Marzuki, 2008: 41). Through norms (in law), the law extends to almost all areas of human life. Legal regulations, which sometimes limit various powers and interests in society, conflict with the powers and interests that exist within society itself so the law has involved itself in the political arena (Rahadjo, 1980: 15-16).

One of the various areas of human life is investment activities. Investment is often differentiated into domestic investment and foreign direct investment. The term investment here, both domestic investment and foreign investment, refers to the meaning of direct investment, which means investing by establishing and operating a company (for example in Indonesia). So it is not an investment in the form of a portfolio (shares or other securities) in the capital market. So, the foreign investment referred to in this research is foreign direct investment, not investment in the form of a portfolio in the capital market.

Foreign investment as part of activities in human life also needs to be regulated by law. Therefore, foreign investment becomes an object of legal politics in the country. M. Solly Lubis, succinctly, defines legal politics as a political policy that determines what legal rules should apply to regulate various matters of social and state life (Lubis, 1989: 100). Meanwhile, Bintan R. Saragih explains that in general legal politics is state policy by forming or establishing legal rules so that the administration of the state and government can take place well and orderly so that state goals (such as the welfare of the people) can be realized gradually and in a planned manner (Saragih, 2006: 17).

Hikmahanto Juwana interprets legal politics from two sides, namely the objectives and reasons that form the basis for the formation of legislation. The purpose of the law in question is to realize justice, legal certainty, or the benefits to be achieved. Meanwhile, the reasons revolve around why the legislation was formed, why the content is like that, and for what purpose the legislation was formed. That is legal politics (Saidin, O.K., 2016: 25).

Foreign investment is carried out to produce certain goods or services that are necessary for human life. As a business and economic activity, foreign investment can be seen from two major perspectives. Firstly, from the investor's perspective, namely, the investor's motivation to invest their capital. In general, the main motivation for foreign investors to invest capital (carry out business activities) is to gain profits from producing goods or services. Foreign investors (entrepreneurs) will use the resources available in the country where the investment is made, including natural resources, human resources (labor), and other resources.

The second is from the perspective of the benefits of foreign investment for the host country's economy. Sentosa Sembiring stated that theoretically, foreign investment in a country has quite broad benefits (multiplier effect), namely that it can absorb labor; create demand for domestic products as raw materials; increase foreign exchange, especially export-oriented investment; can increase state revenue from the tax sector; as well as the transfer of technology and transfer of knowledge (Sembiring, 2007: 24). Erman Rajagukguk said, based on various studies on foreign investment, it shows that the motive for companies or foreign investors to invest their capital in a country (which is generally developing countries) is to seek profit. The opportunity to make a profit in the host country is due to various factors, including cheap labor wages, raw material sources, a wide market, etc. (Rajagukguk, 209: 1).

However, apart from the view that the presence of foreign investment can provide positive benefits for the host country, there is also a view that thinks that foreign investment is a new form of colonialism-imperialism that will only encourage dependence and exploitation of the host country's natural resources, which in turn ultimately it will be detrimental to the host country. The results of Paul Baran's study of the impact of colonialism in India, which he outlined in his book The Political Economy of Growth, show that the touch of capitalist countries in underdeveloped pre-capitalist countries causes underdeveloped countries to have their progress hampered and will continue to live in backwardness. The presence of strong foreign capital from Western countries to developing countries has created surpluses in Western countries. Because, foreign investors come to developing countries to look for cheap raw materials to bring home, look for workers with cheap wages to employ in the factories they set up, then industrialized countries that have developed to sell their industrial goods (Budiman, 2000: 57-59), including developing countries. Meanwhile, developing countries are only able to produce and sell (export) raw materials to advanced industrial countries. In this situation, the one who benefits from a higher value than the selling price of the product is of course the capitalist country. As a result, those who enjoy a surplus in trade relations between advanced industrial countries (capitalist) and developing countries are of course capitalist countries (advanced industrial countries).

Leyla Davarnejad said that the beneficial effects of foreign direct investment on development are not self-evident. Foreign investment does not only promote the (economic) development of a country. However, sometimes the impact of a bilateral agreement in the field of foreign investment is relatively small and the results are mixed. Many countries conclude that international agreements or agreements in the field of investment aim to attract foreign investment and at the same time limit their space in carrying out national policies in the field of investment. It is a challenge, especially for developing countries, to achieve a balance between attracting foreign investment and maintaining national policy autonomy (Davarnejad, 2008: 4).

Laura Alfaro also said that foreign investment is a manifestation of capital, technology, and knowledge, and there is potential for the host country to benefit from the spillover impact of this investment. Spillover mechanisms include direct knowledge transfer through partnerships, opportunities to learn from foreign companies' innovations and experiences, and interactions and movement in the labor market. If a foreign company introduces a new product or process to the domestic market, the domestic company can benefit from the diffusion of the technology. In some cases, domestic companies simply benefit from observing foreign companies. In other cases, technology diffusion can occur when domestic workers move from foreign companies to domestic companies. There is also the potential to create links between foreign and domestic companies. However, there is also the potential for sacrifice (Alfaro, 2014: 7-8).

Apart from that, negative impacts from foreign investment activities also often occur in the form of environmental damage and negative impacts on the communities around which the company operates. So in the end, even though foreign investment may encourage economic growth for the host country, on the other hand, it does not promote people's welfare but instead causes suffering. This is certainly an interesting problem to research. There needs to be a balance between economic growth and people's welfare. Economic growth yes, prosperity too yes. How the regulations regarding investment in the law in the host country are seen from these problems, is an interesting study in this research.

Regulations regarding foreign investment in law are related to the theory of legal objectives so the theory of legal objectives becomes important as a foundation in the formation of legislative regulations, including in determining laws that regulate foreign investment. The theory of legal objectives is relevant and needs to be implied in the formation of laws regarding foreign investment. In this case, lawmakers must pay attention to aspects of justice, expediency, and certainty as outlined in the law being formed.

According to Gustav Radbruch, there are three basic values as legal objectives which are priorities for legal objectives. Gustav Radbruch's theory of legal objectives states that the first thing that must be realized is justice, followed by expediency, and then legal certainty. It is hoped that these three basic values as legal objectives can be realized together, but if this is not possible then justice must be prioritized first, then benefits, and then certainty. (Mas, 2004:74). The three basic values as legal objectives according to Gustav Radbruch above also have their theories, so there is the theory of justice, the theory of utility, and the theory of legal certainty.

In the aspect of justice, there is a theory of justice that teaches that the law must be fair to everyone. The theory of justice has existed since ancient Greece, pioneered by Plato and Aristotle. Aristotle divided justice into corrective or commutative justice and distributive justice (Wacks, 1987: 179). Commutative justice is justice that gives each person the same amount without looking at each person's services. There are similarities in the achievements obtained by each person without taking into account the services provided. Meanwhile, distributive justice is justice that gives each person an achievement or quota according to the services provided. Here, each person does not receive the same share, but rather proportionally according to one's services (Mas, 2004: 73).

In the aspect of utility, the theory of utility teaches that the law must provide benefits (happiness) to many people. Benefit theory teaches that the law must provide benefits (happiness) to many people. The popular and main figure in this theory of utility is Jeremy Bentham. He said that the law aims to guarantee the greatest happiness for the greatest number of people. Indonesian scholar Subekti also agrees with Bentham. According to Subekti, the purpose of the law is to serve the goals of the state, namely to bring prosperity and happiness to the people. The aim of the law should be to provide the broadest and greatest benefits to the citizens of society (Mas, *Ibid*.).

In the aspect of certainty, the theory of legal certainty teaches that the law must guarantee certainty for everyone so that justice will be realized. Thus, this theory of legal objectives is important as a foundation in legal politics (the formation of statutory regulations in which there are laws), including in determining the law (legislation) that regulates investment activities (investment legal politics). Legal certainty contains two meanings. First, the existence of general rules means that each individual knows what actions they can or cannot do. Second, in the form of individual legal security from government arbitrariness because with the existence of general rules, individuals can know what the state can impose or do on individuals. Legal certainty is not only in the form of articles in the law but also consistency in judges' decisions between one judge's decision and another judge's decision for similar cases that have been decided. Roscoe Pound said that legal certainty allows for predictability.

2. Research Methods

This research is normative legal research. As normative legal research, the data used is secondary data, namely books, statutory regulations, and other relevant and needed secondary data. Meanwhile, the approaches used are conceptual, statutory, and historical approaches. All secondary data is collected systematically according to the problem and then analyzed qualitatively.

3. Result and Discussions

3.1. At the Level of the Law

Realizing that foreign investment is an activity that needs to be regulated by law, Indonesia has also issued several laws regulating foreign investment. Since the beginning of Indonesia's independence (1945) until now (2023), there have been six laws that have been formed, namely Law Number 78 of 1958 concerning Foreign Investment, Law Number 16 of 1965 concerning the Revocation of Law Number 78 of 1958 concerning Foreign Investment, Law Number 1 of 1967 concerning Foreign Investment, Law Number 25 of 2007 concerning Investment, Law Number 11 of 2020 concerning Job Creation, and Law Number 6 of 2023 concerning Establishment of Government Regulations in Lieu of Laws Number 2 of 2022 concerning Job Creation Become Law.

Law Number 78 of 1958 concerning Foreign Investment as the first law in the field of foreign investment, was issued during the enactment of the 1950 Provisional Constitution (UUDS 1950). At this time, Indonesia adhered to liberal democracy with a parliamentary system of government (Mahfud, 2001: 41). There are three important considerations describe the philosophical, sociological, and juridical foundations of Law Number 78 of 1958, namely:

a. capital is very necessary to accelerate economic development, increase national production, and improve people's welfare;
b. domestic capital needed to accelerate economic development, increase national production, and improve people's welfare is not sufficient, so it is necessary to encourage foreign investment in Indonesia; and
c. It is necessary to establish clear regulations to provide legal certainty for foreign investors so that they do not hesitate to invest their capital in Indonesia.

In 1965, Law Number 78 of 1958 concerning Foreign Investment was repealed by Law Number 16 of 1965 concerning the Revocation of Law Number 78 of 1958 concerning Foreign Investment. Then, in 1967 Law Number 1 of 1967 concerning Foreign Investment was established. In the preamble to Law Number 1 of 1967, the philosophical, sociological, and juridical foundations are outlined as the basis for consideration by the makers of this law. Philosophically, it is stated that Pancasila is the ideal foundation for developing the Indonesian economic system so it must always be reflected in every economic policy. Sociologically, Law Number 1 of 1967 was necessary because economic conditions at that time required the presence of foreign investment.

Furthermore, in 2007 a new law was formed, namely Law Number 25 of 2007 concerning Investment which replaced Law Number 1 of 1967 concerning Foreign Investment. Based on Law Number 25 of 2007 concerning Investment, investment can come from abroad and can originate from within the country. Foreign investment is

an investment climate that is considered not yet conducive, so it is necessary to improve the business climate in a conducive direction. Budiman Ginting stated that what needs to be done to attract foreign investors to invest is to carry out updates or changes to the laws governing the economy and law enforcement. In the context of legal reform as a means of facilitating investment to support the economy, it should be oriented towards legal guarantees and certainty by what is desired by both investors and the host country (Ginting, 2008: 16). Therefore, in Presidential Regulation Number 18 of 2020 concerning the 2020-2024 National Medium Term Development Plan, the President stipulates 5 (five) strategies for implementing the *Nawacita* mission and achieving the targets of the Indonesian Vision 2045. One of the five strategies is simplifying regulations by omnibus law approach, mainly issuing two laws, namely the law that regulates job creation and the law that regulates the empowerment of micro, small, and medium enterprises (MSMEs). This strategy is also in the context of economic expansion in 2020-2024, which primarily encourages increased investment which is targeted to grow 6.6 - 7.0 percent per year. To achieve this target, private investment (foreign and domestic) is encouraged through the deregulation of investment procedures, and the synchronization and harmonization of licensing regulations.

As a breakthrough in creating a conducive investment climate to encourage investment growth, the government submitted an omnibus law Draft Law on Job Creation (RUU CK) to the House of Representatives of the Republic of Indonesia (DPR RI) for joint discussion so that it could become law. Finally, at the DPR RI Plenary Session on October 5, 2020, the omnibus law RUU CK was then approved to become law, namely Law Number 11 of 2020 concerning Job Creation. However, Law Number 11 of 2020 concerning Job Creation was canceled by the Constitutional Court through Decision Number 91/PUU-XVIII/2020 with the conditional unconstitutional dictum because its formation was formally flawed, there was a mechanism that was violated by the legislators. The Constitutional Court gave lawmakers two years to amend Law Number 11 of 2020 concerning Job Creation. This time was considered unattainable so President Joko Widodo then issued Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation. Furthermore, Government Regulation in Lieu of Law No. 2 of 2022 was approved by the DPR and then became Law No. 6 of 2023 concerning the Determination of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation Becomes Law.

The philosophical basis for the formation of Law Number 11 of 2020 concerning Job Creation, as is the case with Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation, is to realize the goal of establishing the Indonesian State Government, namely creating a justice and prosperity Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In this case, the state needs to make various efforts to fulfill citizens' rights to work and a decent living for humanity, including through job creation.

This philosophical foundation is related to capital investment, which is formulated in Article 3 of Law Number 11 of 2020 concerning Job Creation. Among other things, the purpose of establishing this law is formulated, namely to make adjustments to various regulatory aspects related to improving a capable investment ecosystem that can provide ease of doing business and encourage the acceleration of national strategic projects that are oriented towards national interests while still being guided by the Pancasila ideology. To achieve this goal, this Law regulates strategic policies to improve the investment ecosystem through ease of doing business.

In general, every policy of foreign investment law adopted since the beginning of independence until the current reform era reflects the application of the theory of legal objectives, namely the aspects of justice, benefit, and legal certainty. This can be explained by various laws that have been and are currently in force which regulate foreign investment, below:

a. Law No. 78 of 1958 concerning Foreign Investment:
    1) Aspect of justice. There is a balance between foreign investors and domestic investors in operating business fields by providing restrictions for foreign investors and those that can only be operated by domestic investors [Article 2 and Article 4 paragraph (1)].
    2) Benefit aspect. To accelerate economic development and increase national production to improve people's livelihoods, capital is needed where domestic capital is currently insufficient so it is deemed beneficial to attract foreign capital to invest in Indonesia (Consideration letters a and b).

3) Aspect of certainty. Foreign companies can be given a guarantee that their company will not be owned by the state or converted into national property, for a maximum period of 20 years and plantations for 30 years (Article 13).

b. Law Number 1 of 1967 concerning Foreign Investment:
   1) Aspect of justice. Foreign investment companies are obliged to fulfill their workforce needs with Indonesian citizens, except for leaders or experts who cannot yet be filled by Indonesian workers (Article 10 in conjunction with Article 11).
   2) Benefit aspect. The use of foreign capital needs to be utilized optimally to accelerate Indonesia's economic development and used in fields and sectors that have not been and/or cannot be implemented by Indonesian capital itself (consideration letter f).
   3) Aspect of certainty. A foreign investment permit is determined by a validity period of not more than 30 (thirty) years (Article 18). The government will not carry out nationalization or actions that reduce the right to control and/or manage foreign companies unless the law and the interests of the state require such action (Article 21).
c. Law Number 25 of 2007 concerning Investment:
   1) Aspect of justice. Investments must (are obliged to) prioritize Indonesian citizen workers and have the right to use foreign national experts for certain positions and expertise.
   2) Benefit aspect. Benefits from carrying out capital investment will be achieved by achieving objectives, including a. economic growth; b. creating jobs; c. increasing the competitiveness of national companies; d. improving national technology; e. encouraging the people's economy; and f. improving community welfare [Article 3 paragraph (2)].
   3) Aspect of certainty. Every investor has the right to the certainty of rights, law, and protection (Article 14 letter a). The government will not take action to nationalize or take over the ownership rights of investors, except by law and by providing compensation whose amount is determined based on market prices (Article 7).
d. Law No. 6 of 2023 concerning the Determination of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation Becoming Law:
   1) Aspect of justice. Guaranteeing that citizens obtain employment and receive fair and appropriate compensation and treatment in employment relationships (Article 3 letter b). Providing convenience, protection, and empowerment for Cooperatives and MSMEs as well as national industry and trade by paying attention to balance and progress between regions in national economic unity (Article 3 letter a).
   2) Benefit aspect. Creating and increasing employment opportunities to absorb the largest possible Indonesian workforce (Article 3 letter a).
   3) Aspect of certainty. Arrangements with support, strengthening, and protection for Cooperatives and MSMEs as well as national industry (Article 3 letter c). Increasing the investment ecosystem, facilitating and accelerating national strategic projects oriented towards national interests based on national science and technology guided by the Pancasila ideology (Article 3 letter d).

Based on this information, every law that regulates foreign investment seems to have implemented the theory of legal objectives containing three aspects, namely justice, expediency, and certainty. However, this is not the case. If you look closely at article by article as a whole, sometimes there are norms (articles) that are not in line with the theory of legal objectives.

The paradigm and direction or political line of foreign investment law in the period 1958-1965, even though they both used Pancasila and the 1945 Constitution of the Republic of Indonesia, there were differences in political lines that were very sharp and fundamental or contradictory. If Law Number 78 of 1958 concerning Foreign Investment opens up foreign investment, Law Number 16 of 1965 concerning the Revocation of Law Number 78 of 1958 concerning Foreign Investment rejects foreign investment. This concerns the consistency of the Indonesian people regarding the ideology and constitution adopted in the state structure, which should be implemented properly because of fundamental problems in the state. Law Number 16 of 1965 concerning the Revocation of Law Number 78 of 1958 concerning Foreign Investment does not apply to the theory of legal objectives at all. The legal political line in the issuance of Law Number 16 of 1965 is not a theory of legal objectives, but rather a purely confrontational political approach.

Since 1967 until now the Indonesian investment law has opened up the presence of foreign investment in the Indonesian economy, as regulated in Law No. 1 of 1967 concerning Foreign Investment, Law No. 25 of 2007 concerning Investment, continued in Law No. 11 of 2020 concerning Job Creation, and Law No. 6 of 2023 concerning Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation Becoming Law. However, in the 1967-2023 period, there were also weaknesses.

First, from a constitutional perspective, there are inconsistencies in the policies in the foreign investment law, especially with Article 33 of the 1945 Constitution of the Republic of Indonesia, namely regarding branches of production that are important for the country and which affect the lives of many people. Law No. 25 of 2007 concerning Investment and continued in Law No. 11 of 2020 concerning Job Creation increasingly opens up business fields that foreign investors can pursue. The background that encouraged the birth of investment law politics in Law No. 25 of 2007 concerning Investment and Law No. 11 of 2020 concerning Job Creation is indeed full of orientation to pursue economic growth which contains the benefits of creating jobs. However, when you only think about economic growth, including efforts to create jobs, without thinking about the long term, such as the Indonesian economy being continuously dominated by foreigners could backfire on the Indonesian economy; does not educate or encourage the birth of national business forces.

Second, control over foreign investment companies' compliance with environmental laws directly with the Investment Coordinating Board (BKPM) in Jakarta. There is no role for the provincial government. The problem is, is it possible for BKPM to be able to control if there are environmental violations spread throughout the vast country? Of course not.

Third, there were two cancellations by the Constitutional Court of laws regulating investment, namely: (1) through decision No. 21-22/PUU-V/2007 regarding several articles in Law No. 25 of 2007 including Article 22 which regulates land rights up to 95 years. The problem is that the material aspect of the provisions of Article 22 is unconstitutional because the term of land rights which reaches 95 years and is extended in advance can reduce people's opportunities to access land that is used to improve their welfare; and (2) Constitutional Court decision No. 91/PUU-XVIII/2020 which decides that Law No. 11 of 2020 concerning Job Creation is conditionally unconstitutional because from a formal perspective the formation of the law, Law No. 11 of 2020 concerning Job Creation is considered to violate the mechanism for forming laws.

Fourth, in Law No. 11 of 2020 concerning Job Creation and continued in Law No. 6 of 2023 some regulations change the rules that have been regulated by law, changes which do not strengthen but weaken the position of the community regarding their rights so that they have the potential to harm the interests of the community on the one hand and strengthen and benefit the position of business actors (investors) on the other hand. For example, Article 22 of Law No. 22 of 2019 concerning Sustainable Agricultural Cultural Systems determines that for the use of a certain area of land on customary rights land, business actors are obliged to hold consultations with customary law communities holding customary rights to obtain approval. In Law No. 11 of 2020 and Law No. 6 of 2023 concerning Job Creation, the rules of Article 22 of Law No. 22 of 2019 were changed to "Business actors using customary land rights who do not consult with customary law communities holding customary rights to obtain approval are subject to administrative sanctions in the form of a. Temporary suspension of activities; b. imposition of administrative fines; c. Government coercion; d. Suspension of Business Licensing; and/or e. Revocation of Business License." Indeed, business actors who carry out business activities on the customary law community's customary land without the consent of the customary law community will be subject to several administrative fines, however, the fate of customary law communities on customary land that has been managed is not regulated at all. This shows that the legal political framework is not based on the theory of legal objectives (justice, expediency, and certainty.

There are several weaknesses in the foreign investment law the solution is to create an ideal foreign investment law so that the investment law maintains a balance between economic growth and prosperity. It can be described for example, say there is an increase in foreign investment in very large amounts. so that this will automatically encourage the creation of economic growth at an ideal rate for the country. Of course, high economic growth will

be accompanied by the absorption of large amounts of labor (and the unemployment rate will decrease), state revenues in the form of taxes will also increase, export volume will increase (accompanied by an increase in foreign exchange), and technology transfer can take place (from foreign investment). Here, the presence of large amounts of foreign investment provides positive benefits for the country. However, it must be ensured that the law regarding foreign investment can create people's prosperity.

3.2. At Practice Level

At a practical level, the presence of foreign investment in the Indonesian economy cannot be denied that it has benefits in triggering Indonesia's economic growth. For example, the results of Purwanto & Mangeswuri's research, using secondary data from 1981 to 2010, show that three components significantly influenced Indonesia's economic growth to reach 5 percent, namely foreign debt, foreign investment (FDI), and domestic savings. FDI has a positive and significant influence on GDP. If GDP increases, it will encourage the creation of FDI. One of the motives for investors or multinational companies to invest is to get high returns in a country with a high level of economic growth (Purwanto & Mangeswuri, 2011: 698, 700).

However, the number of benefits obtained does not necessarily stop there. However, it can also cause several bad consequences in other areas. The occurrence of bad consequences in other areas does not provide any benefits but instead brings "disaster", especially for the community around which the company is located.

The Mining Advocacy Network (Jatam), for example, reports that foreign investment activities in the nickel ore mining sector in Indonesia are often a source of conflict, criminalization of society, and environmental destruction. This happens in various nickel ore mining operation locations in Indonesia, such as in Sulawesi, the Maluku Islands, and Papua. Melky, Chair of the Jatam Campaign, said that based on his findings in the field there were several negative impacts from the presence of investment that exploited nickel ore, namely (Laila, 2021):

a. Farming communities lose production space due to land conversion, either through legal procedures or land confiscation. When someone refuses to sell their land, farmers experience intimidation and are forced to give up their land. This happened in Central Halmahera Regency, North Maluku.
b. The indigenous Tobelo Dalam tribe who live nomadic lives around the forests of North Halmahera, North Maluku, for example, experienced land confiscation by a nickel company that built a road into the tribe's territory.

The negative impacts resulting from the presence of large-scale foreign investment are also felt in Papua. In 2017, the Indonesian Forum for the Environment (Walhi) Papua reported that during the 50 years that PT Freeport Indonesia had been operating in Timika, Papua, it had caused many unresolved environmental and social problems. Environmental destruction occurs in the form of changes in the physical condition of the environment due to mining waste disposal activities on the traditional lands of the Amungme tribe and the traditional lands of the Komoro tribe. This waste disposal disrupts the livelihoods of residents as fishermen. As a further consequence, the social life of the people of the two tribes worsened because of the existence of PT Freeport. The environmental damage from PT Freeport Indonesia's activities was also responded to by the Director of Walhi Papua, Aiesh Rumbekwan, who said: "... there is no clarity regarding who should be responsible for this condition. What is also unclear is whether the work contract that has been made between the Indonesian Government and PT Freeport states which party should be responsible if there are legal, human rights, or environmental problems." “Therefore, we demand accountability from the Indonesian Government and PT. Freeport Indonesia repairs various environmental damage that occurred on the customary land of the Amungme and Kamoro tribes. "And also, before continuing to make a new contract, it is necessary to seriously resolve the future problems of the lives of the existing indigenous peoples of the two tribes" (Sucahyo, 2017).

The negative impact experienced by society as a consequence of the presence of foreign investment in the cases that occurred in Maluku and Papua as stated above, clearly shows a dilemma. There is no possibility that the experiences of the people in these two areas are only a small example among the thousands of companies that manage natural resources spread throughout Indonesia.

Once the presence of foreign investment in carrying out business activities hurts society, at the same time it also creates injustice for society. This means that when people in Maluku and Timika (Papua) do not benefit from the presence of mining activities in their area, they will undoubtedly experience injustice from the presence of investment.

So, should we just reject foreign investment? Of course not. The state must be present. The law must be able to provide justice, benefit, and legal certainty for society, wherever and whenever. The state must have a legal policy that can provide justice, benefit, and certainty for its people. Foreign investment as an economic and business institution is very important within the framework of the national economy so it needs to be regulated in such a way that foreign investment can provide justice, benefit, and certainty so that the people become prosperous.

4. Conclusions and Suggestions

Based on the discussion above, it can be concluded that the regulations in foreign investment law in Indonesia still prioritize achieving economic growth, while the aspect of achieving people's welfare from the presence of foreign investment receives less attention. Therefore, it would be better if the investment laws were revised to create a balance between economic growth and prosperity. In other words, investment laws must be able to encourage economic growth and create prosperity simultaneously or simultaneously. There must be a balance between growth and prosperity.

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Methods of Attracting International Treaties in the Judicial System of Afghanistan

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Abstract
International treaties are one of the major needs of governments in the contemporary world. Therefore, according to the necessity of international life and the preservation of national interests and international values, every government turns to attracting international treaties. The government of Afghanistan has joined many international treaties. As the United Nations "Treaty Collection" shows, this country has 155 signatures, ratifications and accessions. According to this article, the main question of this article is that, considering the internationalist and state-oriented methods in the field of attracting international treaties, which method has the Afghan government chosen? The research method of this article is a descriptive-analytical method based on library data, which after collecting information and using the existing laws, the topic and problem are analyzed. The findings indicate that the practical procedure of the Afghan government towards attracting international treaties is not exactly according to any of the theories. Simultaneously, the process in the Afghan government in attracting international treaties is an internationalist vision, which has acted as a state-centered way in determining the status of treaties and their implementation. However, in many cases no procedure can be determined.

Keywords: Methods, Treaty Attraction, Judicial System, Internationalist, State-Oriented, Afghanistan

1. Introduction

Attraction of international treaties since ancient times is one of the primary concerns of the relationship among international law and domestic law. Although the primary and main authority to attract treaties is left to the internal laws of the governments to act upon the treaty or refuse to accept it if necessary; But practically, the attraction and implementation of international treaties is an objective and urgent need of all governments, and this need is increased every day; Therefore, although the methods of attracting treaties are different, the principle of acceptance and attraction is the immediate necessity of governments.

From a historical perspective, during the latter half of the 20th century, domestic systems gradually accepted international values and governments became more interested in following international law. Although each government is free to determine the mechanism of implementation of international rules, even a brief review of national judicial systems shows two basic methods in this field: the first method is the spontaneous synthesis [1]of international rules.

Such consolidation occurs when the national constitution or a normal rule (in the case of rights based on judicial procedure, judicial decisions) state that all government officials, as well as nationals of the state and other persons residing within the borders of that state, are obliged to apply certain They are among the current and future rules of international law. One outcome of this mechanism is that it empowers the domestic judicial system to adjust itself regularly and automatically with international rules. With the formation of an international rule, a corresponding law is created in the national judicial system.

The second method is the special legislative combination of international rules. In the framework of this system, international rules can be invoked and implemented within the judicial framework of the country only if the parliamentary authorities of that country approve specific executive regulations. This resolution could take one of the following two primary forms: firstly, this resolution may include the action of the parliament overseeing the conversion of various provisions of the contract into national resolutions, in which the numerous obligations, powers and rights resulting from those international regulations, (The judicial synthesis of international rules is determined) (Casse 319: 2017). The second form is that in the resolution of the parliament, only the ability to automatically apply[2] international law within the realm of the domestic judicial system may be mentioned, without re-regulating the rule specifically (spontaneous special integration of international law).

Thus, the performance of this mechanism is basically similar to the previous mechanism; That is, the mechanism of spontaneous integration of international rules (the only difference is that this integration comes to the fore individually or for each specific case). In this context, both government officials and all related parties are required to follow the international regulations mentioned in the parliament resolution. The aforementioned resolution consists of one or two articles, where it is indicated that everyone must follow the contract in question. The law includes the treaty text as an annex. Courts, government officials and individuals should be aware of the various provisions that should be used at the national level through conversion in the judicial system of the country (Casse: 2017, 320-319).

Governments are seeking to regulate the national integration of international rules based on two different needs, which are the motivations for choosing the unification system. First, they have to choose between a state-oriented approach (nationalist[3]) and an internationalist approach[4]. Second, they should consider the interaction between the legislative and executive branches of the government, thereby establishing a mechanism for the enforcement of international law. For two reasons, governments may choose a state-oriented or nationalistic approach:

1. to accept specific accession to international rules by the legislature;
2. To place international rules at the level of domestic national approvals.

Contrary to governments that have an international approach:

1. Spontaneous annexation (specifically or current procedure) of international rules;
2 They choose to place international rules at a higher level than national approvals.

Governments often pay attention to the second requirement, which is aimed at the general issue of granting legislative authority to the legislative branch, this pertains exclusively to this branch and is unrelated to the executive branch (Casse 322: 2017). Now, the query that this article aims to address is, considering the internationalist and state-oriented methods in the field of attracting international treaties, which method has the Afghan government chosen?

[1] Integration
[2] Ipso facto
[3] Statist
[4] Internationalist

The hypothesis posited in this article is that the Afghan government's approach to securing international treaties lacks consistency and uniformity, but sometimes it uses the internationalist method, in other cases it uses the state-centered method, and sometimes it has no procedure at all. To prove its hypothesis, the article talks about the general methods of attracting international treaties in the opening paragraph. Subsequently, in the second paragraph, it examines the method and conditions of attracting international treaties in Afghanistan's judicial system. In the third paragraph, it examines the procedures of ratifying treaties and finally concludes with a conclusion.

2. General methods of attracting international treaties

With the passage of several centuries of international law, governments are still the immediate agents of the implementation of international law regulations and the leaders of their relatively independent foreign policies. Therefore, governments are not only the authors and subordinates of international law, but also the guarantors of the survival and implementation of their provisions, and thus have full control over the levers of the executive system of international law (Falsafi, 2017: 547).

The process of attracting international treaties also gains momentum under the shadow of this supreme power; Therefore, in this article, considering the heavy shadow of the governments' will to attract international treaties, how to attract treaties in Afghanistan's judicial system is discussed.

In principle, international law provisions, especially treaty provisions, are not directly applicable within governments unless they are formalized as internal regulations. In the same way, usually the internal organizations and authorities of the governments do not consider themselves directly subject to international law and only obey the internal laws, without paying attention to its conformity or contradiction with the international rules and obligations.

This procedure is especially inferred from the rulings of domestic courts (Dhul-Ain, 2009:567). However, in the practice of the 20th and 21st centuries, many governments have given privileges to the stipulations of international law in their domestic laws, and even in the constitutions of some countries, international law, especially treaty law, explicitly takes precedence over domestic law known[5] .

In addition, in some important international treaties, governments have committed to adhere to the requirements of international law in some issues related to their internal jurisdiction[6], and this is in fact a limitation on their independence and freedom in the field of law. Internally, they have accepted (Dhul-Ain, 2009: 567). As deduced from government practices, the general assimilation of international regulations into the relationship between international law and domestic law can be achieved through four main methods. There are two ways, which are transfer[7] and collection[8]. The two ways, which are transfer and collection, are the main ones, and like a bridge, they connect two separate realms of rights, and the other two ways are conflict[9] and completion[10], possible and secondary, because they may arise following the two main ways.

[5] In paragraph 2 of Article (6) of the 1776 Constitution of the United States of America, it is stated: "This Constitution and the laws of the United States that may be added to it and all agreements (treaties) concluded by the authorities of the United States or that may be made in the future concluded by the authorities of the United States, it is considered the supreme law of the country and the judges of each of the states are subject to it, and the laws of each of the states or the basic laws of those states that are contrary to it are invalid. Article (26) of the French Constitution of 1946 states: "Diplomatic treaties that have been confirmed and officially published according to the regulations have the force of law, even if they are contrary to the internal laws of France", the German Constitution of 1949 in this regard stipulates: "The provisions of international law are considered to be a supplement to federal law and have superiority over laws and directly create rights and duties on the residents of the German territory", in the revision of the Dutch Constitution in 1958, in the article (65) It stipulates: "Domestic regulations that are contrary to the contents of international contracts (treaties) are suspended," Article (145) of the Constitution of 1369 of Afghanistan stipulated, "If the international treaties or covenants which the Republic of Afghanistan has concluded or annexed to it and is contrary to the provisions of the laws of the Republic of Afghanistan, international treaties and covenants will be given priority."
[6] Article (103) of the United Nations Charter
[7] Renvoi
[8] Reception
[9] Conflict
[10] Complement

In the following, each of the methods of attracting international regulations into the internal laws of countries will be explained in general and the attraction of international treaties based on the above methods into the internal laws of Afghanistan in particular.

2.1 Referral

Referral is when a judicial system hands over a matter that is related to its territory to another judicial system[11]. In the discourse on the correlation between international law and domestic law, in most cases the reference is given from international law to domestic law, for example, the issue of organizing international conferences, even though it falls within the domain of international law, but these rights are in the way of choosing the representatives who are in this Conferences participate, it does not interfere and this issue is left to the internal laws of the governments participating in the conference (Zholain, 1388: 571), also the issue of concluding international agreements, although it is related to international law, but this is the internal law of each country. which determines the competent authority to conclude treaties (paragraph 17 of Article (64) of the Constitution[12]).

Finally, heads of state and other people who are representatives of states in international affairs and have direct contact with international law are determined by the internal laws of countries (paragraph 14 of article 64 of the Constitution[13]), or the issue of nationality, which is basically a related issue. It is according to the international law, presently, its regulations are governed by the internal laws of the respective governments.

2.2 Collection

Collection is that one judicial system changes the form and nature of a subject that belongs to another judicial system and makes it into its own rules (transformation theory[14]). In this case, domestic law often receives issues from international law, for example, an international treaty that is concluded, governments make the contents of the treaty in the form of laws and ratifications in order to enforce it in their territory. They change the nature of regulations that are originally related to international law into domestic regulations.

Three results are obtained from collection, one aspect is the transfer of the value of rules from one legal system to another, as in the example of a treaty whose validity is derived from international law, it is also accepted in domestic law; Second, the persons of one judicial system become the successors of the persons of another judicial system, for instance, if governments (persons of international law[15]) conclude a treaty and accept obligations, due to the implementation of that treaty by domestic laws, persons (persons of domestic law[16]) are also required to comply with those obligations; And thirdly, as a result of collection, the scope of validity of judicial regulations expands, if the regulations that are originally part of the scope of international law expands as a consequence of its incorporation into domestic laws, their scope of validity also expands within the countries (Dhul-Ain, 2009: 572). The number of collection cases in the new era is very high.

This receipt, whether complete or incomplete, is considered part of the cases of adoption or adaptation. Most of these receipts have occurred in new countries, countries that are suddenly faced with new life issues and their judicial rules are not able to solve them. Examples are several South American countries and Japan, which were inspired by the set of French civil laws in the 19th century, and the Turkish government, which modeled Swiss legislation, and recently, the situation in Egypt, China, Abyssinia, and especially Afghanistan has been like this (Brull, 2019: 130).

[11] The issue of referral in private international law is one of the main issues of conflict resolution.
[12] Article (64), which states the authority of the president, states in paragraph 17 of this article: "Granting credentials for the purpose of concluding treaties between countries in accordance with the provisions of the law" is one of the powers of the president.
[13] This paragraph stipulates: "Appointing the heads of Afghan political delegations to foreign countries and international institutions" is one of the powers of the president.
[14] Transformation Theory
[15] Subjects of International law
[16] Subjects of Municipal law

2.3 Completion

Completion is when a judicial system establishes regulations for the implementation of rules that belong to another judicial system, or in other words completes it. For example, even if several governments accept commitments that require spending or agree with each other to prevent piracy or drug trafficking, etc., in order to implement these international commitments, each of the governments has to pass the necessary laws and letters. to establish. In this scenario, it is asserted that the regulations established by domestic laws are to ensure the implementation or completion of international obligations. The act of completion is mostly done by domestic laws because usually in international obligations, governments only deal with generalities and principles and leave minor and minor issues to domestic laws. One of the effects of completion is that, like collection, it transfers the value of the rules from one judicial system to another judicial system, changes its persons, and causes the development of the realm of judicial rules, and in addition, it causes them to be more accurate and clear (Dhul-Ain, 2009: 572).

2.4 Conflict

Conflict arises when there is a divergence between two judicial systems (here, international law and domestic law[17]). For example, despite the rules regarding the freedom of the oceans in international law, if the internal government authorities establish regulations that conflict with the aforementioned freedom, in this case, there will be a conflict between the regulations of international law and domestic law. Now we have to see what is the solution in such cases and which of the two fields of law should be considered superior. Despite the fact that the principle of the supremacy of international law over domestic law is a foundational tenet of international law and has been acknowledged and referenced numerous times in the decisions of the International Court of Justice, but all in all, neither in doctrine nor in practice, it is a definitive solution and There is no logic yet.

In the usual practice, the provisions of both fields of law remain valid regardless of the conflict that exists between them; Hence, it can be observed that in such instances, international courts vote in favor of international law and condemn the domestic law that conflicts with it, while it is treated against it inside the countries and the domestic courts follow the laws of their respective governments and They ignore the international regulations that are against it; However, in the doctrine of the extreme proponents of the school of unity[18] of law with the precedence of international law, it is believed that domestic laws conflicting with the provisions of international law are automatically deemed invalid and incomplete, while most of the law writers have not considered the conflict of rules in law to be invalid. Rather, they only consider the responsibility of the government that has enacted regulations contrary to international law. In order to avoid the conflict among the two fields of law as much as possible, the usual judicial writers recommend to the courts, especially the domestic courts, to consistently interpret the laws in a manner that aligns with international obligations (Dhul-Ain, 2009: 574).

Oppenheim[19] has mentioned two assumptions in order to resolve the judicial gap in the relationship among international law and domestic law: The first assumption is that in case of a discrepancy among domestic law and international law, it should always be assumed that there is no such discrepancy and that the domestic legislators did not intend to and, in these cases, the basis of the interpretation is that international law is a product of the collective will of multiple states, and domestic law is the outcome of the will of an individual state, so there should not be any contradiction between them; The second hypothesis is that if the domestic law is silent in the cases where the principles of international law are present, the domestic courts should assume that the silence of the domestic law serves as the mechanism through which the provisions of international law are implemented.have been accepted in the domestic law (Dhul-Ain, 2009: 575).

[17] Here, we mean the conflict between the rules of international law and domestic law, not the conflict that is discussed in private international law, and in fact, it is a conflict between two domestic legal systems.
[18] Monism
[19] Oppenheim

3. Attraction of international treaties in the judicial system of Afghanistan

The term "Treaty" in English has been translated into Farsi as "Ahadnameh" (Mouszadeh, 2010:41). In general, Claude Alber Calliar holds the view that the meaning of treaty is more limited than "covenant[20]" (Calliar, 1989, 447) in the narrow sense, "treaty is a word that has been used a lot and often indicates important issues" (Falsafi, 159 :2017) Despite this, regardless of the many definitions that thinkers and judicial scholars have provided of the treaty, paragraph 1 of Article (2) of the 1969 Vienna[21] Convention on the Law of Treaties provides the following definition: "A treaty is an agreement between states, which is concluded in writing, is subject to international law, regardless of its specific title and regardless of whether it is reflected in a single document or in two or more interconnected documents " (treaties.un.org with However, the 1969 Vienna Convention uses the title of treaty in a general way, while the basic laws or procedures of some governments have a classification of treaties, such as inter-governmental[22], inter-governmental[23], inter-ministerial[24] or administrative treaties; But the convention does not recognize this classification. Also, treaties can be described as "global[25]" or "regional[26]", which in itself has no judicial significance; In addition, the treaty can be divided bilaterally[27], between two states, multilaterally[28], between several states limited to a specific issue, and comprehensively between three or more (Aust, 2007: 17).

The Law[29] of Treaties and International Covenants of Afghanistan[30] (from now on the Law of Treaties), which is considered one of the contemporary domestic laws within the realm of international law, defines the treaty in paragraph 1 of Article (3) as follows:
"Treaty: It is a written agreement of the government of the Islamic Republic of Afghanistan with foreign countries, international institutions or intergovernmental organizations, which is concluded according to the provisions of this law." This definition aligns with the provisions of the 1969 Vienna Convention on the Law of Treaties.

The only thing that distinguishes these two can be summed up in two points: the first is the treaties concluded with international organizations. Afghanistan's Treaty Law also includes international treaties and covenants concluded with international organizations, while the 1969 Convention governs only treaties concluded between governments and those treaties that are between governments and international organizations or among two or more. The international organization is established in the 1986 Vienna[31] Convention. Of course, this is not contradictory to the 1969 Convention, but domestic legislative policies require that both types of treaties be prepared and approved based on a single law.

The second is the difference among a treaty and an international agreement. The convention has not differentiated among these two titles, while the Afghan treaty law considers these two titles to be different from each other. According to paragraph 6 of article (3) of the law on the procedure for the publication and enforcement of judicial documents of Afghanistan[32]: "Treaty: is an agreement concluded in writing between governments in the political and military fields and encompasses the principles of international law ".

[20] Convention
[21] This fifty-year treaty was ratified on May 23, 1969 and entered into force on January 27, 1980. So far (August 2019), 116 countries have ratified and 45 countries have signed this treaty.
[22] Inter- State Treaties
[23] Inter- government
[24] Inter- ministerial or administrative
[25] Universal
[26] Regional
[27] Bilateral
[28] Multilateral
[29] According to the first paragraph of Article (94) of the 1382 Constitution of Afghanistan: "The law consists of the approval of both the National Councils that have been approved by the President"; Also, Article (3) of the Law on the Procedures for Publishing and Enforcing Legal Citations of Afghanistan: "Law: a collection of general legal rules, and it is binding to be established and approved by the competent authority in order to regulate public affairs in accordance with the provisions of Article (94) of the Constitution of Afghanistan." and it has gone through the steps".
[30] This law was passed on November 18, 2016. The official gazette has been published in the number of "Messlem" (1236).
[31] Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986.
[32] This law was promulgated on 16 September 2018. It has been published in the official gazette with serial number (1313).

The Covenant is an official international document that is used a lot. Although this title is not defined separately in the Vienna Convention on the Law of Treaties, it is used as the founding document of international organizations.

The synonym of covenant in English is Pact. This word is translated as "Mithaq" or "Covenant" in Persian language (Mousazadeh 2010: 43), (Brian Kellogg's Pact) but some translators consider covenant (piman) to be equivalent to Covenant (Kaliyar, 1989: 447). This term was used for the statute of the League of Nations, established after the First World War and had a ceremonial aspect (Falsafi, 2017: 159). This term can have other uses as well (Ziyai Begdali, 2008: 15) as the Afghan Treaty Law considers a covenant as equivalent to a convention. and has referred to the documents that contain international basic rules. The Law of Treaties stipulates in Article (3) paragraph 4: "A treaty (convention) is an official document that includes international basic rules and the common will of the member states on certain issues It is also stated in paragraph 8 of Article (3) of the Law on Procedures for Publishing and Enforcing Judicial Documents of Afghanistan: "An international agreement (convention) is an international judicial document that is arranged by international organizations and contains basic rules. be international law".

Although some people believe that there is no distinction among a treaty and a covenant, rather they consider the treaty to be general and the covenant to be specific. Sarwar Danesh holds the view that that there is no difference between these two words, but the meaning of both expressions is the same; Because the international treaty includes any type of international agreement. He, who took part in formulating the constitution in the year 1382, adds: "During the drafting of the constitution[33], I also raised this opinion (the lack of difference between a treaty and a covenant), but no one heard and there was no satisfactory reason to prove the difference between these Two were not provided.

Of course, it can be asserted that the treaty is more general than the covenant. Therefore, the mention of a covenant after a treaty is like a special mention after a general one" (Danesh, 2010: 111) That's why the treaty is also recognized by different names, such as convention, covenant, declaration, constitution, charter, agreement. international agreement, protocol, memorandum of understanding, memorandum of understanding, etc., but in this article attention has been paid to what is essentially called a treaty, not as such, as paragraph 1 of article (2) of the 1969 convention is not considered as such. However, in the judicial system, Afghanistan is not a specific institution that handles all matters related to treaties, but the authority to accept and how to attract treaties in this judicial system is divided between different government forces, each of them having its distinct role in attracting and implementing international treaties. Galland, 2011: 38 (Therefore, according to this article, how to attract and implement international treaties will be examined.

3.1 Admitting or acceding to treaties

Acceptance[34] is the declaration of commitment to a treaty through the issuance of a document that expresses the country's definitive commitment to the provisions of a treaty. This document is usually issued by the executive branch and even the minister of foreign affairs (in some countries such as France). Acceptance is a method that has become common among governments after the decrease in the importance of ratifying treaties. These methods, which were diligently followed by the United States of America and some European countries following the Second World War, were noted in the founding documents of international organizations, for example, the UNESCO Statute (1945) made the "acceptance" method one of the mandatory methods. The formation of governments knows it[35].

[33] According to Clause 31, Article (3) of the Law on Procedures for Publishing and Enforcing Legal Documents of Afghanistan, "Swid is: Compilation, writing, organization and arrangement of the initial draft of a legal document by the relevant department". In the international law system, this term can be referred to as a draft

[34] Acceptance

[35] Article (15) of the UNESCO Statute

This approach is also anticipated in the statutes of the International Monetary Fund[36] and the International Bank for Development (Mousazadeh, 2010: 87). Article (11) of the 1969 Vienna Treaty also stipulates: "A nation's agreement to be bound by a treaty can be conveyed through the act of signing, exchanging the documents constituting the treaty (ratification documents), ratifying, accepting, ratifying or acceding to any other method that is agreed upon." be expressed". According to Clause 9 of Article (3) of the Law of Treaties: "Acceptance: preliminary announcement of the treaty is through the issuance of a document in which the signatory expresses his country's commitment to the stipulations of the treaty or covenant after going through its judicial procedures."

Accession[37] is an arrangement by which a country that has not participated in the drafting of an international treaty, officially becomes its member and accepts the provisions contained therein. Accession is done through the issuance of a document of accession, and this document is a single and unilateral document that conveys the intention of the acceding state to the treaty or to the trustee country (the holder of the documents and usually the Secretary General of the United Nations). In the document of accession, the acceding government explicitly declares its definitive commitment to the treaty to other contracting parties (Mousazadeh, 2010: 81).

Article (19) of the 1969 Vienna Treaty on accession stipulates: "The country's consent to the treaty through accession is manifested when:
(a) The treaty stipulates that this consent can be given by that country through accession;
C) All parties have agreed later that such consent can be declared by that country through accession.
According to Clause 10, Article (3) of the Law of Treaties: "Accession: It involves the government of the Islamic Republic of Afghanistan becoming a party to an international agreement or treaty that explicitly declares its commitment to its provisions and provisions by issuing an official document."

3.2 Competent authority to review the need to attract treaties

In the judicial system of Afghanistan, there is no specific authority to propose the assimilation of treaties, but depending on the case, this authority has been given to many government bodies, including the three forces, ministries and independent directorates, to make their proposal for assimilation if necessary. or accept the relevant treaty, submit it to the government (cabinet[38]) through the Foreign Ministry.

According to Clause 1 of Article (6) of the Law on Treaties: "Proposals for the conclusion of treaties, agreements, contracts, protocols and memorandums of understanding are submitted to the Ministerial Cabinet by the Foreign Ministry[39]." Also, based on paragraph 2 of the same article, other government ministries and departments, after obtaining the permission of the relevant institutions, submit the proposal to conclude treaties to the Foreign Ministry of Afghanistan.

The Foreign Ministry of Afghanistan is obliged to review the articles of that treaty based on paragraph 3 of article (6) in order to express an opinion on their compatibility with the constitution and other judicial documents of the country, before proposing a contract or joining a treaty. Ministry of Justice to provide. Then the Ministry of Justice presents its judicial opinion on the annexation or conclusion of the said document. Although the judicial opinion of the Ministry of Justice of Afghanistan is not mandatory, it is considered as an introduction and a guide to create conditional rights.

3.3 Competent authority to attend negotiations and sign treaties

[36] Article (51) of the Statute of the International Monetary Fund
[37] Accession
[38] Govenement
[39] It is stated in the amendment plan of this paragraph: "The proposal of the treaty plan mentioned in paragraph (1) of article (9) of this law shall be submitted to the government for approval before being signed by the Ministry of Foreign Affairs."

In the international law of treaties, negotiation is the preliminary stage of concluding international treaties. Every simple conversation cannot be called "negotiation[40]" in the specific sense of the word, because nowadays negotiation has become a "fan" and even an "art" (Ziyai Bigdali, 2008: 26). In the judicial system of Afghanistan, negotiation has been taken into consideration, paragraph 1 of Article (4) of the Law of Treaties stipulates: "The President shall conclude treaties directly or give the letter of credit to his representative for the purpose of negotiations or the conclusion of treaties referred to in Article (9) of this law."

According to Clause 2 of Article (3) of the Law of Treaties: "Certificate: It is an official document, which the President of the Islamic Republic of Afghanistan delegates to his representative for the purpose of conducting negotiations and signing the treaties mentioned in Clause (1) (Article) (9) of this law". Paragraph 17 of Article (64) of the Constitution also stipulates: "Granting credentials for the purpose of concluding treaties among nations in conformity with the stipulations of legal regulations" is the authority of the President, and this credentials is used before negotiations or signing a treaty between the representative of the President and the other party[41]. But the letter of authority is different from the letter of credit, and in terms of value, the letter of authority is a lower grade than the letter of credit. Clause 3 of Article (3) of the Law of Treaties stipulates: "Letter of Authority: is an official document by which the Minister of Foreign Affairs authorizes a person to negotiate and sign agreements, protocols and treaties, with the exception of the ruling contained in Paragraph 1 (Article 9) introduce this law or participate in international meetings representing the government of the Islamic Republic of Afghanistan[42].

According to the Law on Treaties: the Minister of Foreign Affairs can sign treaties[43], agreements, contracts, protocols, and memorandums of understanding, except for the treaties listed in paragraph (1) of Article (9) of this law; or based on Paragraph 4 of the same Article, the Minister of Foreign Affairs can grant a letter of authority to its representative to sign the above-mentioned cases, and this letter of authority is negotiated between the representative of the Minister of Foreign Affairs of Afghanistan and the other party before the start of negotiations or signing[44].

Therefore, the competent authorities in the negotiation and signing of treaties are divided into two categories: First, the negotiators regarding the treaties of the first paragraph of Article (1) of the Law on Treaties[45], which are negotiated and It is signed. Second, negotiators regarding other treaties, agreements, contracts. Clause 2 of Article (9) of the law is the treaties[46] that are negotiated and signed by the Minister of Foreign Affairs of Afghanistan or by granting a "letter of authority" to his representative. The precise distinction among the two relies on the specific characteristics of the negotiated treaty.

3.4 Competent authorities to establish the right of condition on treaties

The right of reservation (reservation[47]) is: the declaration of intent by any government to restrict the extent of the clauses within a treaty. In the judicial system of Afghanistan, it is the responsibility of the Foreign Ministry to create a condition for international covenants (conventions) during accession. Article (11) The Law of Treaties

[40] Negotiation
[41] Paragraph 2 of Article (4) of the Law on International Treaties and Covenants
[42] The clauses related to credentials and letters of authority were amended in a decree in Thor 2016 and were published in the official issue of 1257 of the newspaper, and this article was written based on the amended items.
[43] Clause 3, Article (4) of the Law on International Treaties and Covenants
[44] Clause 5, Article (4) of the Law of International Treaties and Covenants
[45] Clause 1, Article (9) of the Law of Treaties stipulates: "International treaties and covenants in the following fields shall be enforced after the approval of the Council of Ministers, the confirmation of the National Council and the approval of the President of the Republic: Armistice Treaty (end of war); the agreement on the determination and stabilization of borders; Treaty establishing international relations, friendship and cooperation; the treaty establishing the international organization; A treaty that requires the amendment of the law in force; Treaty on the status of citizens' rights; the agreement to grant or obtain a loan or to grant tax exemptions and customs products; Treaty on the extradition of accused and convicted persons and judicial cooperation; International covenants (conventions) and its annexed protocols; treaties and security agreements; economic treaties and agreements; and other treaties that, according to their content and nature, require the approval of the National Council"
[46] Clause 2, Article (9) of the Law on Treaties stipulates that treaties other than the above: "memorandums of understanding, agreements and simple and enforceable contracts which, according to the Ministry of Foreign Affairs, do not require the approval of the National Council, are approved and put into effect by the Council of Ministers." "It will be."
[47] Reservation

stipulates: "The Foreign Ministry of Afghanistan is obliged, when joining the government of the Islamic Republic of Afghanistan to international treaties, to adhere to the regulations outlined in Islamic Sharia and the Constitution of Afghanistan and to exclude the contradictory cases". The condition does not mention other international treaties, but it is certain that the above rule governs the treaties that Afghanistan joins or concludes, and the Foreign Ministry of Afghanistan has the authority to create the condition. However, while the condition usually takes place during signing, ratification, acceptance, approval, or accession, it seems that in the judicial system of Afghanistan, it is possible to create the right of condition after the ratification of the treaties; Because Article (1) of the Constitution stipulates: "Reviewing the alignment of laws, legislative decrees, interstate treaties, and international covenants with the Constitution, and interpreting them upon the government's or the courts' request, in accordance with legal provisions, is the competence of the Supreme Court".

This competence indicates that if the Supreme Court finds inconsistency in the treaties and covenants with the constitution and the rulings of the sacred teachings of Islam, this institution considers itself competent to terminate the annexation and create a new conditional right. In other words, this article of the Constitution preserves and makes possible the right of subsequent interpretation and the possibility of creating conditional rights after signing, ratifying or annexing, even during implementation.

3.5 Competent authority to sign treaties

After the end of the negotiations and the writing of the treaty, the signing[48] stage comes, which is done by the fully elected representatives[49] of the countries who have the right to sign (Mousazadeh, 2010: 69). However, international documents are signed in three ways: First, it is signed by a competent person, whether he is the president, prime minister, or minister of foreign affairs, or he is a plenipotentiary representative, which is called a normal signature first type).

Signing at the same time as obtaining the assignment is another type (the second type); and the third is the abbreviated signature or initial, and this is in the case that the individual signing lacks the authority to do so definitively. In accordance with the stipulations of the Vienna Convention regarding treaties: " The language of the treaty is formalized in the following ways: And it is determined: a) according to the same convention as stipulated in the language of the treaty or agreed upon by the countries that participated in its preparation and regulation; or b) In the event of the absence of such a convention, through signature, signature subject to approval. Pending signature (or initialing of the text[50] by the representatives of the mentioned countries or through the final document of the conference that includes the text of the treaty[51].

"According to the laws of Afghanistan: "Signing: is the signing of a treaty, covenant, agreement, contract, protocol and memorandum of understanding, which takes place after the end of negotiations and approval by the competent authorities or their authorized representatives, in order to formalize its text.[52]" In the conclusion of treaties, initialing is considered a step before the final signing, and it takes place when the representative of a government lacks the authority to sign the treaty or harbors uncertainties about certain provisions. By initialing, the representative of the government declares the agreement of the respective government to the language of the treaty without obliging his government to sign the treaty definitively.

Although initials allow governments to think and make decisions, in some cases it has the same value as a signature (Mousazadeh, 2010: 70) as the 1969 Vienna Treaty stipulates about the position of initials: "The initialing of the text is considered to be the signing of the treaty." that the negotiating countries have agreed on

[48] Signature
[49] According to letter (c), paragraph 1, article (2) of the 1969 Vienna Convention: "the term (power of attorney-full powers) means a document that is issued by the competent national authority and according to which a person or persons represent that country to negotiate, accept, or Confirmation of the validity of the text of the treaty is determined either for consenting to the obligation to the treaty or for any other legal act related to the treaty.
[50] Initialling
[51] Article (10) of the 1969 Vienna Convention
[52] Clause 11, Article (3) of the Law of International Treaties and Covenants

this matter[53]. Also in the laws of Afghanistan: "Abbreviated signature (initial): is the temporary approval of a treaty or agreement by a representative of the government who the authorization to sign it, without obliging the government to sign the treaty definitively, by initialing its temporary agreement to the text declares a treaty or covenant[54]"; And the authority to initial the treaties, in accordance with treaty law, it is the authority of the Foreign Ministry. This law stipulates: "Drafts of treaties, agreements, contracts, protocols and memorandums of understanding shall be initialed by the Foreign Ministry before signing and after the agreement of the parties.[55]" Therefore, signature has three judicial positions: signature as a way to formalize and confirm the text of the treaty, signature as a condition of ratifying or ratifying the treaty, and signing as ratifying or ratifying the treaty. Of course, it is possible for the initial signature to occupy the place of the second and even third signatures, although their works are different (Ziyai Bigdali, 2008:40).

3.6 Competent authority to recognize the need for internal ratification of treaties

In the judicial system of Afghanistan, the approval of international treaties has been identified as a need. The competent authority of Ahzaz needs to be ratified by the Foreign Ministry. The Law of Treaties stipulates: "Memorandums of understanding, agreements and simple and enforceable contracts which, based on the Foreign Ministry, do not require the ratification of the National Assembly shall be approved and enforced by the Ministerial Cabinet[56]".

3.7 Competent authority declaring consent to commit or ratify treaties

The treaty is concluded and enforced based on the rules of international treaty law[57], but international law has transferred the method of approval and execution of treaties in the internal system of the contracting countries to the regulations of those countries. If the treaty ratification process has not been completed according to the internal regulations of a country, the ratification has been incomplete or irregular (Khalaf Rezaei, 2016: 131). It has no judicial value. Such treaties are binding when they are ratified. Therefore, international law has deemed ratification procedures necessary for treaties, in the precise or literal sense of the term; Although he did not predict the form and type of these ceremonies and entrusted it to the prudence of the governments and their internal regulations (Kaliyar, 1989:454).

The signing of the treaty only shows the content of the will of the governments and does not make the rules resulting from the treaty binding. Each "rule[58]" is then binding if governments have ratified it. Ratification[59] is the confirmation of the treaty that the competent authorities (usually the parliament) commit their government to other governments by doing it; Therefore, ratification is the final formality that gives validity to the treaty, or it is a judicial practice according to which the competent authorities confirm the will of the government in validating the treaty.

In other words, ratification is the governments' final approval of a judicial action that their full-fledged representatives realize with their signatures. The approval is proved by the exchange of documents in which this approval is stated. Oppenheim believes:

[53] Letter (a), paragraph 2 of Article (12) of the 1969 Vienna Convention
[54] Clause 12, Article (3) of the Law of International Treaties and Covenants
[55] Article (8) of the Law of International Treaties and Covenants
[56] Clause 2, Article (9) of the Law of International Treaties and Covenants
[57] Article (24) of the 1969 Vienna Convention stipulates the entry into force of treaties: "-1 A treaty shall enter into force on the date specified in the treaty or in a manner agreed upon by the negotiating countries; 2- If the treaty does not stipulate this or there is no agreement on this matter, the treaty as soon as all the negotiating countries give their consent.
to apply it as a commitment, it becomes effective; 3- If a country's consent to be bound by a treaty takes place on a date after the effective date of the treaty, the treaty will be effective for that country from the later date, unless the treaty stipulates otherwise; 4- The provisions of the treaty regarding the confirmation of the validity of its text, the proof of the countries' consent to the treaty, the manner and date of entry into force, the limitation of obligations, the duties of the trustee and other issues that must be raised before the treaty enters into force, from the time the text was accepted. the treaty will be mandatory"
[58] Rule
[59] Ratification

"Each treaty is concluded as soon as it is signed; However, its binding force remains suspended until its approval. As a result, until the approval is announced, even though the treaty has been concluded, there are no effects on it" (Falsafi, 205: 2017).

According to Article (14) of the 1969 Vienna Treaty, ratification is one of the approaches to declaring consent to be bound by the treaty; Therefore, the act of ratification is a necessary and necessary act to declare consent to the formal treaty, and today several reasons justify the necessity of the process of endorsement by the nations involved in the treaty.

1) In most countries, legislatures possess the authority to assess and provide input on foreign policy, and in order to reserve this right, it is imperative to either approve or reject the signed text of the treaty;

2) The desire to avoid the controversy caused by the assessment of exceeding the limits and powers that the plenipotentiary representatives may have done when signing the treaty is another reason for the necessity of the act of approval by the legislature;

3) According to the constitutions of many countries, including Afghanistan[60] and especially the countries that have a representative regime, legislative assemblies are partners in concluding international treaties (Ziyai Bigdali, 2008:46).

4. Procedures for ratifying treaties

The formalities of ratifying treaties are different according to the governments and types of different political systems and different eras. If a comparative research is done in this field, we will find that there are three religions and each religion has its own initiative and has solved the problem of ratifying the treaty with its own special method.

41 The exclusive competence of the executive branch

That the approval of the treaty is only under the exclusive authority of the executive branch is the method of authoritarian regimes that have a strong executive branch; Like Japan, which in the constitution of February 11, 1189 (Article 13) and the Third Reich, which in its law of March 24, 1933 (Article 4), explicitly considered the ratification of treaties as a special authority of the executive branch.

4.2 Exclusive jurisdiction of the legislature

The basis of this the essence of religion revolves around the concept of free will, according to which international politics is controlled by the legislature. Here, the involvement of the executive power is reduced to the level of conducting initial discussions leading to the finalization of the treaty and its approval is placed in the jurisdiction of the legislative power. This practice becomes common in different ways: sometimes the normal leg of the legislation approves treaties using its usual way of establishing laws. This practice is basically common in Latin America. Sometimes, the involvement of all legislative bodies in the approval of the treaty is considered necessary; Like the countries that have demanded the simultaneous intervention of two legislatures in the form of Congress in this matter[61]. In the former Soviet system, which is often inspired by people's democracies, the legislatures themselves do not partake in the approval of the treaty and it is left it to their elected representatives, namely the Presidium[62].

4.3 Mixed ritual

[60] According to Clause 5 of Article (90) of the Constitution: "Approving international treaties and covenants or terminating Afghanistan's accession to them" is one of the powers of the National Council.

[61] Traces of this method (interference of both parliaments) can also be traced in the legal system of Afghanistan. Clause 1 of Article (9) of the Treaties Law, when the confirmation (approval) of a number of treaties requires confirmation by the National Council, it means the National Council of both houses, the House of Representatives and the Senate. If in practice, after the approval of the House of Representatives, the text of the treaty is sent to the Senate and that House also confirms If there is no approval, a joint committee will be appointed from both houses, and if this committee does not agree, a vote will be taken again in the House of Representatives. If it gets two-thirds of the votes of the present members, it does not need to be sent to the Senate again

[62] Praesidium

In this constitution, the executive the legislative branches, while each has its own authority, cooperate with each other. There are various mixed religions and each of them has adopted a special way and custom. In this tradition, sometimes treaties are divided into two types. One category is approved by the executive branch freely and on its own behalf, but the other category is approved by obtaining prior permission from the legislative branch.
This method, which makes the direct or indirect approval of the executive branch dependent on the type of treaty, is sometimes called the French-Belgian method. Treaties are ratified in the same way in England, with the difference that in the country in question, it is usually the king who has the authority to ratify treaties; Indeed, in the Constitution of the United States of America, the power to ratify international treaties is specifically granted to the Senate, the supervision of the country's foreign policy is only exercised by this House, and the House of Representatives only has the authority to ratify treaties that have a financial aspect (Kaliyar, 1989). 454-459).

4.4 Judicial system of Afghanistan

In Afghanistan's judicial system, in terms of form, international treaties and covenants are sent to the National Assembly by the Foreign Ministry to the Ministry of State for Parliamentary Affairs and through this ministry to the National Assembly for confirmation (approval) of the National Assembly. In addition to not being able to postpone the ratification of the treaty for more than one month (one month for the House of Representatives and 15 days for the Senate), the parliament prioritizes reviewing the treaties if necessary[63]. In the U.S. legislative process for treaties, after the House of Representatives votes and approves, the treaty is then sent to the Senate for confirmation. Then, the international treaties and covenants are sent to the President for approval by the National Assembly, and with the approval of this official, the international treaties and covenants are completed during the internal and judicial procedures (Forough Asefi, 2019: 126).

The Constitution of Afghanistan stipulates in terms of the authority to approve (ratify) treaties: "Approving international treaties and covenants or terminating Afghanistan's accession to it[64]" is one of the authorities vested in the National Assembly. Also, Clause 14 of Article (3) of the Law on Treaties stipulates: "Approval: Ratification of treaties and international covenants listed in Article (9) of this law is done by the National Assembly of the Islamic Republic of Afghanistan". In Afghanistan's judicial system, according to Article (11) of the 1969 Vienna Treaty, which considers "ratification" as one of the methods of agreeing to the treaty, it has given a special definition of ratification and identified it as an authority of the government (cabinet).

The Law of Treaties stipulates in this regard:
"Approval[65]: It is the acceptance of the treaty, covenant, agreement, contract, protocol and memorandum of understanding that is done by the the Cabinet of the Islamic Republic of Afghanistan.[66]"

However, the procedure for approval international treaties and covenants in this country has its own rules. A number of treaties that need to be ratified by the National Assembly are listed in paragraph 1 of Article (9) of the Treaty Law.

Paragraph 1 of this article stipulates:

"International treaties and covenants in the following areas will be enforced after the ratification of the Ministerial Cabinet, the confirmation of the National Assembly and the ratification of the President of the Islamic Republic of Afghanistan: Armistice Treaty (end of war); the agreement on the determination and stabilization of borders; Treaty establishing foreign relations, friendship and international cooperation; non-aggression treaty; the treaty establishing the international organization; A treaty that requires the amendment of the law in force; the treaty on the judicial status of nationals; the agreement to grant or obtain a loan or to grant tax exemptions and customs products; Treaty on the extradition of accused and convicted persons and judicial

[63] Article (97) of the Constitution of Afghanistan
[64] Clause 5, Article (90) of the Constitution of Afghanistan
[65] Approval
[66] Clause 13, Article (3) of the Law of International Treaties and Covenants

cooperation; International covenants (conventions) and attached protocols; treaties and security agreements; Economic treaties and agreements, and other treaties that needs the ratification of the National Assembly according to their content and nature. The reason why this authority has been assigned to the National Assembly is perhaps the same reason that the National Assembly, as the highest legislative pillar of the government, is the embodiment of the will of the people[67] and represents the nation.

However, treaties other than the above, that is: "Memorandums of understanding, agreements and simple and executive contracts which, based on the Foreign Ministry, do not require the ratification of the National Assembly are approved and enforced by the Ministerial Cabinet[68]."

The method of recognition of international treaties and covenants in Afghanistan's judicial system is like the approval of a law. When the treaty or international covenant is sent to the National Assembly through the office of the Minister of State for Parliamentary Affairs, it is first sent to the House of Representatives, which is then discussed and reviewed. the necessary provisions of the treaty or international agreement and weighing it with the country's fundamental interest on national level, in case of agreement, it will be put to a vote for confirmation.

If two-thirds of the present members vote in favor of it, that treaty or international agreement will be forwarded to the Senate for confirmation[69]. However, if the Senate does not agree with the ratification of the international treaty or pact by the House of Representatives and the Senate, the mixed commission will be formed with an equal number. If the dispute is resolved, the treaty or pact will be considered ratified. If there is a dispute, the treaty or international agreement will be returned to the House of Representatives and put to a vote again. This time, if the same treaty or international agreement receives a majority comprising two-thirds of the affirmative votes from the members in attendance and casting their votes, it will be considered approved and without Sending to the Senate is sent directly to the endorsement of the President (Forough Asefi, 2019: 128).

4.5 Competent authority to deposit documents of ratification of treaties

Depositing the ratification documents of treaties is one of the phases of the process of concluding treaties. Until the early 20th century, it was a common practice for the contracting states to exchange documents of ratification; in such a way that each of them sends documents of ratification to the other contracting states as many as the participating entities to the treaty; But since the application of this statute in the territory of multilateral treaties to which many governments are parties caused problems, the signatory governments established a new statute by mutual agreement and designated an authority for depositing ratification documents so that the depositing of documents is concentrated in that authority. No government has to prepare and send a ratification document to each of the participating entities in the treaty (Falsafi, 2017: 295).

Based on paragraph 1 of Article (76) of the 1969 Vienna Treaty: "Negotiating states can, in the treaty itself or in any other way, designate one or more governments or international organizations or the highest administrative authority of that organization as the trustee of the treaty (the custodian of the treaty documents) do". The trustee of the treaty, after receiving the original of the treaty, is obliged to deliver its copies to the parties of the treaty. After receiving the ratification documents of the treaty, he prepares a parliamentary version of this deposit and communicates it to the interested governments. Today, the Secretary General of the United Nations is usually the Secretary General of multilateral treaties[70], and according to letter (g) of Article (77) of the 1969 Vienna Treaty, one of the responsibilities of the Secretary of the Treaty is to "register the treaty in the United Nations Secretariat". In the Constitution of Afghanistan, it is not mentioned about the deposit of international treaties, but Article (10) of the Law of Treaties states: "The signing of certified documents, after approval (by the Ministerial

[67] Article (81) of the Constitution of Afghanistan
[68] Paragraph 2 of Article (9) of the Law of International Treaties and Covenants
[69] Although Article (64) of the Constitution (which expresses the authority of the President) mentions the ratification of laws and legislative decrees as the authority of the President in its paragraph 16, it does not mention the ratification of treaties; However, Article (9) of the Law of Treaties considers the president's approval as a condition for treaties to come into force.
[70] Today, the Secretary General has many duties that can be classified into administrative and executive duties in a general division of duties. Being the Secretary General's secretary of treaties is one of the Secretary General's administrative duties.

Cabinet), confirmation by the National Assembly (and presidential approval) of the treaties by Foreign Ministry"; Therefore, the Foreign Ministry is obliged to deposit its certified documents to the trustee of the treaty (depending on the case) after completing the formalities of ratification or approval of the treaties.

4.6 enforcement authorities and control of the implementation of treaties

International treaties are sources of international law and create international obligations, and the violation of these obligations will also cause international responsibility. If the treaty provisions are silent, these documents in themselves do not have internal requirements. In other words, they do not necessarily require an arrangement to be effective in the domestic judicial system. Of course, this does not deny the fact that the national judicial system considers treaties as sources of domestic law and implements them in a timely manner (Khalaf Rezaei, 2016: 132), however, in general, international rules, whether customary or contractual, are binding and must be implemented in good faith[71].

For this reason, the introductory statement of the United Nations Charter (paragraph three) considers compliance with treaties and relying on other sources of international law as a requirement for the sustainability of the existing international system, and Article (26) of the 1969 Vienna Treaty has emphasized on the correct implementation of international regulations; Concerning the establishment of an appropriate environment for the ensuring the effective execution of international obligations is regarded as an essential prerequisite for the establishment of security in the international community.

To demonstrate the judicial foundation of governments' obligations to implement international regulations (principles of loyalty to the covenant[72]), judicial scholars have developed several theories, each of which has a worthy reputation in its own position. Despite this, all of them have neglected one important point, which is the forced implementation of international rules. Maybe because addressing this issue considering the implementation mechanisms of the practical application of international law, it really seems pointless, because these mechanisms in many instances, they lack an international character and can only be comprehended within the framework of domestic judicial systems (Falsafi, 2017:547).

Therefore, by accepting a treaty, governments undertake to adhere to the rules and regulations of that treaty and fulfill their obligations, and when the implementation of treaty obligations is subject to legislation or other national measures such as action by the judiciary governments. The contracting parties are obliged to arrange the judicial effect of the obligations in the national judicial system. Simultaneously, during the execution of treaties, the principle of territoriality of the implementation of treaties prevails, which is recorded in Article (29) of the 1969 Vienna[73] Convention. In other words, the treaty requirements of governments are primarily international and their national implementation is secondary. The opposite concept of this rule of treaty law, which states that states cannot avoid their obligations by citing their judicial system, such as loopholes in the law[74].

It is that the committed countries, if necessary, must take the necessary judicial measures to implement their obligations. In other words, if the current laws furnish the required and comprehensive foundation for fulfilling international obligations, the governments will not be required to enact or change domestic laws and regulations. Therefore, by joining the treaties, the governments are committed to fulfill the obligations arising from it, but the way of implementing them by the government organs can take different forms according to the internal regulations of the countries.

In some judicial systems, treaties are promptly integrated into the domestic system upon their conclusion and becoming effective at the international level, and in some others, internal measures such as the establishment of executive laws are considered necessary to integrate the elements of the treaty into the domestic system. The method of entering international regulations in the first category judicial systems is called "general

[71] Good faith
[72] Pacta sunt servanda
[73] Article (29) of the 1969 Vienna Convention stipulates: "With the exception of cases where another intention is inferred from the treaty or through another means, the treaty is binding on each party throughout its territory."
[74] Article (29) of the 1969 Vienna Treaty

transformation[75]"; If the constitution has generally decreed the implementation of treaties at the domestic level, but in the second category of judicial systems, special laws have been provided for entering the requirements of treaties into the domestic system, and this method is called "special transformation[76]" (Khalaf Rezaei , 2016:133).

In the judicial system of Afghanistan, none of the above two methods are explicitly mentioned and the laws are silent in this regard, only the Law of Treaties stipulates the implementation of treaties: " Ministries and government departments are required to undertake the essential measures for executing treaties and covenants. international, agreements, contracts, protocols and memoranda of understanding contained in this law, to adopt in the relevant fields[77].

If, for the implementation of an international treaty and covenant, it is necessary to enact a new judicial document or to amend a valid judicial document, the ministries and government departments are obliged, after the endorsement of the Foreign Ministry, to go through the steps of establishing the judicial document or amending the judicial document[78].

The last article states that in case of conflict between the treaty or the international agreement with the domestic law, the relevant domestic institutions are obliged to amend the domestic law. At the same time and if it can be deduced from this article, the treaty has not been accepted as a "general transformation" nor as a "specific transformation", rather the practical procedure shows that the provisions of the treaties are reflected in the form of internal laws and become enforceable. Therefore, in the judicial system of Afghanistan, provision has been made for a better and more effective implementation of international treaties and covenants in the first step of the regulatory mechanism. This mechanism is executed by the Foreign Ministry. As the Law of Treaties stipulates in this regard: the control over the implementation of treaties, covenants and other documents is the duty of the Foreign Ministry.

4.7 Registration of international treaties and covenants

Treaties are often published in the official texts of the signatory countries. The publication of treaties has the advantage that they can be cited in courts; But some treaties, especially military treaties or political agreements, etc., are not published since the past. The League of Nations Covenant stipulates in the field of publication of treaties: "Every treaty or international obligation that is concluded in the future must be registered by the secretariat immediately and published by the same office as soon as possible." None of these treaties or international obligations will be valid before being registered in the secretariat[79].

Despite all this, it was practically shown that the way and customs of the past still remain in force; The countries only informed the secretariat about the existence of the treaties and kept the text of the treaties hidden. In this case, the United Nations Charter contains provisions similar to the Covenant, but the guarantee of non-registration of treaties in the "Charter" system is slightly different from the guarantee of implementation mentioned in the "Covenant". In this regard, the Charter stipulates: "If the treaties are not registered with the United Nations Secretariat, they can never be invoked against one of the United Nations bodies.[80]" The 1969 Vienna Convention regarding treaties considers one of the responsibilities of the treaty secretary to be "registration of the treaty in the United Nations Secretariat[81]".

Also, the international judicial procedure in two different cases (Maru Matis case and Danzig Free City case), even though one of the involved parties in the case was not a member of the League of Nations, and the contested agreement was not registered with the League of Nations Secretariat, however, compliance with the

[75] Genenral Transformation
[76] Special Transformation
[77] Article (12) of the Law of International Treaties and Covenants
[78] Article (14) of the Law of International Treaties and Covenants
[79] Paragraph 1 of Article (13) of the Law of International Treaties and Covenants
[80] Article (18) of the Covenant of the League of Nations
[81] Article (102) of the United Nations Charter

agreement He considered the mentioned letters mandatory (Mosizadeh, 1389: 89) for these reasons (Article (18) of Covenant 102, Charter, letter (g) of Article (77) of the Vienna Convention of 1969 and judicial procedure) that international treaties as a set Very suitable multilingual books have been published by the United Nations and the League of Nations (Kaliyar, 1989: 460).

According to the judicial system of Afghanistan, only those treaties mentioned in paragraph (1) of article (9) of the Law of Treaties and Covenants of Afghanistan are registered in the United Nations Secretariat or other international organizations pertaining to the subject matter of the treaty[82]. Therefore, other cases under the title of agreement, contract, protocol, memorandum of understanding, etc., do not need to be registered. Meanwhile, the United Nations General Assembly has determined the conditions for the execution of Article (102) of the Charter through resolutions dated February 10, December 14, 1946, and November 3, 1948. In these resolutions, the task of registering treaties has been widely interpreted; This means that all international documents mean not only formal treaties but also declarations of acceptance of the compulsory authority of the International Court of Justice, technical agreements concluded between governments or international organizations, and unilateral declarations by governments regarding partial nullification. A treaty or the invalidity of treaties that were concluded before World War II with former hostilities must be registered in the secretariat and published in the collection of treaties of that organization (Mousazadeh, 2010:90), in Afghanistan after registration in the United Nations' secretariat or other relevant organization, the Foreign Ministry is obliged to preserve the original of the treaty, covenants and contracts that are authorized by the Ministerial Cabinet or the confirmation (approval) of the National Assembly and the endorsement of the President and a copy of it to available to the Ministry of Justice[83]، And the Ministry of Justice publishes the treaties and covenants listed in paragraph (1) of Article (9) of the Treaty Law in the official gazette[84].

Therefore, despite the fact that many treaties are printed in the official gazette of Afghanistan, like many other countries, even after the publication of the treaties, the courts cannot directly refer to them, but exclusively pertain to the stipulations of the treaties that are reflected in the normal laws. they did

4.8 Competent authority to suspend, modify or terminate contracts

Usually, the methods of concluding, terminating, withdrawing and suspending any treaty are foreseen and determined in the treaty itself or according to the agreement of its parties. If not, the regulations outlined in the 1969 Vienna Convention on the Law of Treaties will take precedence. According to paragraphs 2 and 3 of Article (65) and Article (67) of the 1969 Vienna Convention on Treaties: the party that withdraws from the treaty should issue a notice that includes the proposal, reasons, deadline, and approval of the competent authority. At the same time, the issuing party can cancel the notification at any time. In the judicial system of Afghanistan, how to terminate, withdraw or suspend treaties is also provided. The Law of Treaties stipulates the definition of termination: "Termination: is the deterioration of a contract (treaty, agreement, contract, protocol and memorandum of understanding) and withdrawal from the accession of international covenants[85]"; »; And according to the constitution: "Approving international treaties and covenants or terminating Afghanistan's accession to it[86]" is one of the authorities of the National Assembly. The implementation of this authority is raised when the treaty has been violated by the contracting party, as determined by the relevant ministries, departments and institutions[87]. On the other hand, the suspension, modification and renewal of treaties and covenants are implemented by the authorities that have been approved, confirmed or sanctioned by them[88]. Hence, documents that did not necessitate the endorsement of the National Assembly upon acceptance similarly do not require the approval of the National Assembly during suspension, adjustment, renewal or termination[89].

[82] Letter "z" of Article (77) of the 1969 Vienna Treaty
[83] Paragraph 1 of Article (15) of the Law of International Treaties and Covenants
[84] Paragraph 2 of Article (15) of the Law of International Treaties and Covenants
[85] Paragraph 3 of Article (15) of the Law of International Treaties and Covenants
[86] Clause 15, Article (3) of the Law of International Treaties and Covenants
[87] Clause 5, Article (90) of the Constitution of Afghanistan
[88] Paragraph 2 of Article (13) of the Law of International Treaties and Covenants
[89] Paragraph 3 of Article (13) of the Law of International Treaties and Covenants and Paragraph 4 of Article (13) of the Law of International Treaties and Covenants

5. Conclusion

Although there has been no strong and law-abiding government in Afghanistan since ancient times, and most of the governments of this country have failed; This country has joined a large number of international treaties. A superficial survey shows that Afghanistan adheres to more international documents than many of its neighboring states; However, accession to international treaties has not been the same type and has a single procedure. Possibly, this stems from the fact that the incumbent government or governments have not adhered to the same concept.

Sometimes the ideas of liberal democracy, sometimes Marxist ideas and often Islamic beliefs have prevailed. Additionally, the ruling systems from the monarchy to the republic, the People's Republic, the Islamic State and the Islamic Emirate have ruled over this land. For this reason, the method and procedure of attracting international treaties is not uniform and coherent, but some of these governments/governments have acted in such a strict way against international treaties, and some others have openly moved toward accepting the treaties, while some find themselves in a middle ground. They have behaved in two ways. Nevertheless, the endorsement of laws, particularly the Law of International Treaties and Covenants sanctioned in 2015, signifies a positive stride towards establishing a unified procedure.

Therefore, according to the prevailing political, social and cultural situation in this country, the majority of international treaties, especially human rights treaties, have been accepted, but in practice and according to the special mechanism ruling in the judicial system of this country, the treaties are directly in the courts of this country. They cannot be cited by the country, but the provisions of the accepted treaties should be reflected in the normal laws of the country so that the judges can refer to them. However, the practical procedure is such that the status of international treaties in legislative documents is even lower than the legislative decrees of the president, and it is not mentioned about treaty obligations in government offices.

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Access to Medicine in Post-LDC Era: Challenges in Intellectual Property Law Framework of Bangladesh

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Abstract
After witnessing the effects of a global pandemic, the need for affordable medicines is higher than ever. Many developing countries are suffering to provide accessible medicine for their citizens. Although Bangladesh, as one of the most successful least developed countries (LDC), has gained remarkable success in the pharmaceutical industry, the impending LDC graduation might have some adverse effects. This study intended to analyze the implications Bangladesh might face and how to work around the new situation. Although most medicines that treat common diseases are off-patent, LDC graduation can increase prices of patented drugs like vaccines as it will limit the direct policy support given to the exporters. As LDC graduation will force Bangladesh to comply with the TRIPS agreement by 2026 rather than 2033, an extension is badly needed. Bangladesh will also have to amend its intellectual property laws to fully comply with the agreement, which puts an added burden. Finally, this study shows that although measures like parallel importation and compulsory licensing may help in easy access to medicine, the best thing for Bangladesh will be to apply for an extension to graduate from the LDC category.

Keywords: Intellectual Property, Trips Agreement, LDC Graduation, Patent, Medicines

1. Introduction

1.1. Introduction of Study

As a Least-developed country, Bangladesh has a right to manufacture any patented medicine without procuring any license. Although Bangladesh was predicted to graduate in 2024, due to covid 19, it was deferred two years at the government's request. The LDC status has allowed Bangladesh to flourish in its pharmaceutical sector without being confined to the rigorous regulations of the intellectual property law defined by the TRIPS agreement. Article 66 of the TRIPS agreement gives developing countries more time to implement all the agreement provisions. The Doha declaration initiated the special and differential treatment to help the LDC members, which includes extended periods for implementing agreements, helping increase trade opportunities, helping to implement WTO provisions, etc. After the COVID-19 pandemic, life-saving medicines like vaccines are needed more than ever. However, most of these medicines are patented, which makes it harder for some

countries to access them. Many argue that while TRIPS may hike the prices of medicines, there is no proof of a threat to access to them. Compulsory licensing has been considered a viable option for the LDCs. Retrieval and analysis of 51 observations of pre- and post-compulsory licensing prices indicate that a compulsory licensing event will likely reduce the cost of a patented drug, albeit with some caveats. With the question of access to medicine, intellectual property rights are attached like two sides of a coin. This study analyzes intellectual property law regarding the patent of medicine, how it works, the argument surrounding the topic, the stance of developed countries, and finally, how Bangladesh will fare after graduating as a developing country.

1.2. Study Scope

This study seeks to analyze the TRIPS Agreement of the WTO, the legal provisions related to patents, the demands of medicine in the least developed country, the complications of compulsory licensing, parallel importation, and the current situation of Bangladesh regarding medicine. It also analyzes international laws, treaties, conventions, online research journals, articles, and opinions of politicians, researchers, and journalists regarding giving access to medicine in developing countries.

1.3. Studied Materials

Though research on intellectual property has a long tradition in developed countries, the momentum has started only recently in Bangladesh. With many international agreements and laws regarding this topic, books, and research papers, I have tried to shed some light on this matter to understand the problems more and fill some research gaps. To understand the importance of a smooth LDC graduation in Bangladesh, I used Mohammad Abdur Razzaque's book. I have used articles by Rakshita Singh, Abbas, Abbott, Cohen-Kohler JC, and Cullet to gather knowledge about parallel importation, compulsory licensing, and how it can benefit countries like Bangladesh. To understand the current scenario regarding vaccine production, newspaper articles from The Financial Express, The Guardian, The Daily Star, MSNBC, etc. have helped me tremendously.

2. Study Methodology

This study aims to understand the pharmaceutical position of Bangladesh after graduating as one of the least developed countries. This study is mainly based on the doctrinal method. Since this study is concerned with access to medicine, the analysis methods are designed to evaluate the prices of the medicines, manufacturing issues, and their availability to general people. This study is based on existing national and international laws as a primary source as well as data collected from books, online journals, judicial decisions, international legal instruments, publications from journals, research papers, articles, etc., as secondary sources.

3. Conceptual Framework

In developing and least-developed countries, most people don't have access to the medicine they need. With many life-threatening diseases in the world, many developing countries suffer from it despite the existence of medicine due to accessibility problems. During the pandemic, these countries also experienced a shortage of medicine production. Here, accessibility refers to the affordability of the medicines. Accessibility of medicines and poverty are connected because these problems intensify poverty, poor economics, manufacturing issues, etc. Developing countries also have less money than developed countries, which can increase the cost of medicine. That's why the TRIPS agreement has some exceptions for developing countries to help them transition to afford these basic necessities for their citizens. The TRIPS agreement, in the way of being progressive, seemingly gives the LDCs many flexibilities in their provision. Still, the reality is most countries can't use these provisions in their advances. Many LDCs cannot use things like compulsory licensing due to the absence of adequate pharmaceutical manufacturing capability, while countries with this capability can use them effectively. Geopolitics also plays a considerable part in these flexibilities. In reality, many countries that are about to

graduate from LDC status cannot afford to provide sustainable medicine to their citizens and abide by the provisions of the TRIPS agreement at the same time. Bangladesh may be one of them. This paper intends to analyze the discrepancies between the TRIPS agreement's initiatives for the LDCs and the reality of the situation and find out about the problems that many countries like Bangladesh can face in providing affordable medicine for their citizens. Also, it analyzes the question most developed countries raised about intellectual property rights regarding patented medicines and whether these rights should be protected in the event of a massive humanitarian crisis.

3.1. Provisions of the TRIPS Agreement and its Exceptions

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization (WTO). It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) between 1989 and 1990 and is administered by the WTO. TRIPS has brought a significant difference in international morality relating to intellectual property rights. Before TRIPS, Intellectual property rights were highly diverse from country to country. Now, all patented products fall under this agreement. With its pragmatic outlook on the developing country on improving their financial status, it is considered one of the most argumentative elements of the WTO system. For the benefit of developing countries, there are provisions in TRIPS that seemingly help LDC countries to use these protected items for their benefit. The LDCs are also given an extended transition period to fence intellectual property under the WTO's Agreement on TRIPS.

The objective of TRIPS is to help transfer and disseminate technological innovation and promote it. Where article 7 established the transfer of technological innovation, article 66.2 mentions that these transfers will help developing countries secure a stable base for technologies. It is to be noted that there is no clear, standard definition of transfer of technology in the TRIPS agreement so that countries can interpret the terms to their liking. Articles 7 and 8 of the TRIPS Agreement give protection to the patent, and Articles 27.2 and Article 30 provide some exceptions to the scope of patentability. Article 27.2 refuses the patent of innovation if it poses a threat to human life or health. Still, the restriction cannot be simply imposed to stop the exploitation of the said innovation. This means pharmaceutical products cannot be put under this restriction. The main difference between Article 27.2 and Article 30 is that Article 30 only regulates drug use. The state cannot reject the drug's patentability.

According to Article 30 of the TRIPS, the least developing countries get many flexibilities like pharmaceutical manufacturing, compulsory licensing, patent extension, parallel importation, etc., for non-commercial purposes. Compulsory licensing is when the government allows the manufacturing of a patented product to a third party without the patent holder's consent. Under Article 31, a compulsory license for manufacturing or importing is available to all members. According to this article, generally, the person or company applying for a license must have attempted unsuccessfully to procure a voluntary license from the right holder on rational commercial terms. If it is issued, the patent holder must still be paid remuneration. But in national emergencies, there is no need for a voluntary license. According to TRIPS Article 73 (b) (iii), there is an allowance for a country to carry off 'any action which it considers necessary for the protection of its essential security interests 'during the time of war or other emergencies in multinational relations.'

The TRIPS agreement also supports parallel importation. Parallel importation is when a country imports a patented product without the patent holders' consent from another country where it is marketed by the patent holder or with their permission.

Many LDCs used their long transition period to use the flexibility the TRIPS Agreement provides them. But up until the amendment of 2005, which took effect in 2017, not all countries could use them. Many LDC countries cannot take advantage of compulsory licensing due to the absence of adequate pharmaceutical manufacturing capability, while countries with this capability can use them effectively. Although some countries are capable of utilizing a compulsory license in the pharmaceutical division to manufacture patented medicine effectively, they

are consistently forced by the developed countries to refrain from issuing this license. According to Article 31 (f), the exportation of generic medicine produced under such a license is barred because, most of the time, it is issued for the domestic market of the license-issuing country. So, countries with limited manufacturing power could not use this flexibility in their regards. But The amendment of the obligations of Articles 31(f) & 31(h) allowed countries to export medicine to these countries.

3.2. The Amendment through the Doha Declaration

Pharmaceutical patents provide opportunities for drug manufacturers to create monopolies over medicine production and marketing, which allows them to maximize profits by setting up high prices. The WTO-TRIPS Agreement has some rigorous obligations that create a sky-high standard for the protection of intellectual property. Provisions like minimum twenty-year patent protection and recognizing products to process patents will ensure the elimination of any kind of competition. This concern was shared by quite a few countries, which was settled in the main Doha Ministerial Declaration of 14 November 2001. This declaration intended to give a public health-friendly interpretation and implementation of the TRIPS agreement, which also promotes easy access to existing medicine and facilitates the development of new ones. After that, a new declaration on TRIPS and Public Health was adopted. In this declaration, it was agreed that the TRIPS agreement should not create a situation that prevents its members from taking protective measures for their public health. Also, countries should have opportunities to explore the flexibilities provided by TRIPS, such as compulsory licensing and parallel importation.

Compulsory licensing is connected with the Doha declaration for its interpretation and amendment. There were some issues in Article 31 of TRIPS regarding the production, exportation, and importation of drugs, which the Doha declaration corrected by cutting them. It acknowledges the challenges that serious diseases like HIV, AIDS, tuberculosis, malaria, and other epidemics present in developing countries, the anguish of people because of them, and the necessity of the compliance of TRIPS agreement nationally and internationally in curbing these diseases. Although the article acknowledged that to progress in making new drugs, IP protection is necessary. It also voiced concerns regarding problems like inflation of prices, the medicine corporations' greedy attitude that puts making money over saving lives, and how it affects poor countries to procure affordable drugs or even manufacture them. The Doha declaration also recognizes that every member has the right to take critical measures to ensure their public health. Granting compulsory licensing, choosing the license's grounds, and determining what will be considered national urgency or extreme national urgency in granting compulsory license are a member's rights. Diseases like HIV, AIDS, tuberculosis, malaria, and other epidemics are generally considered civil emergencies or circumstances of extreme urgency. In these kinds of emergencies, compulsory licensing allows the patent rights to cover public health.

Doha Declaration also supports parallel importation. It has continuously stated that all members are free to demonstrate their administration for these kinds of situations without any problem. According to the principle of exhaustion, a patent holder or any party certified by him cannot outlaw an ensuing product resale if they have put out the patented product cause the selling of the product allowed their claims regarding the market to be absorbed. According to Article 6 of the TRIPS agreement, the WTO dispute settlement system cannot resolve any issues or challenges regarding parallel importation practice. This means that even if a state permits parallel imports in a manner that some other state believes breaches the TRIPS Agreement, it cannot be presented as a dispute in the WTO unless basic nondiscrimination principles are considered. According to the Doha Declaration, this implies that members may decide how to cope with tiredness in a manner that best suits their internal policy goals.

Although the amendment of the obligations of Articles 31(f) & 31(h) allowed countries to export medicine to these countries, it still did not solve the problem of medicine scarcity. And the process remains stiff as always. The exporting country has to guarantee the exportation of the manufactured medicine in that particular country only, and the medicines have to be easily distinguished through their complexion or figure. Only the necessary

amount to fulfill the needs of the qualified importing country will be manufactured, and the TRIPS council has to be notified by the importing country.

4. The Approach of the LDCs and Developed Countries about Patenting the COVID-19 Vaccine

Vaccines have long played a pivotal part in the prevention, mitigation, and eradication of contagious diseases. With the ongoing pandemic, COVID-19 vaccination has become a necessity to live a normal life again. With over 3.8 million deaths in the coronavirus, Vaccine access has become very important. But it is a patented product. As a patent is a prerogative of a patent holder to decide how a patented product can be made, used, distributed, imported, or dealt with commercially, the production of vaccines is in a tangled situation. This makes it very hard to facilitate access to vaccines in low-income and middle-income countries. Studies have estimated that roughly one-third of the world's deaths have been caused by serious diseases, which in most cases stemmed from the lack of proper treatment and medicines. As vaccines are protected by intellectual property rights, The weight of vaccine capitalism is experienced most in these countries and Africa in particular.

4.1. The Issues regarding Patenting the Covid-19 Vaccine and its Access

The fact that access to medicine is a big issue in the developing country is an issue that has been raised over the years. All of the concerns have been proved right throughout the COVID-19 pandemic. In any kind of serious disease, developing countries do get hit harder than developed countries because of lack of research and development, high cost of medicine, and inadequate health infrastructure. Because of these serious diseases like HIV/AIDS, tuberculosis, and malaria, COVID-19 spreads much faster in these countries. Studies showed that by the end of 2008, only 4 million people were receiving antiretroviral treatments for AIDS out of the 12 million people in developing countries who were going to die without immediate access to affordable treatments. In 2018, about 822 people died of AIDS-related complications in the European Union against their 512 million population, while in Mozambique, 54000 people died against their 29 million population.

The COVID-19 pandemic has created a massive need for pharmaceutical patent waiver more than ever. And with the Marrakesh agreement, it is possible to waive the patent rights in emergencies, which the current pandemic certainly is. In Article IX.3 of the Marrakesh Agreement, "exceptional circumstances" are described as an obligation that the WTO or any other multilateral trade agreement imposed on a WTO member country that can be waived if it is supported by three-quarters of the members. According to Article IX.3 (b), when the waiver request concerns the multilateral trade agreements given in Annexes 1A, 1B, or 1C, it will be first submitted to the Council for Trade in Goods, Council for Trade in Services, and then Council for TRIPS. However, the term exceptional circumstances are not defined in the WTO agreement. Nonetheless, through common knowledge, the words imply that in a situation of urgency, certain liabilities that have the intention to be legalized and embraced by nations enable nations to waive those liabilities that would otherwise violate the WTO measures. In simpler terms, the power of waiver defined in Articles IX.3 and IX.4 enables flexibility in difficult situations where a member country might not have the luxury to comply with WTO morals.

In October 2020, the WTO was asked by India and South Africa to waive certain TRIPS conditions, which would have helped the LDC countries give people affordable access to COVID-19 medical products as early as possible. The TRIPS council was asked by the countries for a recommendation of waiver on the implementation, application, and enforcement of 4 sections within the second part of the agreement. In that proposal, it was said that "*developing countries “especially” may face institutional and legal difficulties when using flexibilities available within the TRIPS Agreement." "This waiver would cover obligations from four sections of the TRIPS Agreement — Section 1 on copyright and related rights, Section 4 on industrial designs, Section 5 on patents, and Section 7 on the protection of undisclosed information. It would last for a specific number of years, to be agreed by the General Council, and until widespread vaccination is in place globally and the majority of the world's population is immune. Members would review the waiver annually until termination.”*

Although many developed countries and vaccine manufacturing companies like Moderna and Pfizer also refused this vaccine patent waiver, in 2022, the WTO provided a partial waiver for five years. WTO waived patent rights on vaccines and allowed the use of confidential clinical trial data for vaccine approvals. However, the vaccination rate in the developing countries is still low. Currently, India and South Africa are attempting to extend this waiver time.

4.2. A Possibility of Increasing Access to Medicine through Parallel Importation and Compulsory Licensing

Patent protection of pharmaceutical products gives inventors exclusive rights and a chance to monopolize the market. It allows them to sell products at a price that wouldn't be possible in a competitive market. As a consequence, these medicines become unaffordable for people with limited income. With the expectation of price hiking of patented medicines that came along with the implementation of the TRIPS agreement, provisions like compulsory licensing and parallel importation were expected to handle the negative impacts. Though these provisions have legality, international politics curtail most of the opportunities for generic manufacturing.

Parallel importation is an exception given to the LDC's use. Under Article 6 of the TRIPS agreement, parallel importation cannot be brought to the dispute settlement, leaving the members to adopt this measure in their trying times. The COVID-19 epidemic has put a strain on the majority of the world's healthcare systems. Governments, particularly in resource-constrained low- and middle-income nations, are struggling to satisfy their citizens' health demands. Patent exclusivity raises the cost of healthcare by enabling protected technology to be sold at prices that are above the market. Parallel importation of patented health technology is a legal policy alternative for obtaining patented health innovations at a lower cost. Parallel imports enable IP owners to reap the advantages of international price discrimination by setting different prices in various jurisdictions while maintaining the purchasing power of a particular market in mind. Parallel importation appears to be a safer choice since the Member States are not required to verify the presence of certain medical crises to exploit this flexibility. The TRIPS Agreement's Art. 28(1)(a) clearly states that the patent holder's power to regulate import is subject to Art. 6 of the TRIPS. Article 6 of the TRIPS Agreement states that *"For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4, nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights."* So, Art. 6 states 'exhaustion' but does not control it. The International Exhaustion of Rights Convention says that the rights of IP Rights holders expire after the first sale in any market. The national exhaustion of IP Rights, however, only exhausts the rights of the IP holder when the first sale is made in any sort of national market, preventing parallel imports from accessing local marketplaces. Furthermore, under regional exhaustion of IP rights, the IP rights holder's rights cease to exist immediately after the first sale in any regional market. The Doha Declaration, in combination with the TRIPS agreement, serves as a key pillar in the idea of parallel importation. The primary goal of this proclamation is to protect and defend public health.

Though the TRIPS Agreement provides adequate policy room for WTO Member States to address exhaustion rights, parallel importation of patented medications has historically been a contentious problem because it may dramatically reduce manufacturers' earnings by substituting sales in low-price areas for sales in high-price regions. Brand-name pharmaceutical corporations have a tendency to respond violently when other parties, especially when using legal methods, attempt to interfere with their revenues.

Compulsory licensing is mentioned in articles 31 and 31*bis* of the TRIPS agreement. With compulsory licensing, a government can use a patented product without the holder's permission. Even generic medicines can be produced by this. TRIPS agreement allowed scenarios where compulsory licensing could be used instead of strict regulations. Though many people argue that compulsory licensing can be used for affordable drugs, this theory only exists in assumption. There is no substantial study to prove this theory. However, there is evidence that proves that compulsory licensing can lower the price of patented medicine. It might be argued that compulsory licensing only works in richer nations since residents in these countries can afford to buy more costly pharmaceutical items due to strong patent rights. But in battling a crisis like COVID-19, compulsory licensing can be a very useful tool. By facilitating compulsory licensing, many developed countries have

managed to get COVID-19 vaccines and other related drugs. Canada enacted the COVID-19 Emergency Response Act as a law to allow the states to produce, sell, and use patented medicines. Germany passed the Prevention and Control of Infectious Diseases in Humans Act, which allows compulsory licensing. So, compulsory licensing can be used for quick access.

5. The Implications of LDC Graduation for the Pharmaceutical Sector of Bangladesh

currently, LDCs benefit from two kinds of transition periods provided by the TRIPS Agreement: a general transition period and a particular transition period for the pharmaceutical sector. The general transition time has been prolonged until July 1, 2034, while the particular transition term for the pharmaceutical sector has been renewed until January 1, 2033. LDCs, on the other hand, will forfeit the advantages offered during the transition periods once their LDC membership expires. Bangladesh was scheduled to depart the LDC category in 2024, as per a previous CDP plan. But, because of the COVID-19 epidemic and a request from the Bangladesh government, the graduation year was postponed by two years to 2026. Bangladesh's excellent healthcare accomplishments in recent decades have been aided by the presence of a thriving and low-cost pharmaceutical sector. Access to medications, infant survival, vaccination, sanitation, and other health outcomes have all significantly improved. Bangladesh would lose access to this transition period if it graduated from LDC classification in 2026 without an extension and would be forced to comply completely with TRIPS in medicines by 2026 rather than 2033. Recent advances, as well as the country's capacity to deal with continuing and emerging health concerns, may be compromised. Covid-19 is one of the clearest examples of such a danger. Combating the pandemic's economic destruction and long-term consequences would need complete international cooperation, for which the transition period for drugs needs to be more than 2026.

5.1. An Overview of the Pharmaceutical Sector of Bangladesh and Its Current Status

In Bangladesh, Development in the pharmaceuticals sector has been fueled by an active, domestic industrial strategy, which has been aided in recent years by the World Trade Organization (WTO) transition phase for LDCs, which enables Bangladesh to avoid patent enforcement. Until the 1980s, multinational corporations controlled the pharmaceutical sector. This supremacy was characterized by significant imports of pharmaceuticals and raw ingredients for pharmaceuticals. Eight MNCs produced about 75% of all pharmaceuticals (in value terms), with the remaining drug manufacturing being done by 160 small and medium-sized enterprises. Bangladesh implemented its first drug policy regime in 1982, resulting in a substantial revamp of the pharmaceutical sector. The National Drugs Policy (NDP) attempted to discipline the pharmaceutical business by instituting medication pricing limits, lowering MNC market dominance, and restricting pharmaceutical patents to achieve different public health objectives. To make the NDP aims a reality, the government also enacted the Drugs (Control) Ordinance (DCO) 1982, which regulated several elements of the fundamental distribution networks, such as manufacture, distribution, importation, and sales. Bangladesh additionally implemented two more drug policy regimes throughout time, the first in 2005 and the second in 2016.

The pharmaceutical sector, as the largest white-collar employment, provides 97 percent of the local market and 131 other nations. Since 1982, nominal production has increased exponentially, reaching US$2.8 billion in 2018, or 1.2 percent of GDP, and from 2014 to 2018, with 8.3 percent average annual growth, it was growing faster than GDP growth. It also has a positive impact on people's lives. According to a World Bank report, life expectancy grew to 72.3 in 2018 compared to 46.6 in 1971, and infant mortality reduced from 148.4 to 25.1, both statistics beating the overall number in South Asia.

With an annual average growth rate of 16%, Bangladesh's pharmaceutical sector has reached an all-time high since 2006. In 2019, with 25.5%, this sector earned $130 million in exports alone. Many speculate that exports would reach $1.3 billion by 2030 if the average annual export growth rate of the past five years was 23%. Exports will exceed $400 million by 2030 if the ten-year average of 10% is maintained. A conservative 5% annual growth rate will bring revenues to $222 million by 2030. While Bangladesh has developed a substantial

formulation manufacturing capacity, API production has been fairly restricted. Currently, eight firms in the nation manufacture more than 40 API compounds. Even though few local enterprises manufacture APIs, the pharmaceutical sector mainly depends on imported APIs from diverse overseas sources such as China and India. So, pharmaceuticals are not only a rising source of production, foreign cash, and jobs but also an increasingly important source of inexpensive medications for other LDCs and developing nations.

5.2. The Necessity of Extending the Pharmaceutical Transition Period After the Pandemic

TRIPS transition period has allowed the pharmaceutical business to cut costs both domestically and internationally and boosted health outcomes. Bangladesh will lose access to this transition period if it graduates from LDC criteria in 2026 without an extension and will be forced to comply completely with TRIPS in medicines by 2026 rather than 2033. If so, all of the progress might be jeopardized.

Because of the flexibility, manufacturers in LDCs can export patented medicines to other countries where the patent on the medicines has expired or is missing. On patented drugs, generic producers are not required to pay royalties or compete on an equal playing field with inventors. In Bangladesh, laws like The Drugs Control Ordinance of 1982 empowered the government to set prices and limit imports of any drug if it or a replacement was manufactured in the nation. The 1940 Drugs Act lets the government control how to label any imported drugs and requires the full formulaic information to be accessible. There is no patent protection for plant and animal types; organizations other than the government may impose compulsory licensing, and international patents can be invalidated after four years if the product is not also produced locally. As an LDC, Bangladesh can export generic versions to countries without patent protection or with compulsory licensing. Currently, Vietnam, Myanmar, and Kenya are important markets. Bangladesh has achieved self-sufficiency in the pharmaceutical industry by using the patent waiver, supplying about 97 percent of drugs for the domestic market, and exporting to over a hundred nations, like the United States.

Following graduation, pharmaceutical industries would lose access to patent waivers seven years before the transition period's end, potentially limiting their capacity to create and import generic copies of patented drugs. Graduated LDCs will be required to include patent protections for pharmaceutical items and techniques. When the TRIPS Agreement goes into effect, local pharmaceutical producers will struggle to compete against cheaper products. If an importer can provide a cheaper price for a similar item of the same caliber, local manufacturers are likely to lose market share. Large-scale generic producers in India and China may prove to be important rivals and dangers because of their pricing advantage. These countries' pharmaceutical businesses have well-established backward-linking sectors that produce raw ingredients and, more critically, active pharmaceutical ingredient (API).

Bangladesh will be required to comply with the TRIPS agreement as well as other international treaties about IPR, except for preserving patents and concealed knowledge for pharmaceutical goods, which will be exempted within a particular transition period. The government would be expected to amend current IP laws or establish new legislation per the TRIPS Agreement, which will be open to yearly review by the TRIPS Council.

Bangladesh will also have to revise its patent legislation, expanding patent protection to pharmaceutical items and methods and granting patent protection on animal and plant species. The 1911 Patent Law will have to grant a minimum of 20 years of patent protection rather than the current 16 years. Patents could no longer be revoked merely because they were registered in another country, and compulsory licenses could only be given by the government. If a patent was violated, Bangladesh would have to allow foreign corporations to seek an injunction so that the authorities could confiscate the items. For fear of disclosing trade secrets and interfering with manufacturers' marketing plans, the government could no longer insist on the components of imported pharmaceuticals being disclosed on packages. Bangladesh will very certainly have to discontinue the import restriction policy followed under the 1982 narcotics control legislation after graduation since it would violate WTO norms.

Also, the law doesn't demand significant novelty or creativity. Without a revised strict condition, Patents might be issued on existing or unoriginal things. After the transition, it is also expected to implement the mailbox requirements and exclusive marketing rights. Through the mailbox rule, LDCs were required to set up a "mailbox" system for receiving and submitting patent applications at the start of the transition phase. So, Bangladesh will have to process all patent applications that were submitted over the years.

Higher medicine costs also have some social impacts. For starters, rising drug costs may lead some families to discontinue using or consume less than the suggested amount. Second, families may cut other types of spending, like groceries or spending on children's education, to compensate for the increased costs of medications owing to rising prices. Thus, rising pharmaceutical costs not only influence the use of treatments but may also lower the intake of meals, education, and other basic necessities required to live a healthy life. Studies suggested that the poorest 20% of families spend 13.5 percent of their income on health-related expenses. Furthermore, Bangladesh's graduation from LDC status may result in a rise in medication spending and, as a consequence, more families suffering poverty as a result of increased health-related costs.

6. Finding and Recommendations

6.1. Study Findings

6.1.1. The TRIPS flexibilities are not fully used by the developing nations. Strict intellectual property rights often lead to monopolies, which create high prices for medicines. Patent holders are also allowed new follow-on innovations along with their patent rights. This is a great barrier to access to medicine.

6.1.2. Implementing the TRIPS agreement to further access to medicine in developing countries is quite difficult due to the reluctance of the developed countries. As a patent is a prerogative of a patent holder to decide how a patented product can be made, used, distributed, imported, or dealt with commercially, the production of life-saving medicines like vaccines is in a tangled situation. This makes it very hard to facilitate access to patented drugs in low-income and middle-income countries.

6.1.3. The LDC graduation of Bangladesh risks derailing the technical learning process that has fueled progress up to this point. The industry association anticipates that the present annual compound growth rate of 15% will continue in the next term. Without mitigating actions, this expansion may decline, with wide-ranging economic, employment, and public health consequences. After LDC, all of the TRIPS exemption benefits will go away, which is not beneficial for Bangladesh right now.

6.1.4. The intellectual property laws of Bangladesh do not fully comply with the TRIPS agreement. For example, the Patents and Design Acts, the Patents and Design Rules, the Drugs Act, and the Drug Control Ordinance, amongst others, will require reviewing after LDC graduation. The primary IPR protection laws in Bangladesh are the Patents and Designs Acts 1911 and the Patents and Designs Rule 1933. These laws have many parts that are inconsistent with the TRIPS agreement, and reforming them is quite challenging in the current scenario.

6.1.5. Although parallel importation can provide low-priced medicine, pharmaceutical companies have reacted harshly towards it. Parallel importation can dramatically reduce manufacturers' earnings by substituting sales in low-price areas for sales in high-priced regions. For this reason, companies and developed countries have sided against them. So, despite being a legal method, many countries are afraid to use it as they will have to face the wrath of a developed country.

6.1.6. Though some may argue that compulsory licensing only works in richer nations since residents in these countries can afford to buy more costly pharmaceutical items due to strong patent rights, it can be used to access patented medicines quickly.

6.2. Recommendations

6.2.1. The international health community, led by WHO, should reaffirm nations' ability to employ TRIPS flexibilities to defend public health. Governments may move quickly to implement regulatory and legislative measures to guarantee that patents and other intellectual property rights do not obstruct access to medicines, diagnostics, vaccines, medical supplies, and equipment. There is a need to

analyze national and regional rules to determine the degree to which they allow for TRIPS flexibilities. Particularly whether they allow for efficient forced licensing or government usage of patent-protected items. If not, the relevant changes should be implemented as soon as possible to simplify processes and make such measures easier to execute.

6.2.2. Bangladesh's key task as a prospective middle-income nation is to continue advancing up the technology ladder, creating value, and moving away from the low-cost industry. Limited intellectual property protection has also enabled Bangladeshi enterprises to create their technical foundations by copying or reverse engineering foreign innovations. For further advancement, Bangladesh should apply to extend the TRIPS pharmaceutical transition period.

6.2.3. Bangladesh will have to amend its current intellectual property law to fully comply with the TRIPS agreement. Bangladesh will be required to update its legislation to comply with WTO accords other than TRIPS, such as the WTO Agreement on Subsidies and Countervailing Measures. This may call into question the services and facilities provided to local drug makers under the 2005 National Drug Policy. To fully comply with WTO regulations, new pharmaceutical businesses would have to succeed in the global market with limited financial backing from the government. These amendments should be done after 2033.

6.2.4. By allowing a patent pool, access to medicine can be increased as well. A patent pool is an arrangement between at least two IPR holders to aggregate their rights on a certain innovation and lease the rights to use them to each other and other parties, subject to specified terms such as royalty payment. Patent pools are communal administration systems for intellectual property rights, especially patents. The Medical Patent Pool encourages licenses for HIV/AIDS drugs by acquiring voluntary licenses from patent owners and then non-exclusively licensing to third parties who may manufacture copies to distribute in underdeveloped nations. This approach encourages generic competition, lowering costs and making vital medications more inexpensive, and hence more available, for patients in LDC nations. This model also aids in the reduction of transaction costs. Instead of negotiating several licenses from different patent holders, a generic producer might establish a sublicensing arrangement with the Medical Patent Pool.

6.2.5. Open approaches to Research and development (R&D), akin to an open-source model, might enhance access to medicinal goods in underdeveloped nations. Because of its nature, the open-source model has also been proposed for poor nations, which might aid in the development of pharmaceutical goods, other medicines, and remedies for the most critical diseases that these countries suffer. It is critical to share knowledge because inventing new (and continuing to produce older) medicines is critical for fighting diseases in developing countries. And it's also in everyone's best interests to spread the word. This is one of the motivations behind the Open-Source model, which does not provide exclusive rights like a typical patent system. Furthermore, one of the key reasons why this model has gained popularity is because it is accessible to anyone. This 'Open-Source Pharma' paradigm has also attracted recognition for being a new and competitive model for medical innovation

7. Conclusion

Because of high pricing and poor purchasing power in developing nations, patented pharmaceutical items are well beyond the reach of developing countries. The TRIPS Agreement was believed to be the answer to access difficulties, but it brought in even more complicated challenges, such as confusing phrasing in its articles and different interpretations among member nations. As a result of these factors, the worldwide intellectual property system has become fragmented and uneven. There is a need to figure out how to balance research and development with access to pharmaceutical goods such that neither is harmed. Bangladesh's significant pharmaceutical successes may be attributed to its distinct national history, huge, low-cost labor force, and rising global and national health expenditure. The sector is becoming more important not just for the local economy and health results but also for supplying other LDCs and developing nations at a cheap cost. Covid-19 has struck a tremendous blow, one that will take many years to recover from. Although Bangladesh has dealt with the situation rather well, it will be a wise decision to apply for an extension of the transition period.

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Indonesian Palm Oil Industry: Environment Risk, Indigenous Peoples, and National Interest

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Abstract
This article examines two main issues in Indonesia's palm oil industry. Firstly, the Indonesian palm oil industry and energy security. Secondly, there are significant problems in the production of environmental aspects, the protection of indigenous peoples, and Indonesia's national interests in the energy sector. Indonesia's decision to reduce GHG emissions by 2030 using palm oil as a renewable energy source simultaneously faces environmental degradation and low levels of protection for indigenous communities over their forests and land. In another part, Indonesia's policies have become more aggressive in producing more palm oil as the demand for palm oil and its derivatives has increased as part of a strategy to safeguard national interests in the energy sector. In this context, it is almost certain that energy policy issues originating from the palm oil industry will still be debated at the local, national, and international levels, especially trade and environmental protection issues on the other hand.

Keywords: Indonesia Palm Oil, Energy, Environment, National Interest

1. Introduction

Indonesia is nominated as the fourth-largest crowded country globally by having more than a hundred and thirty-three million vehicles (Agency, 2021), and daily national fuel consumption may reach 1.5 million barrels per day (CEIC, 2023; Maria, 2023). Not only vehicles on the traverse, but also rapid population growth with more than two hundred and seventy million (Agency, 2023) and technological developments make Indonesia need adequate energy sources and fuel. Indonesian fossil fuel has repeatedly been changing for over a hundred years and was also the primary state income at that time (IESR, 2023; Haykal et al., 2022). Nevertheless, as time went by, to fulfil the domestic oil needs, the Indonesian government still relied on oil from other producing countries (Johnson, 2012).

Relying on imported oil from another country is one of the reasons why Indonesia is now developing renewable energies, producing more energy to supply its domestic needs (IESR, 2023). Several renewable energy sources are available in Indonesia, including solar, wind, hydroelectric, geothermal, biomass, and biofuels (Nugroho et al.,

2021). Even though this reason may seem weak, Indonesia has been using palm oil to replace the availability of hydrocarbons to develop biofuels, even though this seems to be a weak argument because it has become a more reasonable option to meet international market demands. Regarding Indonesia's energy capacity, the Indonesian palm oil industry plays a significant role in this country. Indonesia produced 46.9 million CPOs in 2021, which is currently the largest in the world, with an area of 16.8 million hectares (BPDPKS, 2022).

Land tenure-based oil palm plantations have contributed to deforestation rates, conflict and increasing environmental degradation (Muhdar & S, 2019; Muhdar et al., 2023). The practice of using land for plantation activities raises two problems, namely the practice of land grabbing and the practice of land banking (Muhdar et al., 2019). Recently, large forest areas in Sumatra and Kalimantan Island in Indonesia have been converted into commercial plantations, particularly palm oil plantations, which increase temperatures in the region and cause forest fires to occur often (Greenpeace, 2021c). Deforestation is carried out through the mechanism of releasing forest areas for oil palm plantations, not including the 3.12 million hectares of oil palm planted in forest areas or around 19% of the total area of oil palm plantations in Indonesia (Greenpeace, 2021b). Land clearing without explicit permission is also standard. The deforestation for opening the palm oil plantations has resulted in flooding in several areas, and every year, smoke from forest burning also covers the surrounding areas, including big cities in Riau province, in Sumatra Island of Indonesia (Marito et al., 2023; Watch, 2021; Aiken, 2004).

Besides having environmental impacts due to biodiesel development, social and economic issues may arise. Many indigenous people have lost their natural resources to fulfil their needs: forests, home to thousands of animal species and plants, used to live in juxtaposition with indigenous people (Runtuboi et al., 2021). In most cases, many of the local society living around the forest have not received any negotiation and compensation from the government or company regarding the deforestation, changing their environment and taking their opportunity to live (Suryadi et al., 2021; Appiah & Gbeddy, 2018). However, many now work under the Indonesian palm oil plantations with a meagre income (Zubir, 2017). In 2017, there were more than six hundred and fifty disputes regarding the land influencing more than six hundred thousand households in several areas in Indonesia (Human Rights Watch, 2019).

Indonesia's economic capacity through palm oil exports to European countries and fulfilling the country's domestic oil needs could be a way to grow the country's economy. However, Indonesian palm oil still damages the environment and the lives of the indigenous people, especially those who live on both Kalimantan Island and Sumatra Island (Bogheiry et al., 2023).

This paper discusses the implication of the Indonesian palm oil industry on the environment, human rights, and national interest. A description of the Indonesian palm oil industry and energy security will be given in the first chapter. In the second, there will be some explanations of the central issues dealt with by the Indonesian palm oil industry. The last section presents some critical remarks, including the environmental aspects, indigenous peoples, and the national interest in energy security.

2. Method

This study uses a descriptive research method, which is when a study aims to describe what is happening due to particular circumstances or phenomena. In order to deal with the problem under study, a juridical-empirical approach has been used, namely, to attempt to deal with issues of an actual legal nature or those that reflect the realities of life in society in the study. Data collected to conduct this research is mainly compiled from literature studies in the form of several pieces of information or facts collected after reading books, articles, reports, laws, regulations, and so on related to the subject matter of the study.

3. Indonesian palm oil industry on energy security perspective

Several plants can produce vegetable oil, such as rapeseed, sunflower seeds, peanuts, soybeans, coconuts, cotton, and palm oil (Demirbas et al., 2016). Due to Indonesian palm oil's high productivity level among other sources,

biodiesel made from palm oil produced by Indonesia has finally met standardisation from the US and the European Union (Khatiwada et al., 2018). It is also proven that in 2006, exports to Europe were started and expanded to the United States in March (ESDM, 2021; Kinseng et al., 2023).

Indonesian biodiesel has developed since the 1990s until today, and it has been a long journey for Indonesia to develop its energy independently in terms of quality, volume, and mixers (Wirawan et al., 2024). Indonesian palm oil-producing Crude Palm Oil (CPO) has been used domestically and exported internationally to Europe as one of those countries (ESDM, 2021; Squintani et al., 2014). Besides that, several companies have joined in this production since 2006, and it is projected to reduce Greenhouse Gases (GHGs) in the energy sector by 2030 (D. et al., 2009). The mandatory use of biofuels by The Ministry of Energy and Mineral Resources of the Republic of Indonesia (MEMR) has set a policy direction in the energy sector that prioritises the development and utilisation of renewable energy biofuels (MEMR, 2018). The implementation of the mandatory policies succeeded in creating a biofuel market on a national scale, which grew significantly from 2009 to 2014 (Ebadian et al., 2020).

The government succeeded in saving foreign exchange of twenty-three billion USD in 2017 by increasing the use of biodiesel for domestic needs, which has increased from the use of biodiesel in 2012 (Gapki, 2018). This reduces Indonesia's dependence on fossil energy and provides added value to the economy, reduces GHGs, and reduces the increasing import of fossil fuels. So far, from one oil palm tree, 90% of it becomes biomass waste, and only about ten per cent is utilised in the form of oil or its derivative products (BRIN, 2020). Oil palm biomass can also be converted into bio-pellet or bio-coal instead of conventional coal (Shuit et al., 2009). This shows that oil palm plantations are helpful in Indonesia's economic growth and energy supply.

Fossil energy emissions are the most significant contributors to GHG emissions globally and in Indonesia in particular. Sixty-one per cent of Indonesia's electricity production contribution comes from coal-fired power plants (Annur, 2023). Therefore, this palm oil biomass can be a promising renewable alternative energy to support environmentally friendly electricity production. Since Indonesia is still relying on imported oil from other countries, Indonesian President Joko Widodo believed that once Indonesia could make it to Biodiesel 100% (B100), Indonesia would no longer be importing oil from other countries (Asmara, 2019).

At the moment, Indonesia is still heavily reliant on fossil fuels as a source of energy. According to the data obtained from the Indonesian MEMR, it is expected that crude oil supplies will be available in Indonesia only for 9.5 years starting from 2020, as long as there is no new discovery and the current production level is seven hundred barrels of Oil Per Day (BOPD) (MEMR, 2021). In order to reduce dependence on petroleum and meet global environmental requirements, the only way to reduce the need for petroleum is to develop renewable energy sources (Sharma & Shrestha, 2023).

Indonesia has the potential for large quantities of renewable energy sources. Some of these can be immediately implemented in Indonesia, such as bioethanol as a substitute for gasoline, biodiesel as a substitute for diesel fuel, geothermal power, micro-hydro, solar power, wind power, and even garbage or waste can be used to generate electricity (Hulukati et al., 2023). Biodiesel derived from plant oils such as palm, jatropha, and coconut can be easily obtained across Indonesia; palm oil, as one of the primary sources of biodiesel raw materials as an energy fuel, can also be used as a substitute for fossil fuels (Putrasari et al., 2016).

Indonesia has a tremendous opportunity to develop biodiesel because Indonesia is the largest palm oil-producing country globally, with around forty-nine million tons per year in 2021, and this number continues to increase every year, while domestic consumption is only seven million tons per year (Kementerian Pertanian, 2021). This makes Indonesia the largest palm oil-producing country globally compared to Malaysia, which can only produce around 18 million tons in 2021. Moreover, Indonesia has switched to developing biodiesel; this may reduce the budget and dependence on fossil fuels (Basiron, 2022).

In 2018, the Indonesian government required blending twenty per cent of biodiesel with eighty per cent of diesel fuel biodiesel 20% (B20) before it finally reached the new regulation in 2019 that mixing thirty per cent of biodiesel (B30) has been mandatory. Indonesia has implemented biodiesel 30% (B30) as a mix of thirty per cent

biodiesel from palm oil known as Fatty Acid Methyl Ester (FAME) and seventy per cent diesel fuel (Energia, 2018). This policy has succeeded because, until today, there have been no complaints about the use of thirty per cent biodiesel (Jong, 2023).

It is believed that biodiesel produced from vegetable oil will eventually become one of the most important renewable energy sources for transportation and household uses. Implementing the B30 program may reduce the GHGs up to 27,80-million-ton Co2 equivalent (EBTKE, 2023). In Indonesia, advancing biofuel technologies is the only immediate solution to support Europe's reduction of GHG emissions by 2030 (Panoutsou et al., 2021).

3. Major Issues in the Production of Biofuel

3.1. Environmental Issues

Indonesia is the world's largest producer of palm oil, supplying approximately half of the world's supply, and is driving increased palm oil consumption through domestic biofuel policy (Sahara et al., 2022). Although oil palm is a highly efficient crop, its rapid expansion has severe environmental and social consequences (Murphy et al., 2021). As a result of making more palm oil, many forests are being cut down. On the other hand, Indonesia has a tropical rainforest that contributes oxygen to the atmosphere (McFarland, 2018). The country has ten per cent of the world's tropical forests and sixty per cent of Asia's tropical forests, while numerous animals and plants live in these forests and people in the forest's vicinity (Agusti et al., 2020).

Over the last two decades, deforestation in Indonesia has primarily been caused by land clearing for oil palm plantations (Putri, 2021). According to a new report, Indonesia's biodiesel program will exacerbate deforestation due to palm oil demand (Papilo et al., 2022). Furthermore, experts argue that biodiesel should only be used as a transitional measure toward more sustainable renewable energy sources rather than a long-term solution (Jong, 2021a). Deforestation led by oil palm plantations was the primary cause of deforestation from 2001 to 2016, accounting for twenty-three per cent of total deforestation nationwide (Austin et al., 2019).

In a recent report, the Carbon Disclosure Project (CDP), a London-based non-profit that provides information about environmental risks, claims that biofuel regulations in Indonesia are controversial and lack transparency (Jong, 2023). Companies with a permit to use timber forest products in industrial forest plantations must cease clearing forest land for palm oil plantations following a circular issued by the Indonesian Ministry of Environment and Forestry (CDP, 2021). Currently, Indonesia's biofuel regulations may increase pressure on the country's forests. Indonesia's primary forest loss rate decreased for the fifth consecutive year in 2020 but peaked in 2016 (G. F. Watch, 2023). The deforestation of more than a million hectares, or twenty per cent of the national forests, between 2011 and 2016 was attributed to the palm oil industry (Austin et al., 2019).

In light of this analysis, Greenpeace and TheTreeMap report that as of the end of 2019, 3,118,804 ha of oil palm had been planted in Indonesian forests (Greenpeace, 2021a), violating national forestry laws. It is estimated that over six hundred companies plant more than 10 hectares each in forest areas, of which over half (1,552,617 ha) are oil palm plantations (Jong, 2021b). Moreover, as a conservative estimate, Greenpeace estimates that oil palm conversion in Indonesia's forests caused a hundred and four million metric tons of carbon dioxide to be released between 2001 and 2019 (Greenpeace, 2021c). These factual conditions indicate that apart from having economic benefits from the palm oil business, they contribute to global aspects related to climate change.

There is limited land available for agriculture, so the growing demand for palm oil leads to expanding this industry onto other cropland, secondary forests already being logged for timber, and native tropical forests. As is typical with oil palm expansion, it destroys biodiversity, destroys old-growth forests, and contributes to air pollution by replacing tropical forests with monoculture crops. Additionally, most of Indonesia's rainforest comprises peatlands, whose destruction adversely affects biodiversity and climate (Petrenko et al., 2016).

As a result of land conversions such as these, Indonesia is Indonesia's largest source of GHG emissions. However, even under the business-as-usual scenario, it might be challenging to achieve a twenty-nine per cent reduction in GHG emissions by 2030 if weaknesses in law enforcement persist.

3.2. Indigenous Peoples issues

Indonesian oil palm plantations have caused environmental and indigenous rights—issues in various parts of Indonesia. The expansion of the palm oil industry to indigenous peoples land and forests has been a challenge to the government's efforts to realise social equity (Schlosberg, 2007). In order to comply with the company's purchase of the land, indigenous people, previously living in remote areas with limited facilities, must now give up their land. Despite this, many of them have still not been compensated for land acquisition by palm oil companies in Indonesia (Suryadi et al., 2021; Appiah & Gbeddy, 2018). Rural landscapes and livelihoods have been transformed owing to the broader form of industrial resource extraction encompassing commercial logging, plantations, and mining (Toumbourou et al., 2022). Moreover, long and complicated procedures are involved in recognising and protecting customary law communities, and the legal framework has been poorly implemented (Simarmata, 2019). In addition to this, land is deeply rooted in their culture and history (OECD, 2017; Nations, 2007).

Indigenous people have received legal recognition of their customary forests long before the oil palm plantation industry (Herningtyas, 2021). However, now they are very vulnerable to problems because of the oil palm plantation industry, even though they have proven to be effective natural resource managers. As a result, Indonesia's forests are at risk of being converted into plantations, threatening the climate, biodiversity heritage and the indigenous people that depend on them (Rangga et al., 2020).

In the Indonesian legal system, it is well known that the term customary law still exists in several regions, especially in remote areas—the definition of indigenous rights. According to the regulation of the Minister of Agrarian Affairs of Indonesia No. 5 of 1999, Article 1 point 1 states that indigenous rights are the authority which, according to customary law, belongs to specific customary law communities over certain areas, which are the environmental areas of their citizens to take advantage of natural resources, including land within that area, for the survival of the community. Life and life arise from outward and inward relations that are hereditary and unbroken between the customary law community and the territory concerned. Under the Indonesian Basic Agrarian Law, 1960, the guarantee of ownership for forest residents and other customary groups relying on communal and traditional practices is uncertain since customary land rights cannot be registered, which is one of the reasons for the frequent land confiscation of indigenous people (Shivakumar & Bell, 2015).

More than 70 million indigenous peoples live throughout Indonesia's archipelago, representing twenty per cent of the total population. More than most of them live in forests and are dependent on those resources (Rangga et al., 2020). Human rights violations and violations of indigenous rights continue to occur systematically and chronically, especially since the Constitutional Court Decision No. 35/PUU-X/2012 (Khalisotussurur, 2015).

A significant decision was the separation of customary forests from state forests and their classification as "private forests" (Salamat, 2015). The decision of the Constitutional Court Number 35/PUU-X/2012, which was issued on May 16, 2013, stated: "Customary forests are those located within the territory of communities subject to customary law." Oil palm plantations should be aware of the rights of indigenous peoples as customary forests exist in the area.

Deforestation is also a vital component of the problems in Jambi Province due to the conversion of its forests to oil palm plantations, as evidenced by illegal logging events and extensive forest fires at the end of 2015 (Endriani et al., 2018). In consequence, Jambi experienced severe drought during the dry season. Additionally, the river, which is still the mainstay of the people of Penyabungan Village, is currently polluted by five palm oil mills, as evidenced by the number of dead fish and the cloudy appearance of the river (Azzahra & Dharmawan, 2017). Similar events occurred in Lamin Telihan Village, Lamin Pulut Village, and Teluk Bingkai Village of Kutai Kertanegara Regency (Muhdar et al., 2019).

As a result of oil palm plantations in Indonesia, indigenous people have lost their homes and places of residence and their sources of livelihood and natural resources to meet their basic needs in Papua (Runtuboi et al., 2021). Many indigenous people have not yet been compensated despite receiving land for oil palm plantations. Although palm oil companies had recruited indigenous workers to work with them, they were suddenly laid off after several years. Following their dismissal without receiving their wages, they protested to the company, asserting their rights to immediate payment. The company instead assigned police officers brought in to secure the protest (Mifee, 2015). Moreover, Article 18B (2) of the second amendment to the 1945 Constitution of the Republic of Indonesia recognises the existence of indigenous people's indigenous rights. This principle legal instrument has long recognised and protected the rights of indigenous people in Indonesia. Consequently, the state recognises them and the traditional customary law regarding natural resources by indigenous people.

The violation of indigenous rights has become a subject rarely discussed in mainstream media. Today, people living near oil palm plantations face environmental challenges that differ from what they encountered in the past. It is difficult for people to obtain clean water daily because oil palm plantations pollute rivers and other water sources (Kamyab et al., 2018). The lack of dense forests has resulted in them being unable to find the animals and plants they used to consume and live alongside indigenous people.

As a method of ensuring sustainable economic recovery, low-carbon energy development can be utilised to ensure that governments can meet climate targets through a fairer and equitable energy policy (Heffron, 2021). Indonesia is still plagued with many problems due to industrial oil palm plantations to date. Government policies do not seem to be right on target due to the many overlapping interests. The increasing use and utilisation of palm oil for biodiesel production require large tracts of land to be cleared, posing several environmental concerns. The more land must be cleared, the greater the threat to indigenous rights.

3.3. Indonesian National Interest

Since 2006, the EU has been Indonesia's largest foreign investor and one of its largest markets (ESDM, 2021; Kinseng et al., 2023). The EU is also among the regions that consume the most palm oil worldwide, both for food and non-food purposes, and palm oil has the potential to reduce the EU's reliance on fossil fuels (Union, 2019). Moreover, the EU uses CPO as a primary raw material in the transportation sector to produce renewable energy that Europe pursues to address environmental issues (EEA, 2023). Since Indonesia and the EU have an excellent bilateral relationship, it is more convenient for Indonesia to export CPO to the EU.

In 2013, Indonesia's crude palm oil exports to the EU declined (Tandra et al., 2021; Investments, 2013). This decline can partly be explained by the EU's rejection of the Indonesian CPO, which asserted that CPO was unsustainable, causing forest fires, floods, and deaths in Indonesia. On April 4, 2017, the EU Parliament unanimously adopted a resolution on palm oil and the destruction of rainforests that shocked the Indonesian palm oil industry (European Parliament, 2018). Particularly for palm oil products destined for the European market, the distribution of this resolution will pose a challenge.

The EU Parliament banned CPO and its derivative products for five reasons: deforestation, degradation of animal habitats, corruption, and human rights violations (Sulistyarini et al., 2022), and the Indonesian palm oil industry is one of the triggers. According to the European Parliament, the reason has been approved by six hundred and forty members, while eighteen others have refused, and 28 others have abstained (Sidik, 2018).

Following the renewable energy directive (RED II), the EU has published a derivative regulation through its European Commission. As a result of revising and refining the previous Renewable Energy Directive, the Renewable Energy Directive II is the EU's renewable energy directive. It should be noted that palm oil is not included in the RED II policy, which contains significant initiatives the EU took to promote the increased use of renewable energy (Kinseng et al., 2023). RED II classifies palm oil as high-risk, whereas other vegetable oils are low-risk (Mayr et al., 2021).

According to the EU's revised RED II, the sustainability requirements from the first generation of biofuels were amended in 2018, resulting in a more comprehensive ban on palm oil imports from Indonesia due to allegations that palm plantations cause widespread deforestation (Umarach, 2021). According to the EU's RED II policy, palm oil exports should be reduced gradually since the palm oil industry is accused of contributing to deforestation and other harmful social, environmental, and human rights issues (Sutrisno, 2019; Akbar Ramadhan et al., 2021). Despite the European Union's ban on palm oil, deforestation rates in Indonesia remain high (Hugh Speechly, 2019). While the EU ban has a limited impact on deforestation, it is far from an adequate measure for slowing down the deforestation caused by palm oil.

The European Union is urged to play a direct role in reducing deforestation through direct roles such as carbon financing (Comission, 2008). The RED II program resulted in a decrease of hundreds of millions of dollars in palm oil exports from Indonesia to the EU because Indonesia lost its share of the market for palm oil exports, making the Indonesian government file a complaint against the EU at the World Trade Organization (WTO) (Parmar, 2020). The EU Delegated Regulation and the RED II policy have been sued for decriminalising Indonesian palm oil products.

G2G diplomacy continues to be used by the Indonesian government for negotiations with the EU, and the Indonesian government has expanded its export market to other countries, such as China and India, in anticipation of the decline in the palm oil market in the EU (Hasna et al., 2021). Indonesia is also making internal efforts to deal with the RED II regulation and diplomacy.

4. Conclusions

Due to its destructive nature and environmental impact, palm oil is not considered a renewable energy source, even though it would be contrary to national interests in the energy sector. Deforestation led by oil palm plantations was the primary cause of deforestation, accounting for twenty-three per cent of total deforestation nationwide. Since Indonesia faces deforestation issues, it is difficult for indigenous people to obtain their environmental rights, including land and forest. The orientation of national income through the export of palm oil products presents an inconsistency in international responsibility relations when looking at the urgency of Indonesia's strategic products. However, European countries oppose this practice because they have indicated that they are attempting to protect the rights of their sunflower farmers by addressing issues of environment and human rights. From a legal and policy perspective, the answer to this problem is not yet clear regarding the most credible scheme that can be employed to bridge various global interests on the one hand and Indonesian national interests on the other.

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A Dialectical Understanding of Refugee Problems in Indonesia: Humanitarian and State Sovereignty Perspective

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Abstract
The increasing number of refugees each year has caused the government difficulties in handling refugee issues. The absence of law concerning refugees in Indonesia has caused weak coordination between related institutions in field. In this paper will discuss what the urgency, relevance, and obstacles faced by Indonesia in the process of ratification of the 1951 Convention and 1967 Protocol. This research was carried out using a normative juridical approach, by examining a legal problem and resolving it through applicable laws and regulations. The urgency to ratify this Convention can strengthen the human rights institutions in the country, although this is not the only indicator for good human rights implementation. It is because some human rights norms are in fact also regulated in domestic legislation in the current reform era this. Indonesia can not exclude the existence of the International Convention on Human Rights. Even it is necessary to bring the domestic and international factors closer. The relevance to ratify this Convention will enhance the international accountability of a country through a more objective and civilized way. Meanwhile, in terms of legal technical considerations, the ratification will strengthen and enrich the national legal instruments so that it will better ensure the progress and protection of human rights better. Ratification can even be a shortcut to bring closer the existing gap between legal instruments at the international and national levels. Obstacles faced are categorized into two aspects, namely the security and legal aspects. The security aspect caused by refugees is often seen as a threat to the state. While the legal aspects of the law are caused by the absence of comprehensive rules in regulating the refugees and asylum seekers in positive law in Indonesia that can weaken the coordination between agencies in the field. As a law-based country that highly appreciate human rights, ratification of The 1951 Refugee Convention and 1967 Protocol must be a priority. Both instruments are relevant, since the substance is not only heavily loaded with regulation about human rights but also in line with cultural values and norms in Indonesia. As such, the process of ratification needs to consider the country readiness, in terms of technical, political and legal aspects, since those aspects are sometimes challenging. On this matter, ratification is expected to narrow the gap between national and international instruments of law.

Keywords: Refugees, The 1951 Convention, Humanitarian, State Sovereignty

1. Introduction

Lately in various media both print and electronic news coverage about the exodus of many Rohingya refugees from Myanmar. News coverage on the issue of Rohingya refugees is indeed not acres of news coverage over the same problems experienced by other ethnic minorities, such as the ethnic Karen who also get the same treatment

as bad from the Military Junta of Myanmar. Nevertheless, the violence against ethnic Rohingya is no less bad with the problems experienced by ethnic minorities of Myanmar more (Sari, 2018).

Rohingya is the term for a Muslim minority originating from West Arakhan, Myanmar. The area is very remote and borders Bangladesh. The residents of this region are generally of Arab descent who migrated to the region since the time of the Mughal Empire, the Islamic empire that controlled the Indian subcontinent in 1526-1858. Rohingya people characteristics seen from physical, language, and culture that shows the proximity of the Rohingya people with South Asian community, especially those Chitagonian. In course of time since, Myanmar controlled by the Military Junta, the Rohingya become targets of various forms of violence and other actions that violate their human rights. Many of them are employed in the forced to build roads and military camps, molested women and menso victims of rape (Mutaqin, 2018).

The Government of Myanmar must responsible for the Rohingya instead take a stance that is upside down and letting the fate of the Rohingya in conditions of heartbreaking. As a result, until now still going on a wave of evacuation of the breakout and the Rohingya spread to many lands, as well as to Indonesia (Susetyo & Chambers, 2020). Such conditions caused the Rohingya and also people from other ethnic minorities who come from other regions of Myanmar be *"stateless citizen"* (residents who lost their citizenship status).

Organization of Islamic Conference (OIC) urged the international community to immediately deliver political pressures on the Government Myanmar related existence of violence and discrimination against the ethnic Rohingya in Rakhine State, Myanmar. As a minority citizen Rohingya is experiencing the pressure of social, cultural, economic, and abandonment of their fundamental rights.

Though violence was committed against the Muslims, then should be done within the framework of a neutral with a principled issue on humanity. Citing the opinion of Yusuf Kalla in Kompas on August 4, 2012, actions taken by Myanmar are severe human rights violations, and the Government of Myanmar should open up access for humanitarian aid agencies to enter Arakan, another name of Rakhine State, which is on the border of Myanmar and Bangladesh.

The problem is both the Myanmar and Bangladesh are two countries that are covered. Therefore, the OIC, United Nations, and ASEAN are expected to actively give diplomatic pressure upon Myanmar. This is due to the ethnic Rohingya already thousands of citizens affected by the violence and resulted in many deaths, displaced, and loss of citizenship (Cheung, 2012).

Learn from the Rohingya case, there are many problems that can be taken, bearing in mind the benefits until recently Indonesia has yet to become a party in the 1951 Convention and 1967 Protocol. Whereas day by day the number of refugees coming into Indonesia the more that inevitably will become a burden for Government of Indonesia (Missbach & Stange, 2021).

The question of the refugees is a problem as old as the human civilization. In a general sense a refugee is a person or a group of people who for some reason had to leave their home areas towards other regions either in their own country or other countries. Basically, the refugee problem is a humanitarian problem and dealt with principles of humanitarian anyway. In the case of refugees as the existence of a natural disaster, then handle can be said to be simple, because their main needs were housing until they can be returned to its original area. In this case, relief and assistance that take precedence are food, water, clothing, sanitation, health, and so on. While refugees from human made disaster especially victimized continuous interference against their fundamental freedom or personal, or persecution, because of race, colour, origin, ethnic origin, religion, social group, or political opinion, and are looking for security and safety as well as safety outside their home country, basically also remained an issue and dealt with humaniter humaniter anyway (Hashimoto, 2018). These kind of people don't just need relief, and assistance for their survival, but also other vital needs, i.e. international protection, because they would no longer gain protection from the governments of their countries of origin.

As a country that has not ratified the 1951 Convention and the 1967 Protocol, Indonesia does not have the authority to determine refugee status. All countries, including countries that have not ratified this Convention, uphold the standards of refugee protection that have become part of general international law, because the Convention has become *jus cogens*, and no refugee can be returned to an area where his life or freedom is threatened (Tan, 2016).

Linkages with international law can be relied upon to subsume the international interest criteria Indonesia in the process of ratification it later, which basically meets the national interests of legal and moral criteria. One classification of other national interests are the secondary interest, which includes the protection of citizens who are abroad and support the nation's diplomats immunity (Syahrin, 2019). This will be discussed in writing what became urgency, relevance, and constraints for Indonesia to ratify the 1951 Convention and 1967 Protocol.

2. Method

This research was carried out using a normative juridical approach, by examining a legal problem and resolving it through applicable laws and regulations (Marzuki, 2015). The specification of this research is descriptive analysis to provide an overview of the actual facts. The analysis technique uses a statutory regulation approach and literature review related to the research topic.

3. Discussion

3.1 Does Indonesia Have to Ratify the 1951 Convention?

Before becoming a party to the 1951 and 1967 Conventions or Protocols, it is important to first look at what rights refugees have. This aims to consider whether Indonesia is able to fulfill these rights or not. Some of them are: the right to religion (Article 4), the right to own property (Article 13), the right to associate (Article 15), the right to trade (Article 18), the right to do work. (Article 19), the right to education (Article 22), the right to decent working conditions and social security (Article 24), freedom of movement (Article 26).

Looking closely at some of the above rights, then that should not be accepted are the provisions of Article 4. Other articles not to do a reservation, can be seen in terms of Article 42 on 1951 Convention, namely: the definition of the term displaced (Article 1), non-discrimination (Article 3), freedom of religion (Article 4), access to pengadilam (article 6 Paragraph 1), non-refoulement (Article 33), final clause (Article 36-46).

The 1951 Convention was the starting point of any discussion on the question of refugees. This Convention is one of the two devices to another Refugee Convention, namely the 1967 Protocol. The 1951 Convention designed at the end of World War II, and the definition of a refugee that formulated therein is focused to those who are outside the territory of their home country and become refugees as a result from events taking place in Europe before January 1, 1951. In connection with the increasing refugee problem in the late 1950s and early 1960s, it was felt that there was a need to expand the temporal and geographical coverage of the substance of the 1951 Convention.

In terms, the 1951 Convention and 1967 Protocols observed about refugees international is a human rights instrument. The existence of an international instrument that is one aspect in advancing the protection of human rights (Missbach, 2019). This condition is caused by, among others, that the State has a large role in voicing the national interest at a time when the process of negotiating and drafting a set of international human rights and at the time of the transformation process of the device into national law binding through ratification or accession.

Ratification could strengthen the institution of human rights in the country, although this is not the only indicator for a good human rights. Most human rights norms are actually also already provided for in domestic legislation on the current reform era. Indonesia cannot rule out the existence of an International Convention for granted about human rights (Jacobsen, 2002). Even felt the need to transporting domestic and international factors. Reconciling the needs of domestic and international factors was strengthened when in 1993 that to set up

National Commission of Human Rights. Moreover, after Indonesia has Law No. 39 of 1999 about Human Rights, Law No. 37 of 1999 about Foreign Relations, Law No. 24 of 2000 about International Treaty, Law No. 26 of 2000 about The Court of Human Rights that the scope of those powers is check and decide the matter of human rights violations. Therefore, the need to approach domestic factor and international community hopes it can not be bargained again. A lot of effort can do to draw closer to both of these factors with the inclusion of several provisions of the organic law of a country or by the way do the various international instruments of ratification.

In response to the recomendation submitted by the Government for its approval of Parliament requested has not as much response to a draft of the manuscript, as usual (1951 Convention and the 1967 Protocol) already agreed jointly by the representatives of the participating countries even have done the authentication credentials. If an international treaty in formal juridicial is still a draft law because requires the approval of the Parliament. While some countries have been committing yourself and has even imposed, then the freedom of changing the script of the agreement by Parliament can be said to no longer exist, or in other words Parliament cannot use the amandement right. Under these circumstances the Parliament only in the position of choosing, approving the existing script, or refuse to give consent. This choice is made after hearing the Government's consideration with the rationale which can be accounted for.

The ratification of the 1951 Convention and 1967 Protocol should be done in the form of actual legislation in line with what is required in that Convention (Kadarudin, 2018). The Convention governs the protection of human rights. In connection with this then the fabrication and endorsement of an international treaty must be made with a solid foundation, using the instrument of legislation are obvious, especially one that is regulated in the Law No. 24 of 2000 about International Treaties. This provision is used as a legal basis for the Indonesia to make and ratify an international treaty.

Ratification of an international device of human rights would enhance the international accountability of a country through a more objective and civilized (Heriyanto et al., 2023). Action in the form of reports of state parties in the Monitoring Committee (*treaty monitoring bodies)*, is closed and not through ways that are not civilized, i.e. public humuliation*,* excessive politicization of such the UN Council of Human Rights. Whereas in terms of legal technicality, ratification would strengthen and enrich the national legal system so that it will better ensure the advancement and protection of human rights are better. Ratification could even become a shortcut to further bring closer the gap that exists between legal system at national and international level (Liza Shahnaz et al., 2019).

3.2 Indonesia's Considerations in Ratifying the 1951 Convention

In determining the decision to ratify this international instrument, various considerations must be taken into account, such as political, legal and administrative considerations. From this process a compromise formulation emerged which became corporate values and demonstrated the existence of new laws and minimum and universal standards that could be accepted by a sovereign state (Khairiah et al., 2021). As the desire to reach a unanimous decision in establishing international human rights increases, the universal values of international human rights standards will increase.

If national law provisions already meet international standards, then technically and specifically delegated substantive increasingly prepared a country do the ratification or accession. From the administrative aspects, ratification is the obligation to implement and report on a legal device. Usually this becomes somewhat hindered due to lack of experts who have a level of understanding and mastery against the substance of the international instruments of human rights (Zetter, 1991). Not even rarely even be a contradiction, because there is still a perception that state sovereignty as a pillar of international law can be used as reason to exclude themselves from the peremtory norms.

In this context of Indonesia can make a reservation against the provisions of Article 13, 14, and 17 of the Convention which requires the state to give the same treatment to its own citizens and refugees as well as other

people living in its territory on property rights housing, jobs, and more. Consideration for reserve clauses are for developing countries like Indonesia provides facilities for the citizens of his own country 's it is still difficult for the met, moreover should provides the implementation of the refugees.

The attitude to become parties to the Convention at the same time show a nation spirit in the international effort to fight for human dignity award including the question of refugees. By declaring an endorsement at the Convention, then Indonesia were bound by international obligations arising from this Convention, i.e. accepting the procedure of investigation by the Commission established by Convention. So that the attachment to the Convention was not merely a *reporting obligation*, but as a whole can accept it, including receiving the procedure of investigation by the Commission as provided for in Article 35 of the Convention.

Article 35 of the Convention states that, UNHCR oversee the implementation of the international instrument by states parties, and the state party must provide for the execution of tasks UNHCR these. By accepting the supervision of UNHCR, it is not be construed that a State declared state sovereignity to the international community, because the rights in this Convention belongs to the category the non derogable human rights, because it concerns the right to life, and the right to protection. A state of emergency or in the interest of political stability should not be a reason to reduce the right to life, and the right to personal safety. However, in the circumstances that the State must respect the obligations (*erga omnes)*. The obligation of the sovereign State to respect the right to life and personal safety that can be diihat from Article 3 of UN Declaration of Human Rights as follows any individual has the right to life, freedom and personal security.

As a right in non derogable categorizes, *jus cogens* norms interpreted as, norms have been accepted and recognized by the international community, which is not should not be revoked and no be excluded by anyone (Hathaway & Gammeltoft-Hansen, 2015). As a right which has a characteristic, then the right is binding on countries even if there is no obligation that is required in the Convention or declaration specifically consent. So, by having characteristics such that without ratifying any country (especially the members of the UN), it cannot avoid the obligation. Only by becoming a party to the Convention for the state concerned had a binding international obligation legally to protect the rights and interests of refugees residing in the territory of the sovereignty or the jurisdiction of the state. This is a logical consequence that not only contains a requirement for states parties, but also made provision that allows a state party to do (Collins, 2016). In addition, the intrsument also allows states parties to reserve certain articles that was indeed opened in the Convention.

The 1951 Convention contains three chapters governing the protection of refugees, namely, Article 31 (refugees residing unlawfully in the country of exile), Article 32 (expulsion), and Article 33 (non-refoulement). This principle prohibits the return of a refugee to his home country where survival or their freedom is threatened, due to the existence of racial, religious, nations, members in a particular social group is a the basic international protection. So, non-refoulment principle so must be accepted and respected as a *jus cogens* in international law (Goodwin-Gill, 2021).

S. Prakash Sinha gave the sense of a refugee as follows: "the international political reguee may defined as a person who forced leave or stay out his stay of nationality or habitual residence for political reason rising from acquiring events between that states and its citizens which made he stays there impossible or intolerable, and the who whas taken refugee in another state without having acquired a new nationality" (Sinha, 2011). From the opinion, it can be affirmed that in general, a refugee must meet the following criteria: (a) The reason must be based on political factors; (b) The political problems arising between the State and its citizens; (c) There are circumstances that require such person left the country or place of residence, either voluntarily or forced; (d) Return to their country or place of residence is not possible, because it is very dangerous to himself; (e) The person must ask for refugee status in another country; (f) The person does not get a new nationality.

Citizenship is an important factor for the individual, because he can have citizenship identities, as the basis for the protection of his country (Joppke, 2010). The provisions of this Convention will not damage the order of cultural values, customs, and religious norms and followed by the people of Indonesia. For the Government of Indonesia are fit enough to ratify the international instruments. It is soft enough and flexible, because it not only

contains a prohibition or a requirement for States parties, but also contains a provision that allows a state party to do. In addition to these instruments also allow states parties to reserve a particular article that was indeed opened in the Convention.

The protection of refugees is primarily the responsibility of each state. The issue of protection to refugees and asylum seekers is a classic problem that has become an international issue since a long time (Fitzgerald & Arar, 2018). Already many centuries the country receives and provides protection for foreigners who are victims of oppression or violence in the region. This kind of humanitarian tradition in the 21st century was instituted into an International Convention on refugees. According to the 1951 Convention that someone said to be refugees if: A Refugee is a person who: (a) is outside his/her country of nationality; (b) has a well founded fear of persecution; (c) for reasons of race, nationality, religion, membership of a particular social group, political opinion; (d) is unable or, owing such fear, is unwilling to avail himself of the protection of his country.

Based on that definition, refugees can be concluded that in fact the state has a responsibility to protect its citizens and foreigners living in the country. But it often happens that the government could not afford to carry out such responsibilities and unwilling to provide protection to its citizens so often does someone have to leave his native country and seek shelter into the country another (Gil-Bazo, 2015). From the description it appears that the problem of refugees and asylum seekers has always been a national and international issue.

Each country has the right and obligation in dealing with the problems of refugees that basically is a matter of humanity, still consider the honor of sovereignty which is owned by the State. In terms of the 1951 Convention has provided clues about the treatment that must be given to refugees, among other things: (a) national treatment. In this case it relates to provisions on freedom to practice religion, access to courts, legal aid and so on; (b) the treatment given by the State that granted regular residence where he was covering the protection of industrial property, inventions, trademarks, rights to intelectual property, and others; (c) most favored destinations with treatment. The right to join non-political organization, forms of organization, non profit, or trade organization; (d) to get the same treatment with foreigners residing in the country. For example the treatment to have property rights, the right to benefit, the right to housing, and so on (Sinha, 2011).

Refugee protection issues have won the affirmation in international law, refugee law in particular in international refugee law contains a principle of international law which is universal (Jastram & Marilyn, 2001). Therefore, the international law principle contained in this refugee law binding on any country, without considering he replied: the state in question has become a party or yet and of the Convention. With regard to international instruments and regional instruments concerning refugees at least five general principles relating to international refugee law to know, such as the principle of asylum, non- extradition, non-refoulment, the right and the duty of the state towards the refugees, amenities provided by the countries concerned towards refugees.

3.3 Several Obstacles in Ratifying the 1951 Convention

Indonesia has not ratified the 1951 Convention or the 1967 Protocol. This must of course be considered carefully, considering Indonesia's geographical location which connects two continents and two oceans. Even though Indonesia is not the final destination for refugees, Indonesia's large area can be used as a transit point for refugees, such as Galangan Island for temporary settlement for refugees from Indochina (Torry et al., 2022).

The 1951 Convention is a fundamental international agreement aimed at protecting the rights and welfare of refugees throughout the world. Even though many countries have ratified and implemented this convention, Indonesia faces several obstacles in the process of ratifying this important agreement. This essay explores the challenges Indonesia faced in adopting the 1951 Convention and examines the implications of these obstacles. (a) Geographic and demographic challenges. Indonesia, with its vast archipelago consisting of thousands of islands, faces unique geographic challenges that impact its ability to effectively manage and control migration. The size and complexity of these countries makes it difficult to implement uniform refugee policies across the region, potentially creating disparities in the treatment of refugees. In addition, Indonesia's diverse demographics, with diverse ethnicities, languages and cultures, add complexity to the formulation and

implementation of refugee policies; (b) Lack of domestic legal framework. Ratifying the 1951 Convention requires aligning domestic regulations with the international standards established by the treaty. However, Indonesia currently only has Presidential Regulation Number 125 of 2016 which has not yet been implemented optimally. This regulation is still very limited in scope, thereby limiting institutions in carrying out their obligations. These issues will hamper countries' ability to fully comply with the principles of the convention and provide adequate protection for refugees in their territories; (c) Resource constraints. Indonesia, like many other developing countries, faces resource limitations that impact its capacity to adequately address refugee-related challenges. Allocating sufficient resources for the reception, protection and integration of refugees requires a major financial commitment. Indonesia's competing priorities, such as economic development and poverty alleviation, may limit the resources available to implement a comprehensive refugee policy in accordance with the 1951 Convention; (d) Security concerns. Indonesia's historical and contemporary security challenges, including terrorism and political instability, contribute to concerns about the potential security risks associated with hosting refugees (Vogl, 2019). Governments may be concerned that ratifying the 1951 Convention could inadvertently exacerbate security problems, as refugees may be vulnerable to exploitation or inadvertently become targets of criminal elements; (e) Public perception and political will. Public opinion plays an important role in shaping government policy, and in the case of refugees, negative perceptions or misunderstandings about their impact on local communities can influence political decisions. A lack of public awareness and understanding of the reasons refugees seek asylum and the international obligations under the 1951 Convention can hinder the development of strong public support, which is crucial in the ratification process.

Indonesia faces a series of obstacles in ratifying the 1951 Convention, ranging from geographic and demographic challenges to the lack of a comprehensive legal framework and resource constraints. Overcoming these obstacles requires joint efforts from governments, civil society, and international partners to build awareness, address security concerns, and develop policies that are robust and aligned with the principles of the convention. Ratifying the 1951 Convention is not only a legal obligation but also a humanitarian imperative that can contribute to maintaining regional stability and upholding the rights of vulnerable groups in Indonesia.

The handling of refugee problems is currently regulated in Presidential Regulation Number 125 of 2016. However, until now, there have been no derivative regulations from any government agency that explain the legal norms of this presidential regulation, giving rise to new problems in the field. For example, coordination has not been established, local governments have not been willing to allocate budgets, independent refugee shelters are not yet adequate, law enforcement for refugees who violate regulations, and so on. In many cases, local governments feel an additional burden because they receive objections to the entry of foreigners (refugees) into the region. The sharp differences between regional culture and refugees have the potential to cause social conflict (Briskman & Fiske, 2016). Apart from that, the assimilation process between refugees and local residents actually creates new burdens because the children who are there as a result of assimilation are not taken as well as during repartriation or resettlement.

The current difficulties in handling refugees can be described through two handling models as follows: (a) Security model. This model places greater emphasis on sovereign (state) rights because refugees are often considered a threat to the state and must always be controlled. This security model consists of two parts, namely controlling (internal) and protecting (external). The internal approach is a direct control mechanism for society, for example in the form of regulations governing refugees, immigration issues and so on. Meanwhile, the external approach focuses on foreign policy, the role of the UN and others. (b) Individual rights model. This model places more emphasis on individual rights, because refugees are seen as individuals who must be protected according to the 1951 Convention and the 1967 Protocol. Apart from that, they must also receive protection according to human rights doctrine. Refugees must receive justice and protection from persecution or torture in accordance with human dignity.

The most important thing to do in dealing with the refugees was the political bilateral policies between countries of origin of refugees (*country of origin)*, with a refugee receiving country (*the host country)*. The development of the rule of law for the refugee protection can be implemented in many ways, namely: (a) Access the instruments of law or international human rights of refugees, among others, the Convention of 1951 and 1967 Protocol; (b)

Drawing up legal instruments or regional human rights. It can be seen from what is done in the Organization of the African Union through the 1969 Convention, then European countries through the 1985 Schengen Convention, and 1990 Dubin, as well as the countries of Latin America through 1984 Cartagena Declaration; (c) Draw up national legislation on refugees, this legislation should be done by developing a comprehensive national law and is not contrary to the universal principles of refugee protection.

3.4 Is Indonesia Trapped in a Refugee Maze?

In 2019, asylum seekers and refugees again demonstrated in front of the UNHCR Jakarta Representative Office. This action was repeated, after previously there was no agreement on refugee relocation initiated by the DKI Jakarta Government. They demanded that they be immediately transferred to the destination country, which until now has not been realized by UNHCR. "Imagine, they (UNHCR) have been lying to us for seven years, how can we believe it," stressed the demonstrators.

To date, there are around 13,657 refugees in the waiting period for the resettlement process. A total of 5,242 of them lived independently (not receiving assistance from the International Organization for Migration) and 8,415 were placed in shelters in several areas. The number of arrivals of asylum seekers and refugees to Indonesia is not commensurate with the number of settlements or placements in receiving countries, including those voluntarily repatriated and deported from Indonesian territory. Moreover, in the last two years, there has been a significant decline in refugees resettled in third countries.

There are at least four attractions for refugees from being in Indonesia to their destination in Australia, namely: (a) Indonesia is the closest country to the route for illegal foreign immigrants; (b) Indonesia's maritime sovereignty still has many loopholes and is not fully protected. So, foreign parties can easily enter without immigration checks; (c) The existence of UNHCR is an attraction for foreign refugees who have money; (d) Indonesian citizens and foreigners, even officials who use asylum seekers and refugees as a business venture. Based on data the author got from refugees in the Kalideres area, they have to pay at least around US$ 5000 - 10,000 per person to get to Australia by first transiting to Indonesia. They handed over the money to a group of agents suspected of being a human smuggling syndicate (Syahrin, 2017).

On several occasions, UNHCR often intervenes in government policies in the law enforcement process against asylum seekers and refugees. They don't even hesitate to use humanitarian arguments to override positive law. For example, UNHCR asked the Directorate General of Immigration not to deport refugees who have violated the law, even those who have been sentenced to prison. UNHCR is of the opinion that their right to asylum remains intact and should not be reduced in the slightest.

UNHCR's policy as an institution that determines refugee status needs to be questioned. The extent of UNHCR's independence and transparency in providing refugee cards for asylum seekers. Not a few asylum seekers who have fulfilled the requirements as refugees, even at the final stage of the interview, have their applications rejected. Meanwhile, there are some asylum seekers who (perhaps) do not meet the requirements, and are instead given refugee cards. Not to mention the issue of how long the process of issuing a refugee card takes. There are some who have a fast process, around three months, but quite a few have to wait more than two years and have not received a refugee card.

After getting a refugee card, it doesn't mean the problem is over. The certainty of the placement time to a third country is also an issue. Some have waited more than seven years and have not been moved. On the other hand, there are some who have just received a refugee card, after less than a year they are immediately transferred to a third country.

So what about asylum seekers who are denied refugee status by UNHCR? These people cannot be deported (forcibly) by the Directorate General of Immigration. UNHCR, through IOM, requested that they only be returned to their country of origin voluntarily (assisted voluntary return). What if they don't want to be sent

home? How long do they have to stay in Indonesia? Who is responsible for their lives in Indonesia. Should the state budget be used to deal with this problem?

UNHCR representative in Indonesia, Thomas Vargas, stated that his party has limited funds to handle asylum seekers and refugees in Indonesia. He explained that the funds that UNHCR currently has are only able to help around 300 to 400 of the total refugees and asylum seekers spread across Indonesia. Therefore, he plans to collaborate with several parties to give refugees the opportunity to live independently in Indonesia. In fact, UNHCR and IOM also continue to urge the Indonesian Government to provide access to education and employment for refugees.

Empirical facts like this should be of concern to the government. Don't let the existence of UNHCR and IOM actually benefit certain parties and harm Indonesia as a transit country. There are many other negative impacts which will certainly threaten Indonesia's existence as a sovereign country. The question then is, is Indonesia 'trapped' by UNHCR? Or are you trapped in a maze of refugees?

3.5 Temporary Emergency Solution for Refugees

In dealing with refugees and asylum seekers in Indonesia, UNHCR is an important actor in handling this problem. UNHCR has tried to carry out its mandate with various measures to provide international protection to refugees or asylum seekers, namely: (a) Providing guarantees for those identified as refugees who are protected from refoulment or forced return to their country of origin where their lives and freedom are threatened and persecuted, as well as finding long-term solutions for the future of refugees by seeking placement in a third country, or assisting in the process voluntary return to the country of origin (Fiddian-Qasmiyeh et al., 2014); (b) In the process of waiting for the final decision on the realization of a long-term solution, UNHCR guarantees refugees and asylum seekers by facilitating all their basic needs, as well as educational services, language courses, counseling services, health services, and others (Rizka & Prabaningtyas, 2019); (c) In addition to carrying out its duties in Indonesia, UNHCR continues to strive for refugee rights by providing input which includes a step-by-step process, providing support to the government in developing effective mechanisms to address refugee and migration protection problems in Indonesia. Steps towards accession to the 1951 Convention and the 1967 Protocol have not yet been implemented, because to date Indonesia has not ratified the two legal instruments regarding the determination of refugee status; (d) UNHCR collaborates with the Indonesian government in handling refugees, by socializing the government's handling guidelines when finding refugees and asylum seekers at the border, before finally being handed over to UNHCR in the form of training for immigration officers and the National Police; (e) Apart from the efforts made by UNHCR in handling refugees and asylum seekers in Indonesia, there are also factors that hamper the handling mechanism. Indonesia is not a country that has ratified the 1951 Convention and the 1967 Protocol, and national legal regulations have not been able to accommodate immigration interests in resolving the refugee problem. For example, there are no special immigration administration procedures, no provisions regarding temporary residence permits, handling mechanisms and evaluation processes. Therefore, there are differences in the handling and treatment of refugees and asylum seekers between UNHCR officers and Indonesian government officials.

As a country that upholds respect and enforcement of human rights, there should be a legal arrangement for refugees and asylum seekers in this country, both legal and institutional mechanisms (Long, 2013). So the 1951 Convention and the 1967 Protocol became an urgent matter for ratification, considering the increasing rate of international refugees entering Indonesia. This can also reduce the government's dependence on UNHCR in handling refugee problems in Indonesia. In this way, the process of handling refugees can be more efficient, considering the limitations that UNHCR has in terms of human resources and costs. For example, if ratification has been carried out, the Indonesian government can make a regulation that places the process of determining refugee status at Immigration Offices and implements obligations that refugees must comply with while in Indonesia. So that efficiency can be achieved which is certainly beneficial for refugees to obtain their rights in accordance with the 1951 Convention, including the right not to be punished for entering a country's territory, the right not to be returned to their country of origin, the right to litigate before a court, the right to receive

education, the right to marry, the right to obtain identity, the right to obtain identity and the obligation of refugees is to obey the law where they are and must maintain public order.

If Indonesia does not ratify the Convention and Protocol for reasons of national interest, at least Indonesia has a more comprehensive legal framework for regulating refugees and asylum seekers in its immigration laws and regulations. The Presidential Regulation has not been able to provide legal certainty for refugees while in Indonesia, so it needs to be adjusted by adopting humanitarian principles based on international standards. However, what needs to be noted is that the implementation of this rule must not put aside national interests and burden state finances. Thus, it is hoped that even though it has not ratified the 1951 Convention and the 1967 Protocol, Indonesia will still respect the basic rights of refugees by making national laws that are human rights oriented. For example, granting temporary immigration status which will make it easier to control and supervise foreigners. Currently, state officials only have quantitative data, while UNHCR only has qualitative data. Likewise, there is a need for increased cooperation between UNHCR and the Indonesian government, as well as resettlement countries in handling refugees and asylum seekers, because the refugee problem does not stand alone and cannot possibly be resolved by just one actor (Hashimoto, 2018).

There is a need to repair or renew and increase temporary accommodation facilities for refugees which are already inadequate, because they are not criminals, but rather victims of human rights violations that occurred in their countries of origin (Heriyanto et al., 2023). Increased security ensures safety and protection for refugees and asylum seekers, by initiating a legal framework or international agreement between source countries, transit countries, destination or resettlement countries and with international organizations and NGOs, to prevent and anticipate practices that are detrimental to refugees and asylum seekers from actors who deliberately seek profits by mobilizing migrant movements, such as human smuggling and human trafficking (Afriansyah, 2019).

4. Conclusion

There needs to be a strong desire from Indonesia to immediately become a party to the 1951 Convention and the 1967 Protocol, for this reason there needs to be good preparation from a technical, political and juridical aspect in ratifying these two international legal instruments. This is based on the substance of international human rights instruments. Indonesia is a country that upholds human rights as mandated in various regulations, such as the 1945 Constitution, TAP XVIII/1998, Law No. 39 of 1999, Law No. 37 of 1999. Handling refugee problems must uphold human rights. Not only normative, but also implementation in the field.

The relevance of ratifying this Convention will increase a country's international accountability in a more objective and civilized manner. Meanwhile, in terms of technical legal considerations, this ratification will strengthen and enrich national legal instruments so as to better guarantee the progress and protection of human rights. Ratification can even be a shortcut to emphasize existing views between legal instruments at the international and national levels. The obstacles are directed into two aspects, namely security and legal aspects. The security aspects posed by refugees are often considered a threat to the country. Meanwhile, from a legal perspective, this is due to the lack of comprehensive derivative regulations from Presidential Regulation Number 125 of 2016, which can lead to coordination between agencies in the field.

As a legal country that highly respects human rights, ratification of the 1951 Refugee Convention and the 1967 Protocol must be a priority. The second instrument is relevant because its substance is not only full of regulations regarding human rights but is also in line with cultural values and norms in Indonesia. Therefore, the ratification process needs to consider the country's readiness, both from a technical, political and legal perspective, because these aspects sometimes pose challenges. In this case, ratification is expected to provide an overview of national and international legal instruments. This is important to create good bilateral relations between countries of origin, transit countries and refugee destination countries.

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The Influence of Dante's Thinking Over the Notions of Sovereignty, Imperialism, and its Potential in the Realm of the Fourth Industrial Revolution and Blockchain Networks

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Abstract
Ep. XIII provides a hermeneutic instrument to test legal validity today in the light of multi-layered phenomena shaping the ecosphere and infosphere. While De Saussure's thrust regarded the one-to-one relation between a word and its meaning, Dantean multi-sensory theory may give more consistent framework to perceive the evolution of reality and its components at the time of the Fourth Industrial Revolution (Schwab, 2014).

Keywords: Medieval Literature, Dante, Law, Semiotics, De Saussure, Legal Validity, Blockchain

1. Introduction

This study aims at individuating some correspondences among Date's thinking and the Western legal and political traditions. Firstly, the analysis will examine the concepts of unity and order, representing a recurring pattern informing absolutism and imperialism. At a second stage, the attention will be drawn to the changes produced by the Fourth Revolution with a particular focus on permissioned blockchain. To this end, the Dantesque thought may actively concur to frame this phenomenon considering the lack of a univocal classification by legal and social sciences. In concrete, the argument of the *sovra*-senses theory can contribute to putting into relation traits pertaining to past and present societies. The argument is built on the hermeneutic contribution the above-mentioned theory may bring in terms of legal validity through diachronic continuity. To put it differently, if these developments are only ascertainable in fact, the following consideration would try to establish some ontological relations with the existing base of cultural and legal principles. In that regard, the arguments below can also set limits to technological disruption limiting its unfairness. For the sake of this study, It must first be said that this new emerging legal approach *flattens* the underlying hierarchy existing among state organs therefore questioning the role and position of statues, their formation, the State, and ultimately of the law itself. From the one hand, the inner traits of smart contracts can overshadow nuanced legal reasoning given the inflexibility of algorithms.

Overall, it should be remembered that algorithms process bulks of data in an ahistorical, atemporal, and therefore a-contextual manner. By contrast, human-based decision-making (e.g. a court's decision) operates a deductive choice wherein the temporal dimension plays a central role for the qualification of facts. Methodologically, the suggested approach aims to coordinate traditional forms of governance (i.e. statehood and imperialism) with emerging technologies (i.e. blockchain networks and AI). In so doing, Dante's exegetical techniques and their implementation can establish their interoperability through contextuality. In turn, this suggested method tends to establish the adjustment of legal validity categories before technological changes and algorithmic rigidity.

2. Unity, *ordo*[1], and De Monarchia as pillars of Western Society

The evolution of medieval tradition principles shaped Western society's traits until today. In this section, the reference to unity and *ordo* would constitute the basis to consider socio-institutional developments in the Western world in a seamless manner. Therefore, the notion of unity characterizes Medieval Europe[2] in terms of uniformity in law, religion, and values. In turn, unity produces *ordo* understood as harmony, or righteousness (Lingat 1998)[3] among people, the cosmos, and supreme powers. The latter ensures happiness, and stability to the social structure. To this end, the follow outline from medieval sources (i.e. *auctoritates*) would explain their interplay. In sum, they converge on the thematic nexus of units, order, and the nuanced coexistence between the papacy and temporal power within the medieval ecclesiastical, legal, and societal framework.

Die summa über das Decretum Gratiani, J. Friedrich von Schulte (ed.) Giessen 1891[4].

«There it is said that these are the two by which the world is governed, namely, the priesthood and the kingdom; but it is the same. For it is governed by them, but by these, i.e. by this, that you may understand, the priesthood by natural right, i.e. divine, to rule the world, and the kingdom by manners, i.e. to do the same by international and civil law».
Ibi dicitur quia haec duo sunt, quibus mundus regitur, scil, sacerdotium et regnum; sed idem est. Nam ab eis regitur, sed his, i.e. per hoc, ut intelligas, sacerdotium per ius naturale, i.e. divinum, mundum regere, et regnum per mores, i.e. per ius gentium et civile idem facere.

[1] The concept of *ordo* encapsulates a hierarchical framework governing societal, cosmic, and theological structures. Derived from Latin *ordo* denotes an ordered arrangement reflecting divine harmony. Rooted in Augustinian and Thomistic traditions, it elucidates a cosmic hierarchy mirroring the celestial order. Ecclesiastical and feudal systems emulate this divine structure, emphasizing the subordination of elements for societal stability.

[2] Cf. the maxim attributed to Jean Brodeau (XVI Century) «One law, one religion, one empire» *Unum ius, una religio, unum imperium*.
A nuanced exploration of individuality and unity can be found in the thought of Scotus. More precisely, his profound engagement with metaphysical questions, and his concept of haecceity added a unique dimension to the broader discussion of unity within the context of God's creation.
In Scotus's philosophical and theological framework, haecceity refers to the "thisness" or individuality of each entity. It goes beyond the general nature of a thing and addresses its specific, concrete existence as a distinct entity. This concept is especially pertinent when considering the unity of God's creation and the theological implications of individual existence within that overarching unity.
Scotus's exploration of haecceity can be situated within the broader context of the medieval debate on universals and particulars. While thinkers like Thomas Aquinas and Peter Abelard grappled with the nature of universals – abstract entities that exist beyond individual instances – Scotus shifted the focus to the particular, emphasizing the irreducible singularity of each individual being.
The theological implications of Scotus's concept of haecceity are profound. It challenges a simplistic understanding of unity by acknowledging the diversity inherent in God's creation. Each individual being, according to Scotus, possesses a unique haecceity that contributes to the overall diversity within the unified framework of the divine plan.
Furthermore, Scotus's concept of haecceity intersects with his broader theological contributions, such as his defense of the Immaculate Conception. In arguing for the singular privilege of Mary being conceived without original sin, Scotus emphasized the importance of recognizing the particularity and uniqueness of each individual in God's redemptive plan.
The concept of haecceity also engages with the broader theological question of human identity and the nature of God's knowledge. Scotus proposed that God's knowledge of individuals is not based on abstract universals but involves a direct and intimate knowledge of each entity's haecceity. This perspective underscores the individual's significance within the divine order, emphasizing a personalized relationship between the Creator and the created.
Scotus's emphasis on haecceity challenges monolithic conceptions of unity, introducing a dimension of diversity within the divine plan. While unity remains a fundamental theological principle, haecceity invites theologians to grapple with the intricacies of individuality and particularity within the context of God's overarching unity.

[3] To continue, the comparison between Dharma (Lingat 1998) and *aequitas* may result fruitful.

[4] This summary provides a nuanced commentary, shedding light on the interplay of ecclesiastical structures and legal doctrines. Within this context, the emphasis on units is palpable, as the Summa strives to elucidate the various components and interconnections within the *Decretum,* creating a cohesive understanding of canonical principles.

Concilium Parisiense, a. 829, Ch. II-III, MGH, Concilia, II/II, Hannover-Leipzig, 1908[5].

«That the universal holy Church of God is one body and its head is Christ. […]
That the body of the same church is principally divided into two exceptional persons. In the main, then, we know that the body of the whole holy Church of God is divided into two exceptional persons, the priestly and the royal, as we have received from the holy fathers.
On which subject Gelasius, the venerable bishop of the Roman see, writes to the emperor Anastasius thus: They are to be given account in the divine examination».

Quod universalis sancta Dei Ecclesia unum corpus eiusque caput Christus sit. […]
Quod eiusdem ecclesiae corpus in duabus principaliter dividatur eximiis personis. Principaliter itaque totius sanctae Dei Ecclesiae corpus in duas eximias personas, in sacerdotalem videlicet et regale, sicut a sanctibus patribus traditum accepimus, divisum esse novimus.
De qua re Gelasius Romane sedis venerabilis episcopus ad Anastasium imperatorem ita scribit: Duae sunt quippe, inquit, imperatrices augustae, quibus principaliter mundus hic regitur, auctoritas sacrata pontificium et regalis potestas, in quibus tanto gravies pondus est sacerdotum, quanto etiam pro ipsis regibus hominum in divino reddituri sunt examine rationem.

Corpus Iuris Canonici, col. 497 [C.2 q.7 d.p.c. 41][6].

«So and b[lessed] Ambrose excommunicated the emperor, and prevented him from entering the church. For just as it is not without reason that the priest carries the sword, so it is not without reason that the priests receive the keys of the church. He carries the sword for the vengeance of the wrongdoers, but the praise of the good has the keys for the exclusion of the excommunicated and the reconciliation of the penitent».

Sic et b. Ambrosius inperatorem excommunicavit, et ab ecclesiae ingress prohibuit. Sicutr enim non sine causa idex gladium portat, ita non sine causa claues ecclesiae sacerdotes accipiunt. Ille portat gladium ad vindictam maefactorum laudem vero bonorum isti claues habent ad exclusionem excommunicandorum et reconciliationem penitentium.

Corpus Iuris Canonici, col. 497 [C.2 q.7 d.a.c. 42].

«But it must be noted that there are two persons by whom this world is governed, the royal and the priestly. As kings are present in the causes of the world, so priests in the causes of God».
Sed notandum est, quod duae sunt personae, quibus mundus iste regitur regalis cidelicet et sacerdotali. Sicut reges present in causis saeculi, ita sacerdotes in causis Dei.

Overall, the above-mentioned coeval sources acknowledge the two supreme powers which are the Empire, and the Church. The former regulates the earthly aspects of human life. The latter aims at ensuring thesalvation of the soul.

During the Middle Ages severe disputes arose regarding a possible hierarchy among them. In a concise manner, Dante's *De Monarchia* outlines a synthesis resulting in their coexistence. Put differently, they arecomplementary but separate. They both should refrain from interfering in the other's sphere.

The following passage (Dante, 1313)[7]. points out the absolute need of humanity for them. In concrete, the argument is built on their necessary interdependence producing their mutual enhancement.

[5] Chapters II and III of this Council delineate the organizational facets of the Church, illustrating the concerted effort to establish and maintain a structured ecclesiastical hierarchy. The emphasis on order is evident in the meticulous delineation of roles and responsibilities within the ecclesiastical domain, fostering a sense of cohesion and stability.
[6] The coexistence between the papacy and temporal governance is carefully navigated, reflecting the nuanced relationship between ecclesiastical and secular authorities during the medieval period. These canonical excerpts underscore the importance of maintaining a harmonious equilibrium, acknowledging the distinct yet interrelated spheres of influence wielded by the papacy and temporal rulers.
[7] De Monarchia, III, XI, §10.

«For this reason, it must be known that, just as there is relation to relation, so relative to relative. If therefore the Papacy and the Empire, being relations of superposition, must be reduced to the respect of superposition, from which respect they descend with their differentials, Pope and Emperor, being relative, will have to be reduced to someone in which the same respect of superposition is found without other differentials».

Propter quod sciendum quod, sicut se habet relatio ad relationem, sic relativum ad relativum. Si ergo Papatus et Imperiatus, cum sint relationes superpositionis, habeant reduci ad respectum superpositionis, aquo respectu cum suis differentialibus descendunt, Papa et Imperator, cum sint relativa, reduci habebunt ad aliquod unum in quo reperiatur ipse respectus superpositionis absque differentialibus aliis[8].

Therefore, unity turns out to be the paradigm, as an unavoidable element for ensuring order. From another angle, Dante confirms this formulation in Paradise Chant VI of the *Comedy* in the renowned invective of Justinian[9].

[8] *Ibidem*, «At this point it must be understood that as relation stands to relation, so stands related thing to related thing. Hence if the Papacy and Empire, being relations of authority,5 must be measured with regard to the supreme authority from which they and their characteristic differences are derived, the Pope and Emperor, being relative, must be referred to some unity wherein may be found the supreme authority without these characteristic differences».
Translation by A.H. Reinhardt, available at https://oll.libertyfund.org/title/reinhardt-de-monarchia#lf1477_label_096

[9] Vv. 97-111:

«Now you can judge those I condemned above,
and judge how such men have offended, have
become the origin of all your evils.

For some oppose the universal emblem
with yellow lilies; others claim that emblem
for party: it is hard to see who is worse.

Let Ghibellines pursue their undertakings
beneath another sign, for those who sever
this sign and justice are bad followers.

And let not this new Charles strike at it with
his Guelphs—but let him fear the claws that stripped
a more courageous lion of its hide.

The sons have often wept for a father's fault;
and let this son not think that God will change
the emblem of His force for Charles's lilies».

***

Omai puoi giudicar di quei cotali
ch'io accusai di sopra e di lor falli,
che son cagion di tutti vostri mali.

L'uno al pubblico segno i gigli gialli
oppone, e l'altro appropria quello a parte,
sì ch'è forte a veder chi più si falli.

Faccian li Ghibellin, faccian lor arte
sott' altro segno, ché mal segue quello
sempre chi la giustizia e lui diparte;

e non l'abbatta esto Carlo novello
coi Guelfi suoi, ma tema de li artigli
ch'a più alto leon trasser lo vello.

Molte fiate già pianser li figli
per la colpa del padre, e non si creda
che Dio trasmuti l'armi per suoi gigli!

With the advent of the Modern Age, this Pan-European dimension has gradually faded away giving the pace to forms of territorial particularism[10]. In turn, they evolved in modern absolute monarchies. Nonetheless, while considering Hobbes' *Leviathan* (1651), it is possible to perceive how these components survived. Hence, they have been replicated in several European regions. Similarly, medieval forms of regulation, wherein custom[11] was put at their core, have been replaced by the law of the sovereign corresponding to his will[12]. Within this frame, the nature of customs was subsidiary.

Thus, the pursuit of sovereign primacy over centrifugal centers of power connotates the Modern Age. And yet, this modern aspiration is still consonant with medieval frame of mind yet again *signified* by the thought of Dante (1313) [13].

«Finally, if there is one particular kingdom, the end of which is that of the commonwealth with greater confidence in its tranquility, there must be one king who rules and governs; otherwise, not only will those who exist in the kingdom not reach their end, but the kingdom will also slide into destruction, according to that infallible Truth: "Every kingdom divided against itself will be desolated"».

Si denique unum regnum particolare, cuius finis est is qui civitatis cum maiori fiducia sue tranquillitatis, oportet esse regem unum qui regat atque gubernet; aliter non modo existentes in regno finem non assecuntur, sed etiam regnum in interitum labitur, iuxta illud infallibilis Veritatis: "Omne regnum in se divisum desolabitur[14].

In this given scenario, it can be also envisaged how the modern age norms are in line with this conceptual framework. Factually, they exclusively promote the standpoint of the sovereign to overcome every form of particularism eventually resulting into centrifugal forces. In contrast, customary practices are rooted in local and often decentralized norms. As a result, they may challenge the unitary authority envisioned by Hobbes creating tensions between community-based governance and the centralized control advocated by the *Leviathan*. From another angle, they can be considered rivalrous to royal regulatory frameworks.

In the Medieval frame of mind, customary practices were integral to feudal structures where local lords wielded significant influence. This decentralized governance model clashed with the aspirations of central authorities to consolidate power. The tension between local customs and overarching state regulatory frameworks became evident as states sought to establish a unified legal order[15].

[10] Inheritance of fees

[11] Basically, custom consists of the two following components: *diuturnitas* (=duration) and *opinio iuris sive necessitatis* (= belief in law or necessity). The former deals with the longevity of a practice holding significant weight in determining its legitimacy and acceptance within a community. Customary practices that endured over an extended period acquired a certain authority and were perceived as reflective of the collective will of the community. This temporal dimension contributed to the stability and continuity of legal norms, providing a sense of historical rootedness to the evolving legal framework. The latter underscored the importance of a shared belief within the community that a particular practice was not only habitual but also carried a legal obligation. This subjective element distinguished mere habitual actions from legally binding customs, emphasizing the necessity for individuals to perceive a customary practice as obligatory to reinforce its legal standing.

[12] «Quod principi placuit, legis habet vigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat». (= What has pleased the ruler possesses the force of law, as, for example, when the royal law, enacted by his authority, grants to the people and places upon them all its authority and power) (D., I, 4, 1 pr.)

[13] De Monarchia, Liber I, V, §8.

[14] *Ibidem*, «Finally, if we consider the individual kingdom, whose end is that of the city with greater promise of tranquillity, there must be one king to direct and govern. If not, not only the inhabitants of the kingdom fail of their end, but the kingdom lapses into ruin, in agreement with that word of infallible truth, "Every kingdom divided against itself is brought to desolation" ». Translation by A.H. Reinhardt, available at https://oll.libertyfund.org/title/reinhardt- de-monarchia#lf1477_label_096

[15] By way of example, we can consider Amadeus VIII's *Decreta seu Statuta*. This consolidation represents a seminal legal document that encapsulates a distinctive hybrid approach to governance at the turn of Medieval and Modern age. This XV Century set of decrees and statutes reflects the dynamic tension between the adaptability of local customs and the regulatory rigidity imposed by ducal norms. Amadeus VIII acutely sought to strike a delicate balance that accommodated the diverse customs and traditions prevalent within his domain. Recognizing the importance of local autonomy, the *Decreta* acknowledged the flexibility inherent in regional practices. It provided a nuanced framework that allowed communities to retain elements of their own legal and cultural heritage, fostering a sense of identity and continuity.
Simultaneously, Amadeus VIII recognized the necessity for a centralized authority to maintain order and stability across his territories. The *Decreta* imposed a set of ducal norms, establishing a standardized legal foundation transcending local variations. This duality created a unique governance model, wherein the adaptability of customary law coexisted with the stability offered by overarching regulations. For more details, see, I. Soffietti, C. Montanari, 'Il Diritto negli Stati sabaudi: fonti ed istituzioni (secoli XV-XIX)', Turin, Giappichelli, 2008, 25ff.

In that regard, Hobbesian theory of the so-called artificial man (Bobbio & Gobetti, 1993) can explain the systemic implications in this arrangement. At this point, the acts of the sovereign are justified because they move from ethical and political principles. In turn, these disciplines are «demonstrable like geometry for we have created the principles thanks to which we know what is just and what is fair, and what is unjust and what is unfair, that is, the cause of justice, which are laws and compacts» (Hobbes, 1656) [16].

To complete, «for Hobbes, the state is one of these machines, produced by human beings in order to compensate for the shortcomings of nature, and to replace the deficient products of nature with a productof human ingenuity, that is, an *artificium»* (Bobbio & Gobetti, 1993). In addition, Althusian argumentations (Althusius, 1617) [17] on the necessary hierarchical coordination for human forms of interaction reinforces this view.

Then, the *Leviathan* depicts the ultimate accomplishment of absolute thought. It collects the anonymous sum of all individuals deprived of any kind of particularism. At a visual level[18], their bodies' merging sets the so-called artificial man corresponding to the State creation.

(Credits: British Library – detail from the frontispiece)

For the purpose of this study, it can be observed that these outputs' principles are common to the medieval experience. The difference lies in the possibility for the modern man of direct approaching the laws of nature also

[16] In keeping with his *Leviathan*, Hobbes posited that individuals, like points in space, relinquish their natural liberty to a sovereign authority—the Leviathan—much as lines converge at a single geometric point. This convergence symbolizes the unity mandated by Hobbes for the preservation of order and security in society.
Again, the artificial man, a metaphorical construct representing the Leviathan, encapsulates another geometrical theorem in Hobbesian philosophy. Just as a geometrical figure unifies disparate points through its contours, the artificial man unifies individuals, subsuming their natural chaos into the ordered structure of the sovereign. This geometrical analogy illustrates the necessity of a centralized power, resembling the geometric center that governs the configuration of a shape.
Hobbesian political principles, therefore, exhibit a demonstrable nature when approached through the lens of geometric theorems. Much like the Euclidean precision that underlies mathematical reasoning, Hobbes' articulation of political order as geometric constructs provides a methodical framework for understanding and justifying the principles of unity and authority in his Leviathan.
[17] More properly, the author introduces the concept of *societas* which constitutes a pivotal element in understanding the intricacies of societal organization. The term encapsulates the essence of political association, highlighting the interconnected and interdependent nature of social entities within a broader framework. Althusius's conceptualization of *societas* draws intriguing parallels with the notion of hierarchical coordination, where societal structures are envisaged as dynamic networks operating across various levels.
Inherent in Althusius's work is a nuanced perspective overcoming the mere acknowledgment of hierarchy. It incorporates the concept of *consociatio* or partnership. This addition underscores the cooperative aspect of hierarchical coordination, elucidating the idea that social entities collaborate within the framework of hierarchical structures. Althusius's articulation of *consociatio* resonates with Althusser's argument, emphasizing that hierarchical structures serve as essential frameworks for addressing inconsistencies at societal level. The cooperative nature of these associations is consonant with the necessity of hierarchical coordination in navigating the complexities of human interaction.
Crucially, Althusius introduces the theme of subsidiarity. Then, this principle converges with Althusser's concerns regarding conflict resolution within society. In sum, it posits that decision-making authority should reside at the lowest competent level, reflecting a shared belief that hierarchical coordination provides a structured means of addressing societal tensions. This alignment underscores the parallel emphasis both philosophers place on the practical resolution of conflicts through structured hierarchical mechanisms.
[18] For the past, cf. the Elizabethan Great chain of being, wherein the monarch's aura has preplaced the cosmical order.

extending to government. Consequently, the dogmatic approach is gradually replaced by empiricism (Galilei, 1610)[19], and later by the experimental method (Galilei, 1623)[20].

3. Blockchain functioning

In keeping with the above, some conceptual analogies can be established between the Leviathan and blockchain networks. Concretely, they both work as infrastructures creating cohesion among consociates. While the former does create an almost indissoluble bound as per the illustration above, the latter does in contrast establish more abstract forms of relation among data[21], assets, and ultimately people. Simply put, it can be compared to a *fil rouge*.

More precisely, the blockchain is «a method of recording data - a digital ledger of transactions, agreements, contracts, anything that needs to be independently recorded and verified as having happened.

The big difference is that this ledger isn't stored in one place, it's distributed across several hundreds or even thousands of computers around the world. No one person or entity can control the data, which makes it transparent.

The data forms blocks that are encrypted into a continuous chain using complex mathematical algorithms. Once updated, the ledger cannot be altered or tampered with, only added to, and it is updated for everyone in the network at the same time» (BBC, 2017).

By way of example one can consider the sequence below (1-6) which describes the functioning of blockchain technology:

1. A wants to send money to B.
2. The transaction is represented as a block.
3. The block is transmitted to every node in the network.
4. The network nodes approve the transaction and validate it.
5. The next block can be added to the chain providing an indelible and transparent record of transactions.
6. Money goes from A to B

From another angle, blockchain can be understood as the conjunction of «two of the central legal devices of modernity: the ledger and the contract» (Maurer & DuPont, 2015).
Therefore, it is possible to grasp how this technology empirically enables the overcoming of territorial- physical limits. Specifically, the ductility of the blockchain allows it to be applied in the most diverse areas, making it a general-purpose technology on a par with the Internet and electricity (Sklolnikoff, 1993)[22].

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[19] In *Siderus Nuncius* groundbreaking work, Galileo shared his telescopic observations, including his discovery of the moons of Jupiter and the phases of Venus. This challenged the prevailing geocentric model and provided empirical evidence for the heliocentric Copernican system. Galileo's meticulous observations and evidence-based approach laid the foundation for the scientific method, emphasizing the importance of empirical observation, experimentation, and the rejection of purely theoretical reasoning. Galileo's work had profound implications for society, challenging established views of the cosmos and prompting a shift from an Earth-centred to a sun-centred understanding. The impact of *Sidereus Nuncius* extended beyond astronomy, influencing the broader scientific community and encouraging a more empirical and observational approach in scientific inquiry. As Galileo stated in his work, «Nature is relentless and unchangeable, and it is indifferent as to whether its hidden reasons and actions are understandable to man or not». This sentiment encapsulates his commitment to the pursuit of objective truth through empirical investigation.

[20] In *The Assayer*, Galileo defends the Copernican heliocentric model and advocates for a scientific approach grounded in empirical evidence and mathematical reasoning. His famous assertion, «E pur si muove» («And yet it moves»), encapsulates his conviction in the Earth's motion around the sun, despite facing opposition from prevailing religious and scientific views. *Il Saggiatore* played a crucial role in advancing the scientific method by emphasizing the importance of experimental verification and mathematical precision. Galileo argued for a separation between the realms of science and theology, asserting that the book of nature is written in the language of mathematics.

[21] Cf. the wide definition of data according to art. 4 GDPR whereby *personal data* means any information relating to an identified or identifiable natural person (*data subject*); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person […].

[22] General Purpose Technologies (GPTs), also known as transformative technologies or foundational innovations, represent a distinct category of innovations that possess the capacity to reshape entire industries, economies, and societies. These technologies, characterized by their broad applicability and profound impact, have been a focal point of academic inquiry and policy discussions. This essay aims to

More specifically, if standard contracts have helped to significantly reduce transaction costs by making similar contractual categories homogeneous and therefore scalable, the blockchain reduces them to zero[23]. Considering that the blockchain is a secure data structure and also «a protocol for establishing consensus on valuable information within a flat network without hierarchy» (Rejeb, 2019), the role of subjects certifying the validity or regularity of the transactions that take place is eliminated. On a practical level this is possible since «every user has a continuously authoritative copy. Anyone who has access to the ledger has access tothe same full transaction history and the ability to verify the validity of all records» (Gervais, 2018).

Then, the code «enabling nodes in the network to interact with the data stored on a blockchain and act autonomously of some conditions are met is commonly known as a smart contract» (Ibidem).

First of all, smart contracts are «autonomous software agents [...] that automatically respond to inputs according to pre-programmed parameters» (Gervais, 2018). Thus, there is no link with the «complex social dimension of contracts (Rantala, 2017)» since «the finality of executed code reduces the agency of individuals involved» (Ibidem). As a consequence, law is completely excluded from this process with the code as the sole pre-eminent (social) actor (Rodrigues, 2018; Grimmelmann, 2015).

In sum, the syntagma smart contract is a misnomer (Deloitte, 2018) since there is no cognitive component as there is theautomatic execution of pre-defined tasks upon the occurrence of certain conditions and there are no prerequisites to frame smart contracts within the contractual paradigm.

Taking up the Keynesian theory that places a biunivocal relationship between contract and enterprise (Davidson, De Filippi, & Potts, 2017),qualifying the latter as «a nexus of incomplete contracts» (Jensen, 1976), it is possible to understand how the blockchain manages to bridge market failures by zeroing asymmetries of information, and therefore transaction costs.

4. The legal implications of blockchain

After a preliminary analysis it can be observed how the blockchain transfers the cost of trust and coordination (Murck, 2017) to the network thus overcoming the Keynesian approach of managing transaction costswithin the hierarchy of an organisation such as the firm. Therefore, considering smart contract's self-executing nature, the so-called trust paradox ensues, thereby «we have to be able to trust the blockchain, and to trust that no one controls it» (Ibidem).

elucidate the concept of General Purpose Technologies, examining their defining characteristics, historical instances, and their implications for economic growth and societal development.
At the core of the notion of General Purpose Technologies is their ability to serve as a foundation upon which a multitude of complementary innovations and applications can be built. GPTs are distinguished by their versatility, adaptability, and wide-ranging potential. They act as catalysts, triggering a cascade of innovations across various sectors, thereby driving economic growth and transformation.
Historically, GPTs have played pivotal roles in shaping the course of human civilization. The steam engine, for instance, marked a watershed moment during the Industrial Revolution. This GPT revolutionized transportation, manufacturing, and agriculture, ushering in an era of unprecedented economic expansion and societal change. Similarly, the information and communication technologies (ICT) of the late 20th century, including the Internet and the microprocessor, served as contemporary GPTs that revolutionized communication, commerce, and information dissemination, catalysing the modern digital era. The impact of GPTs on economic growth is profound and enduring. These technologies create a virtuous cycle of innovation, investment, and productivity gains. The initial investment in GPTs and their subsequent diffusion across industries result in increased productivity, reduced costs, and improved quality of goods and services. This productivity growth, in turn, fuels higher living standards, income growth, and enhanced competitiveness on a global scale. Furthermore, GPTs exert a transformative influence on societal structures and dynamics. They reshape labour markets, alter consumer behaviours, and redefine business models. In the context of the digital revolution, for example, GPTs have given rise to new forms of work such as the gig economy, altered the nature of employment, and posed fundamental questions about privacy, security, and ethical considerations in the digital age. Despite their transformative potential, the deployment of GPTs is not without challenges and risks.
In conclusion, General Purpose Technologies are foundational innovations that possess the capacity to reshape economies and societies. Their versatility, impact across multiple sectors, and enduring influence make them subjects of considerable academic and policy interest. Historical examples, such as the steam engine and ICT, demonstrate the profound economic and societal changes that GPTs can catalyse.

[23] Hence, blockchain manages to factually bridge market failures zeroing asymmetries of information and related transaction costs.
Given that blockchain is a secure data structure and ‘a protocol for establishing consensus on valuable information within a flat network without hierarchy’ (Davor and Sajter. 2019), the role of certifiers falls short.

We therefore move from a trust placed in subjects who are given a space to act to a trust in theauthenticity of transactions.

In the first case, there is a reliance on third parties whose actions produce effects towards those who have entrusted them (VVAA, 2018). In the second case, on the other hand, trust is entirely placed in the blockchain «to bridge over the uncertainty about the future» (Ibidem).

To complete, the flexibility of tokens, representing a set of rules encoded in a smart contract can in turnrepresent «almost anything: a unit of virtual currency, an asset, physical object, or any other abstract entity» (Gervais, 2018). In this sense, it is also possible to understand how the blockchain can be freely configured to any application (Ibidem).

In light of these factors, «the paradox of erasing the need for trust» (Rantala, 2017) clearly emerges because «untrusted members can interact verifiably with each other without the need for a trusted authority» (Casino, Dasaklis, & Patsakis, 2019).

Interestingly, Reid Hoffman's vivid expression «trustless-trust» (Werbach, 2009) conveys this state of affairs. More precisely, «on a blockchain network nothing is assumed to be trustworthy... except the output of the network itself (Ibidem)»[24].
In short, it is not surprising to note how the blockchain fits into the evolutionary framework of contracts. Since the 19th century, there has been a progressive reduction at the factual level of a complete and bilateral formation and manifestation of consent.

5. Blockchain and the social contract

Given the peculiar nature of the blockchain, which makes it possible to overcome the relational dimension either between parties or between institutions, new changes and problems are emerging (Breu, 2018). Keeping in mind the institutional nature of the contract in the modern age these embryonal societal changes will be analyzed to subsequently verify the disruptive technology in the realm of law.

First, if the liberal paradigm based on property and contract saw exchange between parties as its essence, it now takes on a valence of *hyperindividualism* (Rantala, 2017) since state authority can be disregarded and transactions can be more confidential in nature. However, it is very clear that individual agency, within the framework of smart contracts, is no longer as indispensable as it was in the past. Some commentators speak in this regard of trans-individuality (Ibidem) since there is a functional representation of the individual taking part in a transaction without personal characteristics or qualities having relevance.

[24] Methodologically, a preliminary conceptual framework can be individuated into sentencing principle of
Bowen LJ, Sounders v Maclean (1883) 11 QBD 327,343. The case concerned a contractual dispute between Sounders and Maclean, both of whom were engaged in the shipping industry. Sounders had chartered a ship from Maclean to transport cargo, and a dispute arose when the ship encountered delays, resulting in financial losses for Sounders. The central question before the court was whether Maclean, as the shipowner, had violated the trust Sounders had placed in him by not providing a seaworthy ship for the agreed-upon journey.
Bowen LJ's judgment emphasized the fundamental principle that underlies all contractual transactions: the existence of a trust or confidence between the parties. In any contract, there is an implied duty of trust and confidence that each party must fulfil. In the case of a ship charter, the shipowner is entrusted to provide a seaworthy vessel, and the charterer trusts the shipowner to deliver the cargo safely.
Bowen acknowledged that trust is implicit in many commercial transactions, particularly in transactions involving services, such as the chartering of a ship. He highlighted that trust forms the basis of all agreements and is essential for the smooth functioning of commerce. In the context of the Sounders v. Maclean case, trust was manifested in the expectation that the ship would be fit for its intended purpose. However, Bowen also clarified that this trust does not imply absolute guarantees. It is not an absolute or unconditional warranty. Instead, trust in contractual relationships is based on a reasonable standard of care and diligence. In the case of Maclean, the shipowner, he argued that Sounders could not expect an absolute guarantee of seaworthiness but rather a reasonable assurance that the ship was in a fit condition for the voyage. Bowen observed that, in this instance, the ship had been delayed by adverse weather conditions, which were unforeseeable and beyond the shipowner's control. Therefore, Maclean had not breached the trust by providing an unseaworthy vessel.
Bowen's judgment in Sounders v. Maclean emphasizes that trust in transactions is an inherent element of contract law. It is founded on a reasonable expectation of performance, but it does not entail an absolute guarantee. Trust is vital for the efficient functioning of commerce, and the courts will protect this trust by ensuring that parties fulfill their contractual obligations with due diligence. In this case, the court found that Maclean had not violated Sounders' trust, as the delay was beyond his control, and he had acted reasonably in providing the ship. Thus, the judgment reinforced the importance of trust while maintaining a balanced view of what trust entails in contractual relations.

In this sense, the notion of «self-sovereign identity» (O'Dwyer, 1989) developed from the blockchain can clarify the content of hyper-individualism since it is no longer based on reputation or peer-verification, but exclusively «on the cryptographic storage of data about an individual» (Ibidem).

Apparently, this new system can only appear to be able to dispense with the intervention of third parties, since in the absence of prescriptive elements, it opens the door to power relations (De Filippi, & Loveluck, 2016) of an amorphous nature.

In other words, taking the viewpoint of techno-determinism, it is possible to demonstrate the disconnect between the linear development of technology and various social interests (Srnicek, 2013).

Given the wide application potential and scalability of blockchain technology one can understand how these circumstances can come into being. More specifically, Hyaek's definition of the economy understood as «an organization or an arrangement in which someone conspicuously uses means in the service of a uniform hierarchy of ends» (Ibidem) allows the understanding of the inherently political element within blockchain technology.

The author then establishes a differentiation between the economy and the spontaneous order brought by the market indentified by the concept of catallaxy[25] «characterized by a multitude of agents living within an 'extended order'» (Ibidem). Before continuing, it is worth noting the considerable affinities that this new socio-economic order has with the characteristics of medieval society. In that experience, it was not so much the ownership of subjective rights that mattered, but rather the centrality of things (*res*) around which the communities depended, drawing their sustenance from them.
Moving then towards an information-based economy we can find an equivalent 'token centrism' especially because tokens are susceptible to represent anything (Wang, & Nixon, 2021) and their presence is necessary in the world of the Fourth Revolution, given their scalability and wide range of application.

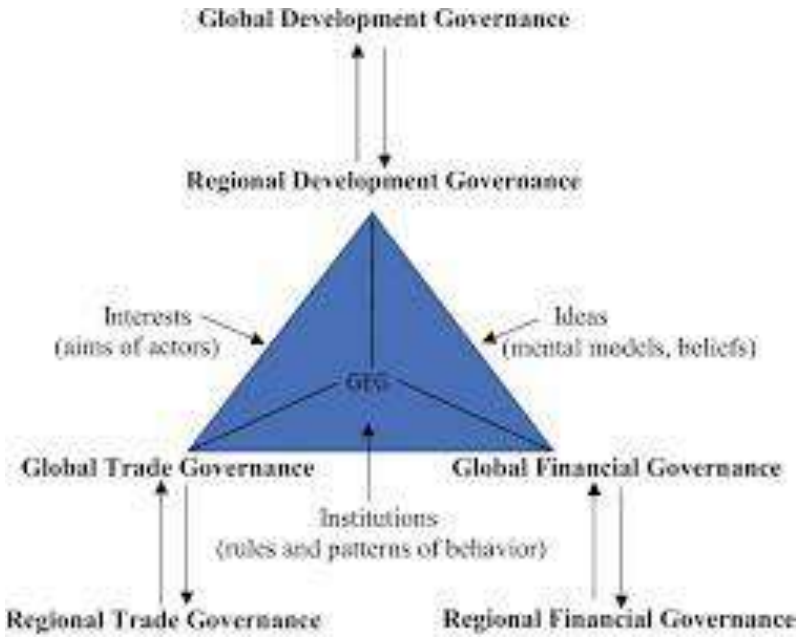
As a result, the comparison with the medieval experience sheds light on possible new regulatory schemes if we consider the eminent role of fraternities and guilds as centers of political, economic and social interest (Grossi, 1995; Genta, 2005) [26].
At the juridical level the result of these approaches had given fruit to the development of the custom as primary source and these elements will be kept in consideration to develop new possible strategies. To continue, the overlapping within the blockchain of different legal and social situations gives rise to competing regulatory modes since the blockchain becomes to all intents and purposes an «alternative governance institution» (Campbell-Verduyn, 2017).

Before analyzing possible methodologies, it is necessary to dwell on the delicate relationship between sovereignty and transactional privacy, also to be able to discern the constitutional value of blockchain as a form of social contract. This because blockchain governance's task is to identify at a decentralized level the same certification strategy for the validity of acts put in place by states and public administrations (Casino, Dasaklis, & Patsakis, 2019).

In the course of the discussion, we will therefore try to outline a possible regulatory balance between privacy as a public good and at the same time private (Solove, 2021) and the functioning of the blockchain as unlimited record keeping. Moreover, the remaining observations will try to provide new hermeneutic tools to frame the current economic-institutional scenario. More precisely, the new ICTs are under scrutiny for the Hobbesian test of sovereignty that can be traced back to the need to give up some freedom in order to gain it (Werbach, 2009). Against this backdrop, it is possible to establish a functional relationship in terms of interconnectedness among Leviathan's frontispiece, Global Governance functioning, and blockchain networks. The diagram below shows

[25] More precisely, «a catallaxy is a special kind of spontaneous order produced by the market by people acting within the rules of the law of property, tort, and contract» (Hayek: 1982, 269).
[26] Additionally, it is interesting to note the return of a collective dimension of right when thinking about the so-called new generation of rights as per the South American Constitutional experiences (e.g. Bolivia, and Ecuador).

the close affinity of Global Governance patterns[27] with the intrinsically geometric feature of the Hobbesian speculation as noted above.



(Credits: Springer)

In the remainder of the paper, the attention will be drawn to Dantean method with a twofold purpose. Firstly, it would contribute to temper algorithmic determinism[28]. Secondly, it would consequently hint at a more equitable facet of new forms of technology including but not limited to blockchain.

[27] Global Governance can be understood as the collective and cooperative management of global affairs by various actors, including states, international organizations, and non-state entities. In that regard, The EU directive of 26th June 2002 (2003/C 67/05) stands as a significant legislative initiative within the framework of European integration. This directive, emblematic of the EU's commitment to fostering a unified internal market, primarily focuses on regulatory harmonization to facilitate the free movement of goods and services across member states. With a keen emphasis on standardization, the directive seeks to diminish barriers to trade and enhance the efficiency of economic transactions within the EU.
Of notable importance is the directive's historical context, referencing the broader process of European integration initiated in 1992. This historical linkage underscores the directive's alignment with the principles established by the Single European Act of 1992, a foundational treaty that laid the groundwork for the creation of a single market. The directive, therefore, builds upon and reinforces the objectives set forth in 1992, showcasing the EU's enduring commitment to deepening economic integration.

[28] To clarify the above, let us briefly dwell on two examples that concern the activity of the judge, understood as an organ of the State[ ]. Let us consider, for example, the case of a debtor who does not pay the sum of money to the creditors stipulated in the judgment. In many jurisdictions, the creditor may proceed in such a case with execution on the debtor's assets. In this case, the competent court will usually order the debtor's employer to start deducting a certain amount from the debtor's salary to satisfy the creditor. This possibility is not, however, unlimited, as it is intended to ensure that the debtor maintains a minimum subsistence level. Obviously, the rationale behind this rule is the need to balance the creditor's right to obtain the money with the need to preserve the debtor's basic needs and rights. Similarly, a landlord seeking to enjoy eviction of the tenant would not be able to achieve this result with immediate effect: this is true even where there are legitimate grounds for eviction. National tenancy law requires that the tenant be given a minimum amount of notice to balance the landlord's right to regain possession of the house with the tenant's need to find an alternative solution for his accommodation. Therefore, the enforcement procedures established by state law require a certain period of time not only because instantaneous coercion is not practically feasible, but also and especially in order to balance the opposing interests of the parties. In contrast, the blockchain network does not - by its very nature - envisage either the presence of the judge (interpreter), or the balancing of the interests at stake, or (to give just one example) respect for human rights. And with respect to the two aforementioned examples, the smart contract could make an automatic deduction from the wages of the defaulting tenant and might be able to recover his money efficiently, without the need to rely on state-mediated procedures that impose an expected rate of return. In the case of eviction, the use of automatic locks managed through blockchain technologies can make it immediately impossible for the tenant to gain access to the house once the landlord activates the eviction through software scripts. The same does also apply to risk assessment procedure in insurtech to the possible detriment of the insured/weaker party.

6. The theory of supra-senses as a legal validity's testing over blockchain and other technological applications.

«And as the same idea can only be vary'd by a variation of its degrees of force and vivacity; it follows upon the whole, that belief is a lively idea product'd by a relational to a present impression, according to the foregoing definition».

(Hume, 1739)[29]

In previous sections the relation among institutional patterns was the thrust of the dissertation. In these concluding remarks, the argumentation regards Dante's theory of supra-senses, and its potential to test the legal validity[30] of Fourth Revolution's technological applications. More precisely, Dante elaborated the above-mentioned theory while introducing to his mentor the ultimate accomplishments *Commedia* will have produced by the time of its publication. In that regard, Dante describes how the Biblical narration of flee from Egypt may contain other meanings (i.e. senses) beyond the mere literal one[31]. In that regard, the author underlines that these other additional significances are allegorical. In the light of their Greek etymology, they are susceptible of telling something different. In line with Dante, «this method of treatment, in order to make it clearer, can be considered in these verses: "In the exodus of Israel from Egypt, the house of Jacob from the barbarian people, Judah became its sanctification, Israel its power." For if we look at the letter alone, it signifies to us the departure of the children of Israel from Egypt in the time of Moses; if to an allegory, it is signified to us by our redemption made through Christ; if to the moral sense, it signifies to us the conversion of the soul from mourning and the misery of sin to a state of grace; if to the anagogical, it signifies the exit of the holy soul from the slavery of this corruption to eternally glorious freedom».

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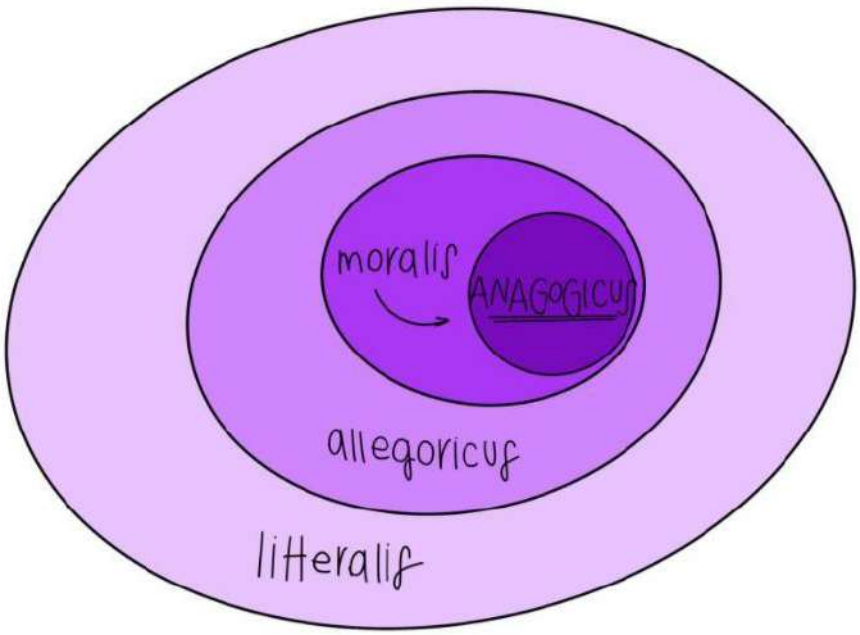
[29] A Treatise of Human Nature, Book I, Part III, Section III, *Of the influencing motives of the will*.

[30] «Legal validity governs the enforceability of law, and the standard of legal validity enhances or restricts the ability of the political ruler to enforce his will through legal coercion», Internet Encyclopaedia of Philosophy, https://iep.utm.edu/legal-va/

[31] The biblical narrative of the Israelites' exodus from Egypt, as chronicled in the Book of Exodus, holds profound significance in Judeo-Christian tradition. This sacred event has inspired various interpretations throughout history, and Dante Alighieri's theoretical framework, as elucidated in the *Epistula* to Can Grande della Scala, offers unique insight.
This letter serves as a guide to understanding the allegorical dimensions of the *Commedia*. In this letter, Dante delineates the multiple levels of interpretation that can be applied to his work, emphasizing the allegorical, moral, anagogical, and literal senses. This hermeneutic approach provides a key to unlock the symbolic depth embedded in biblical narratives, including the Exodus.
Dantean *allegorical* interpretation of the Exodus transcends the historical account to unveil a spiritual journey reflective of the Christian soul's path towards salvation. The Israelites' departure from Egypt becomes a *metaphor* for the human soul's liberation from the bondage of sin and worldly entanglements. In Dante's schema, Egypt symbolizes the fallen world, marked by moral corruption and separation from divine grace. In this respect, the figure of Moses, as leader of Israelites out of Egypt, assumes a parallel significance in Dante's allegorical reading. Moses becomes a symbolic representation of divine grace and the guidance provided to the human soul on its journey towards the celestial realm. Thus, the crossing of the Red Sea results in a pivotal moment in the Exodus. More properly, it reflects the soul's passage through the trials and tribulations of life, with the parted waters signifying the transformative power of divine intervention.
Dante's emphasis on the allegorical dimension prompts readers to contemplate their own spiritual pilgrimage, recognising the challenges and temptations encountered on the path to redemption. In this vein, the Exodus narrative becomes a timeless parable illustrating the universal human quest for transcendence.
To continue, *moral* interpretation of the Exodus aligns with the broader ethical framework of Commedia. The moral implications of the Israelites' flight from Egypt invite reflection on the consequences of moral choices and the pursuit of virtuous living. In this sense, the journey towards the Promised Land, guided by divine moral principles, becomes a paradigm for the ethical transformation required for spiritual ascent.
Moreover, the moral consequences of disobedience, as exemplified in the Israelites' wandering in the desert, is consonant with Dante's exploration of sin and its consequences in the various circles of Hell. The Exodus, then, serves as a didactic narrative, cautioning against the pitfalls of moral deviation and emphasizing the importance of adhering to divine moral precepts.
To conclude, *anagogical* interpretation pertains to the heavenly or mystical realm. It enriches the Exodus narrative with the celestial dimensions. The Promised Land, towards which the Israelites journey, takes on an anagogical significance as a symbol of the ultimate destination of the redeemed soul – the celestial paradise.
The hardships faced by the Israelites during their sojourn through the desert find resonance in Dante's portrayal of purgatorial trials. The anagogical interpretation invites contemplation on the transformative nature of suffering and purification, mirroring Dante's vision of Purgatory as a place of purgation and spiritual refinement.
The anagogical dimension also extends to the figure of Pharaoh, whose pursuit of the Israelites represents the perennial struggle between the forces of good and evil. In Dante's cosmic vision, the Pharaoh becomes an allegory for the demonic forces that seek to hinder the soul's journey towards the union with the divine.
Although allegorical, moral, and anagogical interpretations are emphasized, the historical and literal dimensions of biblical narratives are not dismissed. The Exodus, as a historical event, remains a pivotal moment in the narrative of human history and covenant with God. Against this backdrop, a nuanced approach acknowledging both the historical reality and the symbolic layers embedded in biblical accounts is fostered.

Qui modus tractandi, ut melius pateat, potest considerari in hiis versibus: "In exitu Israel de Egipto, domus Iacob de populo barbaro, facta est Iudea sanctificatio eius, Israel potestas eius". Nam si ad litteram solam inspiciamus, significatur nobis exitus filiorum Israel de Egipto, tempore Moysis; si ad allegoriam, nobis significatur nostra redemptio facta per Christum; si ad moralem sensum, significatur nobis conversio anime de luctu et miseria peccati ad statum gratie; si ad anagogicum, significatur exitus anime sancte ab huius corruptionis servitute ad eterne glorie libertatem (Epistula XIII)[32].

Visually, the graph below depicts the relation among different senses.



(Credits: Isabella Blandino)

Overall, Dante's standpoint allows a multi-layered exam of the interests at stake, thus transcending the partial implications of technological applications (i.e. particular transactions involving a narrowed set of individuals). On the contrary, this multi-layered dialectic approach represents a means with which to embrace the complexity of blockchain networks and even of AI applications. Subsequently, it ultimately enables to ascertain their effects on society and their legitimacy. In concrete, this approach can contribute to give consistency to the above-discussed blockchain's *trans-individual collective* dimension in terms of legal validity[33]. In the past, with traditional legal institutions (e.g. property and sovereignty), it appeared easier to make this test since there was a biunivocal correspondence with the object of regulation and the power over it. While arguing with semantics, De

[32], http://www.danteonline.it/italiano/opere2.asp ; the bolds are mine

[33] In that regard, a parallel can be individuated in Gadamerian *Horizontverschmelzung* (1969), translated as the fusion of horizons. This conceptualization signifies the dynamic interplay between the interpreter and the interpreted. Gadamer rejects the idea of a fixed, unchanging horizon, positing instead a fluid, evolving fusion that occurs through dialogue. This transformative process involves a constant interweaving of pre-understandings with emerging insights, creating a nuanced and enriched understanding of the interpreted.
As a matter of fact, Gadamer challenges the Cartesian dualism that posits a clear separation between subject and object, emphasizing instead the interconnectedness of interpretation. The fusion of horizons rejects the notion of an isolated, objective truth and asserts that understanding arises from an ongoing, dialectical engagement between interpreter and interpreted.
As a consequence, this approach disrupts traditional notions of authority in interpretation. The fusion of horizons suggests that understanding is not a passive reception of meaning but an active, participatory engagement. In this way, Gadamer challenges hierarchical structures of interpretation and opens up the possibility for a more egalitarian and dialogical approach to understanding. In sum, such an understanding of blockchain networks can concur to establish more effective protection of rights. In that regard, it is possible to frame privacy as something private while moving from its inherently collective dimension. More properly, it can be compared to safe environment whose integrity ensure its enjoyment by each member of a community.

Saussure's theory on the correspondence between *signified* and *signifier* was sufficient to set a relation among terms, concepts, and ultimately between society and institutions.

Today, by contrast, this paradigm has been inverted and exponentially multiplicated considering the difficulty in determining and/or separating what is regulated and who/what exercises an authoritative power (e.g. tokes, NFTs, and blockchain trustless trust system).

To continue, the advantage of this hermeneutic approach provides several criteria to qualify any output of technological applications as righteous because it does also include moral elements[34] that technological determinism tends to exclude a priori. To this end, this interpretive technique can concur to fill the gaps among domestic sets of rules (De Vauplane, 2018), and contribute to qualify open questions in law, technology, and society once the new notion of Sovereignty as control over data (Floridi, 2020) is taken into consideration. From another angle, this method would enable to solve, and give consistency to formalism. It can be understood as «that form, terribly empty, and sublime […] as the sole rigorous, and evident result of every philosophical ethics, we will be condemned to ignore the world's richness and qualities, and to renounce every certainty on qualities, and their relationships» (Scheler, 1927).

To continue, the following relation for identity can synthetically take into account Scheler's standpoint, the *trans-individual collective* dimension of blockchain networks, and Global Governance dynamism. At the same time, it does embed Dantean theory of sopra-senses.

$$\text{Identity } A=B + A\leftrightarrow B$$

In that, regard such a multi-layered approach would rather concur to establish a synthesis merging different commonly held conceptions of identity, rather than providing mutually excluding frameworks for the definition of new patterns of legal validity[35]. Differently put, this technique aims at creating the methodological basis to establish an equitable basis for the re-qualification of the legal discourse before these unprecedented changes.

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[34] «Not every form of de facto governance is legal; only forms of governance that comply with certain minimal moral constraints are properly characterized as legal» (Marmor, 2008).

[35] From the one hand, Derrida (1967) argues that identity is not a stable or fixed entity but is rather a product of linguistic and cultural constructs. Thus, any attempt to define identity is bound to be fraught with contradictions and paradoxes. In this respect, language operates through a system of differences, and identity is never fully present but is always deferred, as meaning is contingent upon a network of linguistic signs. The deconstruction of identity, therefore, involves exposing the gaps and contradictions within discourses that seek to establish fixed identities. On the other hand, Lévi-Strauss (1949) contends that cultural phenomena, including identity, can be understood through underlying structures that govern human thought and behaviour. More properly, identities are not arbitrary but are instead products of underlying structures that organize and give meaning to social phenomena.

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Blockchain, Legal Interpretation, and Contextuality as Tools to Establish Privacy and Fundamental Rights Protection Amid Geopolitical and Legal Uncertainty

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Abstract
This summary explores the degree of rights' protection when it comes to States forms of surveillance under a concise legal comparative outline. Given today's interdependence put into being first by Global Governance patterns and then by exchange on platforms, attention will be drawn to the Chinese Personal Information Protection Law (PIPL), American Clarifying Lawful Overseas Use of Data Act (Cloud Act) and the EU General Data Protection Regulation (GDPR), along with the recently adopted Data Privacy Framework (DPF). At a second stage, new possible techniques are considered to properly tackle these unprecedented changes that challenge traditional legal patterns.

Keywords: Blockchain, Legal Interpretation, Contextuality, Privacy, Fundamental Rights Protection

1. A comparative outline on (formal) limits to State surveillance

In the light of contemporary events regarding Ukraine and Taiwan, new forms of nationalism have emerged in the form of so-called techno-nationalism. Namely, it consists of «the emergence of a techno-nationalist vision that marries the praise of national scientific genius with greater state involvement in the financing of R&D and in the protection of the nation's scientific and technological heritage» (Le Grand Continent, 2022).

At a normative level, this prerogative can be observed in the prospective interpretative outcomes of existing pieces of legislation concerning surveillance over data. This estimate comes from US Government's National Security Strategy report issued on October 2022 (§Securing Cyberspace)[1].

[1] «Our societies, and the critical infrastructure that supports them, from power to pipelines, is increasingly digital and vulnerable to disruption or destruction via cyber-attacks. Such attacks have been used by countries, such as Russia, to undermine countries' ability to deliver services to citizens and coerce populations. We are working closely with allies and partners, such as the Quad, to define standards for critical infrastructure to rapidly improve our cyber resilience, and building collective capabilities to rapidly respond to attacks. In the face of disruptive cyber attacks from criminals, we have launched innovative partnerships, to expand law enforcement cooperation, deny sanctuary to cyber criminals and counter illicit use of cryptocurrency to launder the proceeds of cybercrime. As an open society, the United States has a clear interest in strengthening norms that mitigate cyber threats and enhance stability in cyberspace. We aim to deter cyber attacks from state and non state actors and will respond decisively with all appropriate tools of national power to hostile acts in cyberspace, including those that disrupt or degrade vital national functions or critical infrastructure. We will continue to promote adherence to the UN General Assembly-endorsed framework of responsible state behavior in cyberspace, which recognizes that international law applies online, just as it does offline».

In this respect, a classification based on the formal limits to State surveillance within the above-mentioned legal instruments can be fruitful to ascertain the underlying global degree of discontinuity in this sensitive subject matter. Methodologically, Richard's definition of privacy, understood as «the degree to which human information is neither known nor used» (Richards, 2021) conveys the idea of privacy as a bundle of prerogatives, including, but not limited to forms of outer interference. In that regard, it is possible to relate privacy as the basic building block for *habeas data* identifiable as right to (data) freedom (cf. Gstrein, & Beaulieu 2022; Risse (2023) [2]

Firstly, a centripetal regulatory technique can be noted in Chinese PIPL as per the residual element of art. 13's list[3] of conditions enabling personal information handling. Secondly, US Cloud Act does allow unilateral access, concretely neglecting the fundamental rights of non-US persons. From a European angle, these fundamental rights are the right to privacy, the right to data protection, and the right to an effective remedy and a fair trial[4].

Prior to the European Commission's adoption of the EU-U.S. Data Privacy Framework (DPF hereinafter) on 10th July 2023, Cloud Act opposed GDPR not allowing the disclosure of data without international mutual legal assistance[5] since it expressively omits this possibility[6]. Thirdly, GDPR places in between in light of its nature protecting civil liberties while also adding the principle of legitimate interest to data processing. Practically, it should be remarked that actors (i.e. companies) can potentially be faulty if they establish their legal strategy on one of these bodies of rules alone. Below, a comparative tab visually renders the above discussed traits pertaining to these instruments.

[2] As per Gstrein, & Beaulieu (2022) «We have already stressed that privacy should not be understood as an isolated concept, but rather as a proxy for the relationship between the individual and society. In this sense, the meaning of privacy evolves along the vectors of time, space and culture. While Cannataci argues that culture can be sub-divided in fields such as economic and technological development (Cannataci, 2016, pp. 8–10), the importance of political processes should not be underestimated. Few concepts relating to privacy and the control of information flows demonstrate this as clearly as habeas data, since its emergence is closely tied to the political history of countries in Latin America throughout the twentieth century (Gonzalez, 2015, p. 649). The expression 'habeas data' is derived from the more prominent legal principle 'habeas corpus', which is Latin for 'you should have the body'. In common law jurisdictions, this legal notion—or 'writ'—describes the requirement to bring a prisoner or detainee physically before the court to decide whether detention is lawful. In analogy, habeas data require public authorities to provide all personal data relating to a certain case or allegation to ensure that a person is aware of the basis of the accusations they are confronted with (Parraguez Kobek & Caldera, 2016, p. 114)».

3 Article 13:

Personal information handlers may only handle personal information where they conform to one of the following circumstances:

1. Obtaining individuals' consent;
2. Where necessary to conclude or fulfill a contract in which the individual is an interested party, or where necessary to conduct human resources management according to lawfully formulated labor rules and structures and lawfully concluded collective contract;
3. Where necessary to fulfill statutory duties and responsibilities or statutory obligations;
4. Where necessary to respond to sudden public health incidents or protect natural persons' lives and health, or the security of their property, under emergency conditions;
5. Handling personal information within a reasonable scope to implement news reporting, public opinion supervision, and other such activities for the public interest;
6. When handling personal information disclosed by persons themselves or otherwise already lawfully disclosed, within a reasonable scope in accordance with the provisions of this Law.
7. **Other circumstances** provided in laws and administrative regulations. [emphasis added]

https://digichina.stanford.edu/work/translation-personal-information-protection-law-of-the-peoples-republic-of-china-effective-nov-1-2021/

[4] These rights are enshrined in articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union. For more details, https://policyreview.info/articles/analysis/mitigating-risk-us-surveillance-public-sector-services-cloud

[5] Through legal agreements.

[6] Additionally, «in 2020, the CJEU invalidated Privacy Shield in a decision known as Schrems II, in which the European Union was principally concerned with U.S. regulations enabling certain signals intelligence activities. The decision referenced Section 702 of the U.S. Foreign Intelligence Surveillance Act, which allows the U.S. government to compel communication service providers to assist in the surveillance of foreign persons outside the country, and U.S. Executive Order 12333, which denotes when intelligence agencies can engage in foreign intelligence surveillance abroad. Schrems II outlined two necessary benchmarks for the transatlantic data flows to be in compliance with EU law: U.S. surveillance activities should be limited to what is necessary and proportional and should be subject to judicial redress».

Source: https://www.csis.org/analysis/cloud-act-and-transatlantic-trust

Legal instrument	(Formal) limits to State surveillance	Remarks
GDPR	None	Limits set by ECJ
Cloud Act	Reasonable foreseeability	Insufficient check and balances when it comes to access of personal data stored overseas
PIPL	None	Cf. PIPL art. 13

Nonetheless, the DPF is partially bridging these normative gaps when it comes to data exchange and forms of State surveillance in EU and US space[7]. Although the US intelligence service can access data coming from the EU for security purposes, the access must be limited to what is strictly necessary and proportionate. Moreover, Europeans will also have access to the Data Protection Review Court (DPRC).

Hence, the individuation of new strategies is deemed necessary to protect the value of privacy, traceable back to the limit on the power of governments and companies and to the respect for individuals (Solove, 2020). Formally, it should not be excluded the virtual possibility for international agreements. Nonetheless, this approach alone does not suffice per se in the light of contemporary geopolitical contingencies. Additionally, a similar trend can be witnessed when it comes to international private law and blockchain[8].

2. Conclusions and viable strategies

«There can be no question of interpreting code. Code does not have a meaning; it has an effect. The only question can be whether the code fits with any natural language term of statement that preceded or accompany it» (H. Beale) (2021). In the remainder of the paper, attention will be drawn to viable alternatives to mitigate current global regulatory volatility. Additionally, It should be remarked that there are no technical limits having one's data accessed by governments' security agencies (Hildén, 2021).

In doing so, reference is made to the combined action of permissioned blockchain technology[9] and legal interpretation to increase contextuality with a double purpose. Firstly, this suggested approach would temper algorithmic determinism. Secondly, State sovereignty would not be hampered by blockchain as a form of outer agency adding, and therefore being susceptible to overlap with Statehood when it comes to international agreements formation.

[7] No transfer to the United States can be legitimised based on the Decision on the DPF without the inclusion of the US company receiving the data in the list kept by the FTC. The DPF is, in fact, based on a self-certification mechanism, and only once all the obligations imposed by the Decision have been fulfilled by the company interested in joining the DPF, can transfers to that company be made, without the need to implement additional data protection measures. Furthermore, we must not forget that, regardless of the mechanism used for the transfer, stipulating a contract with the recipient of the data, located in the United States, is in any case mandatory pursuant to the GDPR (cf. GDPR's Art. 28).

[8] Overall, international private law provisions and categories are currently found inconsistent with today's legal thinking since they do not correspond to smart contracts matters and practical needs. Specifically, PRIMA Model and the Factual PRIMA as of the Hague Convention presuppose the existence of intermediaries not existing as such in the blockchain (de Vauplane, 2019). Moreover, the criteria of *lex rei sitae* can be difficultly met considering the aterritorial nature of the internet and thus, leaving room to the problem of mobility in private international law.
Analogously, at a sentencing level, clarity is still missed. Although the landmark Singaporean Court's *Quoine* decision ([2020] SGCA(I) 02) establishes guidelines and principles, it does not explicitly answer whether the automated nature of platforms can give rise to legal obligations. In concrete, the decision confirms an English case law's precedent (*Thornton v Shoe Lane Parking* [1971] 2 QB 163) holding that data inputs in a piece of software represent an offer.

[9] «Permissioned blockchains are blockchains that are closed (i.e., not publicly accessible) or have an access control layer. This additional layer of security means that the blockchain can only be accessed by users with permissions» (Oracle, 2022).
The big difference with the past is that this ledger isn't stored in one place, it's distributed across several hundreds or even thousands of computers around the world. No one person or entity can control the data, which makes it transparent.
The data forms blocks that are encrypted into a continuous chain using complex mathematical algorithms. Once updated, the ledger cannot be altered or tampered with, only added to, and it is updated for everyone in the network at the same time» (BBC,2017).
From another angle, blockchain can be understood as the conjunction of «two of the central legal devices of modernity: the ledger and the contract» (Maurer, Du Pont, 2015).
Therefore, it is possible to grasp how this technology empirically enables the overcoming of territorial- physical limits. Specifically, the ductility of the blockchain allows it to be applied in the most diverse areas, making it a general-purpose technology on a par with the Internet and electricity (Skolnikoff, 1993).

In short, blockchain is «a distributed database that maintains a continuously growing list of ordered records, called blocks». These blocks «are linked using cryptography. Each block contains a cryptographic hash of the previous block, a timestamp, and transaction data. A blockchain is a decentralized, distributed and public digital ledger that is used to record transactions across many computers so that the record cannot be altered retroactively without the alteration of all subsequent blocks and the consensus of the network» [10] .

Added to the above, smart contracts, as pieces of software automatically running on the blockchain, can enhance States cooperation[11] by reducing uncertainty[12]. Given the flexible nature of tokens[13] susceptible of representing «almost anything: a unit of virtual currency, an asset, physical object, or any other abstract entity» (Gervais, 2018), «the paradox of erasing the need for trust» (Rantala, 2017) emerges. Concretely, «untrusted members can interact verifiably with each other without the need for a trusted authority» (Casino, Dasaklis, & Patsakis, 2019). Interestingly, Reid Hoffman's vivid expression «trustless-trust» (Werbach, 2009) conveys this state of affairs. More precisely, «on a blockchain network nothing is assumed to be trustworthy [...] except the output of the network itself» (Ibidem). For the sake of this study, it should be remarked that States can therefore refrain from ascertaining the consistency of their peers' (i.e. other States') actions given that blockchain constitutes an immutable record of transactions[14].

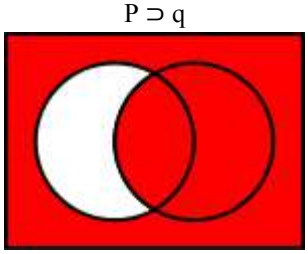
However, smart contracts are irrespective of possible contextual (i.e. factual) changes and human input remains essential to link actual development with that of blockchain. The following example illustrates these possible discrepancies. Let us consider, for instance, the case of a debtor who does not pay the sum of money to the creditors stipulated in the judgment. In many jurisdictions, the creditor may proceed in such a case with execution on the debtor's assets. In this case, the competent court will usually order the debtor's employer to start deducting a certain amount from the debtor's salary to satisfy the creditor. This possibility is not, however, unlimited, as it is intended to ensure that the debtor maintains a minimum subsistence level. Obviously, the rationale behind this rule is the need to balance the creditor's right to obtain the money with the need to preserve the debtor's basic needs and rights. Similarly, a landlord seeking to evict the tenant would not be able to achieve this result with immediate effect: this is true even where there are legitimate grounds for eviction. National tenancy law requires that the tenant be given a minimum amount of notice in order to balance the landlord's right to regain possession of the house with the tenant's need to find an alternative solution for his accommodation. Therefore, the enforcement procedures established by state law require a certain period of time not only because instantaneous coercion (Lessig, 1999 and 2006) is not practically feasible, but also and especially in order to balance the opposing interests of the parties (Colber, 2018). In contrast, the blockchain network does not - by its very nature - envisage either the presence of the judge (interpreter), the balancing of the interests at stake, or (to give just one example) respect for human rights (Fairfield, 2014; Wright, & De Filippi, 2015). And with respect to the two aforementioned examples, the smart contract could make an automatic deduction (Garcia-Teruel, 2020) from the wages of the defaulting tenant and might be able to recover his money efficiently, without the need to rely on state-mediated procedures that impose an expected rate of return. In the case of eviction, the use of automatic locks managed through blockchain technologies can make it immediately impossible for the tenant to gain access to the house once the landlord activates the eviction through software scripts.

[10] Synopsis, https://www.synopsys.com/glossary/what-is-blockchain.html#:~:text=A%20blockchain%20is%20%E2%80%9Ca%20distributed,a%20timestamp%2C%20and%20transaction%20data.
[11] Without posing questions on Art. 2, §4 of UN Charter asserting that States shall refrain from threatening the territorial integrity of any State. In contrast, the blockchain's a-territorial feature would allow to bridge these gaps.
[12] More properly, we should «qualify the 'smart contract' as a 'synecdoche': conceptually speaking, the smart contract does not correspond to the agreement, but presupposes it and constitutes a written translation of it (in computer code language) (Allen and Widdison (1996) (Cannarsa et al. Eds, 2019)). Smart contracts will be referred to as the source of the obligations between the parties, but these obligations arise from a will previously formed, which is received and formalized with the smart contract» (De Caria, 2020). In this respect, we are witnessing for the first time ever to non-anthropocentric conducts, whose effects become unpredictable for the definition of forms of legal liabilities (Adorno, 1951). In turn, these unprecedented features pose severe challenges to the core of legal sets of rules and institutions while considering the animus, as the pillar for legal reflections. In brief, blockchain networks, as well as AI, put into being forms of *agere sine intelligere* (Floridi, 2020 and 2022). Therefore, the notion and the sense of trust is eroded because «it consists of substituting the information that one does not have with other information that supports confidence in the action (Duranti and Rodgers, 2012).
[13] As per the blockchain ecosystem, a token is an asset that is digitally transferable between two people. For further details, s. Coinhouse, https://www.coinhouse.com/learn/blockchain-technology/what-is-a-token/#:~:text=In%20the%20Blockchain%20ecosystem%2C%20any,have%20different%20classification%20and%20uses
[14] Thus, States should overcome the initial burden of disclosing part of their actions to benefit from this technology.

In that regard, legal interpretation results as a connecting factor since jurists verify the correspondence of facts against their representation over the blockchain. In that regard, «the key to this issue lies in interpretation's dualistic nature, i.e. that it has both a backward-looking conserving aspect and a forwardlooking creative one. This dualism would seem to indicate that in interpret ing the law, judges both seek to capture and be faithful to the content of the law as it currently exists, and to supple ment, modify, or bring out something new in the law, in the course of reasoning from the content of the law to a dec ision in a particular case» (Dickson, 2008).

Similarly, the same pattern can be extended to contemporary challenges when it comes to Code, State law, and international law agreements. As per the above-mentioned impossibility of interpreting code (Beale, 2021), semiotics can work as a conceptual framework to bridge the existing gap between law (i.e. natural language) and code (i.e. artificial language). The scope of this proposition is to establish *contextual consistency* between (uninterpretable code) and natural language-based legal narratives. Specifically, the argument can be based on the semantic version of the *material conditional* as per the below formula and its graphic equivalent – where *p* individuates code, while *q* legal narratives.

$P \supset q$



Source: Wikipedia

Hence, *p* (code) materially implies *q* (legal narratives)

This condition establishes the possibility of setting the aforementioned test to verify whether code contains, and therefore implies legal narratives. To put it differently, this enables us to prove whether there is a relation, though partia,l between code's effects and the legal discourse. More properly, this correlation can allow the interpreter (e.g. a judge) to ascertain the existence of legal institutions, or at least the elements pertaining to them. In sum, the interpreter can verify the code's coherence before legal facets[15].

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15 This process is irrespective of a legal smart legal contract's formation in line with the classification below:
(1) Natural language contract with automated performance.
(2) Hybrid contract.
(3) Solely code contract.

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Responsibility of a Pharmaceutical Company on Medicine Safety (Case Study on Paracetamol Syrup)

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Abstract
Cases of medicine poisoning derived from paracetamol syrup that is currently rampant have caused acute kidney failure in children. This is known because of the content of harmful substances contained in the medicine. The dangerous substances contained in the medicine are *Ethylene Glycol* and *Diethylene Glyco*l. Paracetamol syrup poisoning cases have claimed many victims. Up to now, 269 victims have experienced acute kidney failure and 157 of them are declared dead. This article analyses the responsibility of pharmaceutical companies in securing medicine in cases that occur and how legal steps are to protect the interests of victims and their families. The research methods employed normative legal methods sourced from secondary data in the form of legal materials and non-legal materials. The qualitative approach is descriptive and the data collection is qualitative. Qualitative data analysis using the Miles and Huberman model where the narrative and secondary data are examined with analysis content. This case is caused by intentional or negligence on the part of the pharmaceutical company producing the medicine in the production process and carelessness in the packaging and distribution of these medicines. The Ministry of Health and the Food and medicine Supervisory Agency (BPOM) are also recognized for being careless in supervising and issuing proper distribution permits for these medicines. There must be a responsibility from the parties concerned to the victims and their families. The parties involved in this medicine poisoning case have absolute legal responsibility (strict liability) for the losses suffered by the victims.

Keywords: Poisoning, *Paracetamol*, *Ethylene Glycol*, *Diethylene Glycol*

1. Introduction

Along with the development of civilization that has been achieved by humans, human life in society is increasingly complex. The population growth throughout the world, including in Indonesia, continues to increase significantly so that the quality of public health continues to experience dynamics. On the one hand, the situation or condition that occurs at a certain time and in a certain place can be seen from two sides, some perceive it as an increase in health quality and on the other hand it can also be perceived as a decrease in health quality. The quality that is believed to be very dependent on the point of view and the school of thought held by a person or group of people at a certain place and time.

This happens because it is actually neutral and the increase in the number of people with the disease can be felt from various sides. For some people, an increase in the number of people who are sick can be interpreted as being successful in uncovering cases, while on the other hand, an increase in the number of people who are sick can be interpreted as not having/unsuccessfully competent institutions in the health sector have not worked optimally and so on. The increase in the number of hospitals and health facilities such as Puskesmas and clinics as well as the operation of pharmaceutical companies does not necessarily mean that the level of public health will improve.

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The substance Ethylene Glycol (EG) contained in paracetamol syrup is a chemical substance in the form of an odourless, colorless and sweet-tasting liquid. Ethylene Glycol is commonly used as an antifreeze in vehicle radiators. In addition, the substance can also be used as a solvent in industrial and household products. According to Indonesian Standards, the safe threshold is 0.5 mg/kg body weight per day for contamination from Ethylene Glycol and Diethylene Glycol (Agustin, 2022). If someone consumes more than the limit, it will be poisoned and can be fatal. According to UGM Pharmacy expert Prof. Zullies, the use of Ethylene Glycol as an additional substance has been regulated according to the level limit, it should not cause problems in its safety (Pinandhita, 2022). Meanwhile, according to PHARMACOPE, EG can actually be used but a maximum of 0.1%.

After you have introduced the problem and have developed the background material, explain your approach to solving the problem. In empirical studies, this usually involves stating your hypotheses or specific question and describing how these were derived from theory or are logically connected to previous data and argumentation. Clearly develop the rationale for each. Also, if you have some hypotheses or questions that are central to your purpose and others that are secondary or exploratory, state this prioritization. Explain how the research design permits the inferences needed to examine the hypothesis or provide estimates in answer to the question.

2. Method

The research uses normative legal methods based on secondary data in the form of legal materials (Primary, Secondary and Tertiary) and non-legal materials (Soekanto, Mamudji, 2022: page. 12-13). The qualitative

approach is descriptive and the data collection is qualitative. Qualitative data analysis uses the Miles and Huberman model where the narrative and secondary data are examined with analysis content (Ezmir, 2010: page.129-135).

3. Results

In the case of paracetamol syrup which causes acute kidney failure in children, *Ethylene Glycol* substance can help dissolve the paracetamol medicine into a liquid syrup for easy consumption by children. Regarding this matter, Penny Luquito, the head of BPOM, said that his party had carried out supervision in accordance with the provisions of medicine manufacture. The BPOM itself is conducting monitoring, but there is a possibility of an error. Substance EG is the result of imports from India (DataBooks, 2022), so it needs to be investigated further. Meanwhile, import and export supervision activities have not been optimal by the government (Mustakim, et.al, 2021: p. 120). According to Masteria Yunovilsan Putra, Head of BRIN's vaccine and medicine research center, there is a possibility that manufacturers may fraudulently mix EG syrup medicine solvents in order to make a lot of profit. However, this possibility has not been confirmed. Based on data from BBC Indonesia (2022), the problem has become more complicated because until now there has been no legal provision regarding the obligation to test solvents, so the process is not as strict as the testing of active ingredients. Supervision from pharmaceutical companies must be carried out to maintain medicine quality during the distribution process to the public (Deddy, *et.al*, 2022: 347).

When solvents enter Indonesia, scientific tests are not strictly carried out because there are no regulations that require it. Therefore, there is a lack of supervision, such as not detecting raw materials for medicine that exceed the maximum limit for consumption, as happened with paracetamol syrup which has a toxic impact on children. The lack of supervision occurs because the government puts trust in the importer, as seen with Indonesia being the world's 9th largest EG importer globally (Zahira, 2022). In addition, pharmaceutical companies also fail in monitoring so that there is an excess of EG content in *paracetamol* syrup.

Looking at this case, based on Article 19 of the UUPK concerning the responsibility of business actors which contains compensation for pollution, it does not eliminate the possibility of compensation in the form of criminal sanctions which are the responsibility of business actors covering all consumer losses. In Number 36 Article 14 of 2009 concerning Health, the government supervises the implementation of Health and Article 196 in conjunction with Article 201 Business actors who produce/distribute pharmaceutical preparations that do not meet the standards can be imprisoned for a maximum of 10 years and pay a maximum fine of one billion. Criminal sanctions can also be imposed on pharmaceutical companies if in pharmaceutical practice which includes manufacture, security and other processes are not carried out by pharmaceutical personnel who have expertise and authority (Article 108).

Observing the various explanations above, it can be seen that in terms of the use of *Ethylene Glycol* as a solvent for paracetamol syrup from a formal juridical point of view, the procedure has not been established. Specifically, regarding the level test to the contaminant test, therefore all parties who carry out the mandate of government duties, in this case especially in the pharmaceutical and health environment, need to build a strong commitment and develop high moral integrity to always refer to the moral message mandated by the founders of the country. As stated in the 4th Paragraph of the Preamble to the 1945 Constitution, the government protects the entire Indonesian nation and advances the general welfare. Article 28 of the 1945 Constitution states that anyone has the right to live in physical and spiritual prosperity and to live in a good and healthy environment.

The latest news, BPOM said it was processing criminal charges against two pharmaceutical companies that were not mentioned because of the alleged intentional process of producing medicines that did not comply with the requirements and set out 10. The Ministry of Health also recalled five syrup medicines containing EG that exceeded the threshold, namely cough and cold medicines. Unibebi flu Cough Syrup and Flurine DMP Syrup, while for fever medicine there are Termorex Syrup, Unibebi Fever Drops, and Unibebi Fever Syrup (Chaterine, 2022). The existence of illegal acts carried out by producers not only causes economic losses, but also harms

health and even threatens life safety as happened in the case of kidney failure which claimed many victims (Noviardi, 2021: p. 220).

Article 14 of the Health Law No.36/2009 states, anyone has the right to health. This is stated in the provisions that (1) Everyone has the right to obtain the same rights in the health sector. (2) Anyone has the right to obtain safe, affordable and quality health services. Pharmaceutical preparations in the form of medicinal ingredients that are produced and distributed in accordance with PHARMACOPEIA must meet the quality, usefulness and safety requirements as stated in Article 2 of PP Number 72 of 1998.

Comprehensive medicine management, including medicine distribution network, is needed to assure consumers of the quality, safety and efficacy of medicines. Considering the concept of Strict Liability, even though there are no strict rules regarding the testing of solvents, but with the discovery of many victims of kidney failure, it must be the responsibility of the BPOM who carry out supervision and the pharmaceutical company also carry out special supervision even though a medicine has passed the contaminant level test. So, a pharmaceutical company that produces paracetamol syrup whose solvent composition exceeds the threshold so that the resulting product does not meet the safety standards of pharmaceutical preparations. Where this happens intentionally or unintentionally can be subject to legal sanctions. If this is caused by negligence, of course, the sanctions that can be imposed on the pharmaceutical company concerned can be categorized as lighter. Meanwhile, if it is done intentionally, it can be subject to accumulative sanctions in the form of administrative, criminal, and civil sanctions.

BPOM's excuse stating that there are no regulations for testing raw materials for pharmaceutical preparations gives the impression that BPOM officials intend to avoid various demands for responsibility, both in terms of ethics, professional discipline (Siswati, 2015: pg. 213) and legal responsibility because they are actually guidelines, standards, guidelines. The measure of human behaviour in life in the nation and state is not only regulated by legal norms/rules. There are other rules that also apply at the same time, namely the rules of politeness, the rules of decency and the rules of religion. Rule-These non-legal rules also provide guidelines for humans and their lives, especially for those who carry public authority in which the duties of service, protection and protection are attached to the community.

Meanwhile, from the optical point of view of legal discipline, a legal norm is only a container in which it contains legal principles that contain various pairs of antinomical values, such as order and peace/freedom, legal certainty and legal comparability, and so on. Therefore, the absence of rules should not and should not be used as an excuse for the bearers of public authority to demand responsibility. For the case of kidney failure that claimed 269 victims if it happened in Japan, the relevant public officials would mobilize all resources and financial resources to deal with this case and after being handled they would resign and even commit seppuku out of shame.

As emphasized by Emmanuel Levinas "respondeo ergo sum" (Erwin, 2019), the existence of an official and the institution that oversees him will be determined by how much fundamental willingness to carry out the tasks inherent in his position so that its fulfilment depends on the belief in the willingness to accept and take responsibility and be aware of the consequences that will arise. People who do not have the authority and expertise in pharmaceutical preparations will cause harm to the community (Sompotan, 2016: page. 74).

4. Legal Measures to Protect the Interests of The Victims and Their Families

Consumer protection law is one of the interests of society. If there is no balanced legal protection between business actors and consumers, this can lead to the existence of consumers in a vulnerable position, because there are many cases of consumers who feel aggrieved and in the end the case ends with a dispute whose results cannot satisfy the consumer.

Therefore, the Consumer Protection Act (UUPK) was formed. The purpose of the establishment of this UUPK is to protect consumers so that consumers do not feel disadvantaged and their needs can be properly met, and

business actors can regulate business actions to run their business properly as well. Because business actors and consumers both need each other, so that later they will be able to create mutually beneficial relationships (Muthia, 2018).

In the case of poisoning with paracetamol syrup, if it is true that the content of EG and DEG is proven to be the cause, the victims and their families can sue for compensation, both material and immaterial, against the pharmaceutical company that produces the medicine and other related parties. The right to seek compensation is also stated in the UUPK. Because babies and children must strive for their health by doing maintenance in order to prepare a generation that is smart, healthy, and of good quality. Likewise, efforts to reduce cases of death that occur in infants and children. This maintenance lasts while in the womb until the age of 18 years. In this health care, from parents to the government, it is the responsibility to be involved in making efforts to maintain the health of infants and children.

According to Komariah Emong Sapardjaja, there are 4 elements of an act that can be called an act that violates the law, namely, there are those who commit the act, the act is against the law, the act is detrimental to others, and the act is caused by the negligence of the related party (Sutarno, 2014).

Initially this case of acute kidney failure was found in Indonesia in January 2022, with 1-2 confirmed cases of death due to acute kidney failure every month. Then, in August 2022 there was a very drastic increase in cases. With this increase in cases, it is necessary to conduct an examination related to the cause of this acute kidney failure. Muhammad Mufti Mubarok, Deputy Chairman of the National Consumer Protection Agency, said that the victims and their families can prosecute and seek compensation from pharmaceutical companies producing medicines and related parties by first identifying the cause of this acute kidney failure case. If the cause has been found, the victim and his family can file a lawsuit and ask for compensation from the pharmaceutical company that produces medicines and related parties if the medicines are proven to contain EG and DEG (Kompas, 2022).

Table 1: Increase in Cases

Adverb of time	**October 21, 2022**	**October 24, 2022**	**October 26, 2022**
Total Cases	241 Case	241 Case	251 Case
Death Case	133 Case (55%)	143 Case (56%)	157 Case (58%)

If the victims and their families want to file a claim or ask for compensation from the pharmaceutical company that produces the drug, YLKI or the Indonesian Consumers Foundation provides a place for complaints services for the victims and their families. YLKI is also ready to facilitate if the victims and their families want to file a public lawsuit. It can be seen that the drugs that are circulated should have met the requirements for quality, safety, and efficacy. However, these drugs containing DEG and EG apparently passed the marketing authorization for eligibility. The claim for responsibility for the case of mass kidney failure can be addressed to pharmaceutical companies producing drugs, the Ministry of Health, or BPOM.

As it is known that pharmaceutical products are known as adverse effects. Adverse effects are adverse effects that appear unexpectedly, caused by various things, such as hypersensitivity, drug interactions, excessive effects, inevitable side effects, and activation of the disease. Adverse effects can also be caused by product defects. These product defects are basically divided into 4 groups: (1) Defects at the time of production at the factory that occur due to deviations in product design, specifications, wrong labelling, contamination, and wrong doses, (2) Defects in product design, (3) Defects in storage, (4) defects in use (Sampurna, 2005: pg. 156-157). Information

from VOA Indonesia (2022) actually uses EG and DEG as solvents that have been used for a long time, but they are not used for the manufacture of pharmaceutical products. According to historical records, in 1937 in the United States there were cases of poisoning caused by EG and DEG because there are no rules for the use of these materials. In China, it was found to contain EG and DEG in cheap toothpaste. Then in Europe, EG and DEG was once used to give a good taste to wine.

According to the statement of Penny K Lukito, Head of BPOM, there will be 2 (two) pharmaceutical companies that will be followed up with criminal actions related to the use of EG and DEG. According to existing regulations, the use of EG and DEG is actually not allowed for ingredients in the process of making a medicine. However, if there are medicines that require EG and DEG as raw materials or additives, it must use the standard limits that have been set.

Based on the results of the investigation conducted by the Criminal Investigation Police of the two companies, namely PT. Yarindo Farmata and PT. Universal Pharmaceutical Industries. Evidence has been found in the form of syrup medicines that use excessive DEG and EG content, raw materials and packaging, as well as other documentary evidence owned by the two companies. The evidence will be confiscated and BPOM will impose sanctions on the two pharmaceutical companies that produce medicines in the form of administrative sanctions, namely in the form of product withdrawals and destruction of these products, as well as revocation of distribution permits and termination of distribution from these pharmaceutical companies (Bisnis.com, 2022).

As reported by Bisnis.com, the PT. Universal Pharmaceutical Industries believes that the blame in this case is the supplier who imported the hazardous substance. His party admitted that they had no particular intention and tried to cooperate with the policies set by BPOM. The government must move quickly to deal with cases of acute kidney failure so that cases of death in children do not continue to increase. If it is found that there is an element of intent or negligence on the part of a pharmaceutical company that produces medicines that causes the presence of hazardous substances in these medicines or there are product defects (defects), then the law enforcement process must be carried out and criminal penalties can be prosecuted. Pharmaceutical companies producing medicines can be subject to a criminal sentence of up to 10 years as well as a maximum fine of one billion. The Ministry of Health and BPOM can also be prosecuted if they are proven to have done or passively assisted the law because they have neglected to carry out supervision and failed to declare the distribution permit for the feasibility of these dangerous medicines.

In the Criminal Code Articles 359 to 361, as contained in the form of a threat, a person can be punished if it is proven that there has been negligence that has made a person injured, be it minor injuries, serious injuries, or death. Heavier criminal threats can be imposed on people who are proven to have committed the crime with the aim of carrying out their work/livelihood. Even those who are found guilty can be deprived of their rights in carrying out their work or activities.

This related party has absolute legal responsibility (strict liability) for the losses suffered by the victim, as regulated in Article 19 of the UUPK. From the article it is explained that if the related party is proven to have made a mistake, then they must take responsibility for the losses suffered and suffered by the victim. However, if not proven guilty, this related party must be able to prove that the error is not the result of his artificial production but comes from the consumer's fault (Muthia, 2018: page. 213).

In this way, it is hoped that there will be justice to protect the interests of the victims and their families so that they can be fulfilled as expected by them. Considering that until now there have not been any regulations regarding the testing of raw materials for hard medicines and there is no agreement on the level of solvents, in general the Indonesian people, especially infants and children who are susceptible to symptoms of fever, need preventive legal protection in the form of making related regulations and repressive protection. in the form of action as a law enforcement effort to provide preventive legal protection to the community, especially toddlers and children. Peparations will cause harm to the community (Sompotan, 2016: page. 74).

5. Discussion

In general, pharmaceutical companies can be held responsible for errors as long as the elements of intentional and negligence can be proven as well as liability without errors because they have caused losses. In particular, pharmaceutical companies can also be sued for absolute liability (Strict Liability) by referring to the provisions of Article 196 in conjunction with Article 201 of the Health Law. Protection of the interests of victims and their families in the form of preventive legal protection by enforcing the rules for testing solvents for pharmaceutical preparations contained in legislation or policy regulations as well as repressive legal protection in the form of legal action as a form of law enforcement by the police to courts or the imposition of administrative sanctions by the ministry of health. or civil lawsuits by the victim's family or legal representative.

Author Contributions: Yuwono Prianto is an Associate Professor for courses in philosophy of law and agrarian law at the Faculty of Law Tarumanagara Jakarta. Outside the campus, he does a lot of social preneurship for some urban marginalized groups as well as legal empowerment for rural communities in the use of natural resources, as well as community members who are victims of natural disasters in various parts of Java and South Sumatra. Currently, he is piloting a social preneurship project for seniors in the culinary and plant cultivation fields. On the sidelines of teaching and writing activities, it is often a structure in the training of certified mediators at the national level in collaboration with the Mahkamah Agung. Della Savelya is an undergraduate student at the Faculty of Law, Tarumanagara University and in the process of writing this article responsible for technical matters.

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A Human Rights-Based Critical Discourse on the Abolition of Child Sexual Abuse

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Abstract
Sexual exploitation of children is still rife in Indonesia and the perpetrators are difficult to be legally processed due to gaps in the legal framework and lack of understanding of children's rights by parents. However, legal harmonization has not emerged, and children are still neglected by their parents to earn a decent living through prostitution. To harmonize laws that seem to be useful for law enforcement on perpetrators of child prostitution and to provide an understanding of children's rights. The author employs a qualitative research approach to law and human rights by incorporating laws and documents pertaining to child sexual exploitation. Sexual exploitation of children takes place in Indonesia due to a lack of understanding by many parents about protection of children's rights, including a gap in law enforcement against perpetrators of child sex exploitation, allowing child prostitution to continue. Good Faith in Legislative is deemed necessary to harmonize the law so there is no gap in law enforcement. Instead, perpetrators of child sex prostitution can be brought to justice, and parental education on the importance of children's rights is deemed necessary so that the children do not become victims of sexual exploitation in the future.

Keywords: Children Rights, Sex Exploitation, Prostitution

1. Introduction

Current international and national child protection laws do not provide adequate protection against child sexual exploitation. This has resulted in millions of children becoming victims of sexual exploitation, jeopardizing their prospects. According to a survey by the United Nations Office on Drugs and Crime (UNODC) (2020), a total of 148 countries are involved in human trafficking, accounting for over 95% of the world's population and 30% of child victims of sexual exploitation. Girls account for 72% of all cases of sexual exploitation. Boys account for 23% of all cases. Western and Southern Europe have the highest number of sexual exploitation cases involving children with 4,168 cases, followed by South Asia and Sub-Saharan Africa with 3,447 and 2,833 cases, respectively. With 213 and 234 cases, South America had the fewest cases, followed by Eastern Europe and Central Asia (UNODC, 2020).

Although UNODC's report does not explicitly mention child sexual exploitation in Southeast Asia, the data suggest otherwise. The Indonesian Child Protection Commission "Komisi Perlindungan Anak Indonesia" (2021) discovered 234 cases of child sexual exploitation victims between January and April 2021. These data are nearly identical to those released by the ASEAN Post (2019), which ranks Indonesia as one of the worst ASEAN countries for children, behind Laos and the Philippines (ASEAN Post, 2019). The indicators are child health, education, childbirth, marriage, and violence (ASEAN Post, 2019). Furthermore, CEPAT (2020), a nongovernmental organization dedicated to abolishing prostitution, pornography, and child trafficking for sexual exploitation in Indonesia, discovered that the number of sexually exploited children increased even during the COVID-19 pandemic. Pimps use various techniques to entice children for sexual exploitation, even placing them on online searches, resulting in child rights protection issues in online domains (UNODC, 2020).

Save the Children (2020) places Indonesia in the category of countries where "some children miss childhood" in its report titled "The Hardest Place to Be a Child." Many children have lost their childhoods due to exploitation in terms of health, education, labor, marriage, childbirth, and violence. Indonesia is also the least safe country for children online, according to the DQ Institute (2021). The six pillars upon which the institute based its indicators are Cyber Risks, Digital Use Discipline, Digital Competence, Guidance & Education, Social Infrastructure, and Connectivity. A zero score shows the least secure, while 100 indicates the most secure. With a score of 18, Indonesia has the lowest safety rating of the countries surveyed. According to recent research, 98% of children aged 12–17 years are sexually abused in novel ways, such as through social media platforms like Booking Out, which facilitates sexual transactions (Cindy, 2021; KPAI, 2021).

Although Indonesia has a relatively strict legal framework for the protection of children's rights, many children are victims of prostitution and sexual violence, which forces them to give up their virginity as young kids. The International Convention on the Rights of the Child was ratified by Indonesia 30 years ago, but the state has not fully guaranteed children's rights. Article 28 B paragraph (2) of the 1945 Constitution explicitly states that "every child can live, grow, and develop, and may be free from violence and discrimination." The Child Protection Law Number 23 of 2002 guarantees children's rights as all activities to guarantee and protect children and their rights to live, grow, develop, and take part optimally under human dignity and are protected from harm, danger, violence, and discrimination.

Protecting children against prostitution is a problem that the government is attempting to address, as it is currently a serious problem in the country (Moore, 2021). Recent studies have revealed that children aged 12–17 years are involved in prostitution for a variety of reasons, including grooming strategies, sexual commodification of children's bodies, economic factors, and broadening communication channels to facilitate transactions, particularly in the virtual world (Wolf, Pruitt & Leet, 2021; Bang et al., 2014; Camden, 2021; KPAI, 2021). In child prostitution, grooming models, economic difficulties, and easy access to transactions seem to be the primary factors that influence victims of prostitution.

In the Indonesian context, child prostitution is defined as the act of obtaining sexual services from or offering sexual services to a child by someone or trafficking children for the sexual exploitation of others in exchange for money or other rewards (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2016; Eddyono, Hendra, & Budiman, 2017). Child prostitution can also be a family trade in which children live with their parents and sell sex as part of the household economy (Montgomery, 2011). Child trafficking for sexual purposes and child pornography are two other means of commercial sexual exploitation of children (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2016). In this respect, adults create child prostitution through their demand for children to be sex objects, abuse of power, and desire for sex, while the children are only victims of violence (Eddyono, Hendra & Budiman, 2017). However, the term "child prostitution," implies that a child chooses this as a job or a profession. Therefore, blaming children for child prostitution is incorrect in law and practice because it justifies children as condoning sexual exploitation and transfers legal responsibility to them.

Busuttil (2011) claims that sexual predators take advantage of children's docility because they are less capable of defending themselves and are unable to meet their basic needs. This deviant attitude is frequently motivated by a

sense of sexual and economic power, a desire for new experiences, or a sense of impunity due to anonymity. Furthermore, myths and prejudices in certain cultures frequently justify the search for sexual relations with children. In Asia, for example, some men believe that having sexual relations with very young virgin girls both prevents them from contracting HIV/AIDS and cures it. Most men believe that having sexual relations with a virgin increases their virility and brings them longevity and business success (Busuttil, 2011).

According to UNICEF (2020), Indonesia has 80 million children, and 90% of them, particularly girls and young women, live in poverty. Besides economic hardships, children are targeted for sexual abuse due to the weak legal system and inadequate infrastructure (Ferrao, 2020; Wangamati et al., 2019). For instance, the legal systems in several tourist destination countries, including Indonesia, Thailand, Cambodia, Brazil, Colombia, The Philippines, Kenya, and the Dominican Republic, inadequately address child sexual abuse; rather they legalize prostitution and sex tourism, making children targets of sexual predators, and communities sometimes tolerate such actions (Janez & Katarina, 2015; Grouchy, 2015; Octaviana, 2019; Bah, 2020; Ferrao, 2020; Tammy et al., 2020; ECPAT, 2021). Similarly, under Indonesian law, articles of child sexual abuse are only violations of cultural norms, spiritual norms, or manners associated with a sexual wish (sexual desire), not crimes against the human body (Ilyasa, 2021). As a result, if there are actions that violate children's rights because of sexual violence, the best way forward is not through legal processes but local solutions (Grijns & Horii, 2018).

Child prostitution began thousands of years ago and still persists, with the key factors and causes being poverty, low education, ignorance, maltreatment, and structural inequalities (Olofinbiyi, & Singh, 2020; Duger, 2015; Letourneau et al., 2018; Hampton & Lieggi, 2018; Mathews & Collin, 2019; Hurst, 2019; Pellai & Myriam, 2015; Rudolph, et al., 2018; UNICEF, 2020; Mitchell, Blease & Soicher, 2021; Sutinah & Kinuthia, 2019; Coy, 2016; Reid, 2011). This study addresses some factors that are rarely mentioned in previous studies.

The problem of child prostitution is incredibly complicated. It is not only related to economic factors and violations of cultural and spiritual norms but also indicates a lack of understanding of children's rights and weaknesses of current legal systems. Therefore, in addition to the previous study's objectives, this study offers a unique perspective on the causes of rising child prostitution due to the inadequacy of current legal structures. An inadequate law is open to potentially lethal consequences. It uses open-ended, ambiguous language, resulting in the improper delineation of its boundaries (Pistor & Xu, 2003). To fill in the gaps, a proper understanding of the existential nature of humanity is essential (Bowers, 2002). Harmonizing the Child Protection Law becomes an exclusive legal feature that will provide justice for victims of child sexual exploitation while also allowing perpetrators to face criminal charges.

2. Method

This qualitative study attempts to bridge the gap between academic knowledge and solving societal problems (Wowk et al., 2017; van den Akker & Spaapen, 2017; Fam, Neuhauser, & Gibbs, 2018). To solve the identified problems, it employs legal studies and social science approaches. This study investigates various theories concerning recognizing children's rights as victims of sexual abuse in Indonesia. In examining the implementation of children's rights in Indonesia, the conceptual approach is used to examine various viewpoints and legal doctrines.

The author employs pertinent national and international legal and social science literature in its entirety, including international legal norms about protecting children's rights. To analyze the problems, primary sources such as the Child Protection Act, the International Convention on the Rights of the Child, and secondary data sources such as legal instruments, both national and international, books, reports of organization databases are also considered. Such a combination of approaches is desirable because it serves as the basic framework for examining existing problems and finding more innovative and liberating answers.

This study begins with a discussion on the prevalence of sexual abuse in children. It goes on to identify the underlying causes and methods used by child sexual abusers and examines the existing laws on the issue, highlighting the difficulties in their implementation. The selection of socio-legal studies is important to

understand these facts. They include detecting legal loopholes, filling gaps between the legal instruments and their actual implementation, identifying the channels through which the law may have an impact, and resolving weaknesses. (Katz, 2010; Gould & Barclay, 2012; Nalle, 2015; Meadow, 2019; Irianto, 2021). Thematic analysis helps achieve the goals of research papers by using themes developed based on the research objectives. The thematic analysis seeks to answer the following research questions: First, why is it difficult for the law to combat child sexual abuse in Indonesia? Second, how can victims of child sexual abuse be rehabilitated?

The author employs Katz's theory of Loophole to dissect the problem of inadequate protection against child prostitution under Criminal Law (Kitab Undang-Undang Hukum Pidana or KUHP). Some scholars define loopholes as inadequacy in a set of rules or even in the law (Katz, 2010; Murphy, 2018). Loopholes begin with the way laws are written, with poorly thought-out laws, and the use of almost inapplicable laws to justify actions (Meggit, n.d). This occurs because it is impossible to anticipate every circumstance or course of action that will arise due to or in response to the law (Free Dictionary, n.d.). According to Larcom's Legal Limited (2018), Loopholes are technicalities, unforeseen circumstances, dangers, and failure to do the right thing. Merriam-Webster (n.d.) defines a loophole as an error in how a law, a rule, or a contract is written that allows some people to avoid obeying it legally. Black's Law Dictionary (n.d) defines loophole as an authorized legal interpretation or practice that is unintentionally ambiguous due to a textual exception, omission, or technical defect, which evades or frustrates the intent of a contract, law, or rule without violating its literal interpretation. To avoid dangerous legal loopholes, law enforcement mechanisms must be implemented in a way that accurately reflects new legal situations (Raxter, 2021). However, it must be ethically permissible to pursue it, and the regulations must not prohibit it (Kvalnes, 2019).

Using loopholes theory and empirical evidence, the author did not discover any existing literature on child prostitution due to the lack of inclusiveness of legal instruments in literature reviews. Legislation is not all-inclusive, and loopholes arise through the passage of laws, enactment of regulations, drafting of contracts, or court decisions (Katz, 2010). Prostitution, for example, is punishable under Article 284 of the Indonesian Criminal Code if marriage still binds the male/female. The Indonesian Criminal Code, however, omits child prostitution.

This study is limited to discussing whether the law on child protection is comprehensive enough to protect children from sexual abuse in Indonesia. Focus will also be placed on the regulations for child protection that have legal loopholes about interpreting child prostitution. Furthermore, the researcher uses qualitative research methods to analyze the research problems, implying that quantitative research conducted outside of this study may provide a more comprehensive view of the research topic.

3. Literature Review

There have been previous studies on child sexual exploitation (Finkelhor, 1994; Jones & Loggie, 2020; Lalor & McElvaney, 2010; Suyanto, Hidayat & Wadipalapa, 2020; Franchino-Olsen et al., 2020; Benavente et al., 2021; MacIntosh & Ménard, 2021). Several scholars focused on the factors, recruitment process, and strategies that contribute to children becoming prostitutes, such as poverty, low education, ignorance, maltreatment, and structural inequalities (Olofinbiyi, & Singh, 2020; Duger, 2015; Baird & Connolly, 2021; Letourneau et al., 2018; Hampton & Lieggi, 2018; Mathews & Collin, 2019; Hurst, 2019; Pellai & Myriam, 2015; Rudolph, et al. 2018; UNICEF, 2020; Mitchell, Blease & Soicher, 2021; Sutinah & Kinuthia, 2019; Coy, 2016; Reid, 2011; ECPAT, 2019). Some authors concentrate solely on the negative consequences of child prostitution, such as social marginality, low school attainment, a bleak future and negative stigma on children, childhood trauma, and the need for rehabilitation (Brown, 2019; Jazlyn et al., 2021; Leclerc et al., 2016; Levin, 2019; Susilowati & Dewi, 2019; Barrios et al., 2015; Lev-Wiesel et al., 2018).

Child prostitution refers to the control of sex rather than sex itself (ECPAT, 2019). Threats, force, coercion, and deception are used, as is transactional sex, which sells sexual services but not the individual, and it manifests gender oppression and exploitation. Furthermore, poverty, maltreatment, and threats are said to be the primary

motivators for child prostitution (ECPAT, 2021). However, the author argues that instead of poverty and maltreatment, the primary reasons for child prostitution are legal flaws, loopholes, or evasion of the law.

Current literature does not adequately address the voluntary sexual exploitation of children for monetary gain, and national legislation does not clearly define child prostitution. There is no comparable research that combines the two to justify combating child sexual exploitation. Due to a lack of research in this area, the author addresses the issues of child sexual exploitation based on the incompleteness of the law. This study provides viable ways of identifying the root cause of the problem, determining why child sexual exploitation is on the rise even though Indonesia has a plethora of laws protecting children's rights. As Grant (2015:2) points out, understanding "the more root causes of crime" is crucial for addressing societal crime.

4. Discussion

As a state guarantee, the protection of children's rights should produce significant outcomes that adequately protect children from exploitation. For example, the state is obliged to provide proper safeguards against child trafficking for sexual exploitation, protect children's best interests, and protect children from violence and discrimination. Failure to do so violates many regulations on children's rights protection.

This violation will have a significant effect on children, such as presenting them with a bleak future and attaching harmful stereotypes to their lives (Williams, Wilson & Bergeson, 2019). Such factors can make it more challenging to live a better life. This means that when parents and law enforcement cannot protect children's rights, children "drown," suffering actual losses throughout their lives. Despite many laws protecting children's rights against sexual exploitation, a lack of understanding of children's rights and poor law enforcement will result in various stigmas and a loss of the opportunity to have a better life. This reflects in current statistics which show that, with a few exceptions, women have significantly lower levels of education and hourly earnings than men (Noerdin, et al., 2006). Former sex workers seem to be particularly vulnerable in this group (Murdiyanto, 2019).

Many children are manipulated and forced into child prostitution, making them vulnerable to sexual violence and economic exploitation (Yuniantoro, 2018). According to an online study on child prostitution by pimps (Mucikari) in Solo, Central Java, the average age of child prostitutes was between 15 and 16 years (Kurniati, 2021). Another study estimates that the number of children involved in prostitution in Indonesia is 30% (approximately 40,000–70,000 children) of the total percentage of prostitution in the country (Utami & Wadjo, 2021).
Based on these statistics, it is clear that child prostitution is widespread, necessitating preventive measures such as strict law enforcement and harsh penalties for perpetrators (pimps) and parental education on children's rights. Prostitution is a complicated problem because it involves immoral human behavior that is illegal and has the potential to destroy the social values that exist in the Indonesian society (Utami & Wadjo, 2021).

4.1 Child Prostitution Under the Indonesian Children Protection Law

Indonesia is currently facing the dangers of adult prostitution and child prostitution. However, the practice of child prostitution has become very concerning, especially given the many child exploitation cases, both voluntarily and involuntarily. Over time, the most common reasons adduced for child prostitution are poverty and a lifestyle demand influenced by the social environment (Utami & Wadjo, 2021).

Whether a child's prostitution is forced or voluntary, children in prostitution cases must be considered victims, and such exploitative behavior must be considered a crime. Child prostitution is a type of commercial sexual exploitation of children (Eksploitasi Sex Komersial Anak or ESKA), which involves the sexual exploitation of children for monetary gain or other forms of remuneration. Children in ESKA cases are primarily unable to decide about continuing to pursue prostitution as professional life.

The Criminal Code (KUHP), which serves as the foundation of Indonesian criminal law and regulates criminal law, essentially prohibits prostitution activities, even though it does not explicitly include "prostitution" in its articles. It uses the word "obscene act," which, according to the Sexual Rights Initiative (2020), is defined as "prohibited sexual intercourse outside of marriage that is a punishable by law." The Criminal Code also defines obscenity as "any act done to get sexual pleasure while endangering the honor of decency."

Prostitution is considered an obscene act because it fulfills several criteria, including sexual intercourse outside of marriage and for sexual pleasure. The Criminal Code makes provisions for prostitution in two articles, 296 and 506:

- Article 296 states that "anyone whose occupation or habit intentionally commits or facilitates obscene acts with other people shall be punished with imprisonment for a maximum of one year and four months or a maximum fine of IDR. 15.000.00 (fifteen thousand rupiahs)."
- Article 506 states that "Whoever, as a pimp, seeks to profit from a woman's obscene acts shall be imprisoned for a maximum of one year."

The Criminal Code prescribed other penalties for child sex offenders in Article 88 of Law No. 35 of 2014, which states the following:

> "Anyone who violates the provisions referred to in Article 76I shall face imprisonment for a maximum of 10 (ten) years and a maximum fine of IDR 200,000,000.00 (two hundred million rupiahs)."

Then, according to Article 5 of Law No. 21 of 2007, "everyone who adopts a child by promising or giving something to be exploited shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least IDR 120,000,000.00 (one hundred and twenty million rupiahs) and IDR maximum 600,000,000.00 (six billion rupiah)."

There are certain legal provisions relating to child prostitution, including the role and function of the government in providing education or guidance to perpetrators of prostitution to prevent them from falling back into their life of crime:

- Law No. 1 of 2000 Concerning Ratification of the ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor);
- Child Protection Law No. 23 of 2002 and its amendments;
- Law No. 10 of 2012 on Ratification of the Optional Protocol to the Convention on the Rights of the Child Concerning the Sale of Children, Child Prostitution, and Child Pornography;
- Law No. 11 of 2012 on Juvenile Criminal Justice System.

According to Part IV, number 3 of Law 1/2000 and Article 3 letter (a) of Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor in the Annex to Law 1/2000, one of the worst forms of child labor is the use, provision, or offering of children for prostitution. According to Article 76I and Article 88 of Law Number 35 of 2014 Concerning Amendments to Law Number 23 of 2002 Concerning Child Protection, anyone who places, allows, commits, orders to do, or participates in economic or sexual exploitation of a child faces up to 10 years in prison or a fine of IDR 200 million.

4.2 Gaps in Domestic Legislation

In response to the growing practice of prostitution, the state has enacted a slew of regulations, including those found in the Criminal Code (KUHP) and local laws and regulations, to stop or sanction perpetrators or those involved in prostitution. Two articles in the Criminal Code (KUHP) specifically relate the crime of prostitution to adult prostitution (rather than child prostitution). Anyone who intentionally connects or facilitates obscene acts committed by others, or is suspected of doing so, faces a four-year prison sentence under paragraph (2) of

Article 295 of the Criminal Code. Moreover, Article 296 of the Criminal Code stipulates, "whoever intentionally causes or facilitates obscene acts by others and makes it a livelihood or habit faces a maximum imprisonment of one year and four months or a maximum fine of fifteen thousand rupiahs."

Children who are victims of commercial sexual exploitation (ESKA) are afforded special protection under Article 59 of Law No. 23/2002, a governmental and societal obligation and responsibility. Examples of special protection captured under Law No. 23/2002 are as follows:

- Dissemination and/or socialization of laws and regulations concerning the protection of economically and/or sexually exploited children.
- Monitoring, reporting, and sanctioning.
- Involvement of various government agencies, businesses, trade unions, nongovernmental organizations, and society in abolishing child economic and/or sexual exploitation.

Furthermore, according to Article 64 paragraph (3) of Law Number 23 of 2002 Concerning the Protection of Children, special protection is provided for children as victims of criminal acts through:

1. Rehabilitation efforts, both within and outside the institution;
2. Efforts to protect against identity reporting in the media and to avoid labeling;
3. Providing physical, mental, and social safety guarantees for victim witnesses and expert witnesses; and
4. Providing accessibility to obtain information about case development.

However, this law does not define child prostitution. The Child Protection Act of 2002, as amended by Law No. 35 of 2014, contains some special provisions concerning sexual exploitation. Sexually exploiting children for personal gain or the benefit of third parties, including pimps, is prohibited under Article 88, and offenders may face up to a year in prison. In contrast, the law protecting children has no specific provisions that define or criminalize child prostitution. This void must be filled in light of Article 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children,
child prostitution and child pornography, which provides that "child prostitution means the use of a child in sexual activity" for wages or other forms of consideration.

The Child Protection Act also makes it a crime to "knowingly and intentionally" allow a child to be exploited commercially or sexually once the child requires and deserves help and support. Violations of this provision can result in up to 10 years imprisonment and a fine of up to IDR 200 million. This provision punishes those who facilitate child sexual exploitation and those who are aware of such exploitation but do nothing to prevent it. Using or threatening to use violence to force a child to engage in sexual acts is punishable by 5 to 15 years in prison and a maximum fine of IDR 5 billion.

Regarding child prostitution, law enforcement officers frequently face challenges in prosecuting perpetrators (Naibaho, 2011). This is because, due to the law's imperfect drafting (Katz, 2010), the definition of child prostitution is not sufficiently comprehensive.

To support Katz's point that the Criminal Code (KUHP) is not perfect because several articles regulate the crime of prostitution but do not address child prostitution, the omissions of child prostitution in some articles of the Criminal Code that govern prostitution are presented below:

1. According to Article 296 of the Criminal Code, "Whoever intentionally connects or facilitates obscene acts by others with other people, and makes it a livelihood or habit, is threatened with a maximum imprisonment of one year and four months or a maximum fine of one thousand rupiahs."
2. Article 297 of the Criminal Code states that "Whoever intentionally causes or facilitates the trafficking of a male child who is not yet an adult shall be punished by a maximum imprisonment of six years."
3. Finally, Article 506 of the Criminal Code states that "Whoever takes advantage of someone else's

obscene acts on women to make a living is punishable by up to a year in prison."

Articles 296, 297, and 506 of the Criminal Code only prescribes sanctions for those who facilitate obscene acts, including providing a one-year prison sentence upon conviction. It does not prescribe criminal sanctions for perpetrators and their consumers, except for pimps who profit from the practice of prostitution and people who commit acts to connect or earn a living or habit. Hence, prostitution is not a crime because the Criminal Code does not regulate these issues.

According to the legality principle, commercial sex workers (Pekerja Seks Komersial or PSK) cannot be held criminally liable because no provision explicitly states that acts committed by sex workers violate criminal law provisions. The Criminal Code only refers to commercial sex workers (PSK). First, women sex workers present themselves as workers, which is an official designation. Second, their names appear in state documents (local government) as commercial sex workers, which means that sexual relations or commercial sexual relations have been legalized.

Law enforcement's most frequently used laws are Law No. 23 of 2002 concerning Child Protection and Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002. Children of sex buyers are free to roam in Indonesia because of a lack of rules governing child prostitution. Buyers of child sex appear to avoid Indonesia's lax legal regulations and sexually exploit Indonesian children, including the purchase of sexual services for children (CEPAT International, 2011).

With their financial capabilities, sexual predators quickly get children to satisfy them without facing legal constraints. There is no legal instrument in Indonesia that regulates the criminalization of people who buy sexual services from children. As a result, few foreign visitors come to Indonesia solely to purchase sex with children, either directly or through their network of fellow child sex predators looking for children to satisfy their sexual desires (CEPAT International, 2011).

Katz (2010) characterizes an inadequate law system as one where the legislation does not include behavior that should be reflected in articles of the law where the action has the potential for harm. The state's role as a legislator includes the establishment of a legal system that can prevent human rights violations. In appraising the substance of criminal law, which is disadvantageous to children's rights, actual damage to children remains as long as the law is in effect, and it is much more helpful to harmonize or adjust it.

When the Indonesian Criminal Code (KUHP) was enacted, "legal loopholes" already existed. Those who sexually exploited children even used some existing legal provisions as a cover for their actions. Sex offenders realized the weaknesses of the law and kept committing such acts—particularly as prostitution was not considered illegal and no legal liability attached to anybody who engaged in sex work. The same is true for those who engage in child prostitution. If perpetrators only buy sex from child prostitutes, they cannot be prosecuted. This differs from the perpetrator providing a place or becoming a pimp, precluding legal responsibility under Article 560 of the Criminal Code (KUHP). The legal position of sex buyers of child prostitution appears to differ from that of those who provide places for child prostitution. Only those who profit from providing facilities that harm children in connection with child prostitution face legal consequences.

Thus, according to Katz, the inadequacy of existing laws in placing criminal liability on sex buyers of child prostitution encourages consumers to continue buying sex from child prostitution. If the state can provide effective legislation on this issue, children will be better protected. This could be because legislators overlooked or did not consider only adult prostitutes. This must be kept in mind when developing legal provisions to protect children against child sex buyers. The ability to protect children against child prostitution depends on the content of the law. Those who patronize child sex prostitution, for example, can be discouraged through the provision of adequate sanctions (Hamzah, Narang & Yusari, 2021).

In general, it is difficult to prosecute the perpetrators/buyers of sex from child prostitutes during the investigation stage by the police because prostitution is not a crime, so arresting perpetrators may be a challenge. Thus, the fact that prostitution is not criminalized under the Criminal Code remains an impediment (KUHP) as sex buyers

hide behind the ineffective laws. The law is no longer capable of protecting certain victim groups. Thus, they will continue to suffer as long as the law does not provide them with a sense of security. For example, in the case of Vanessa Angel, which recently received widespread coverage in the Indonesian media, only the pimp and artist, Vanessa Angel, provided online prostitution services were criminally charged. Meanwhile, prostitution service users or customers were not charged with a crime (Putra & Suardana, 2019).

Finally, when discussing prostitution following the provisions of the Criminal Code (KUHP), with nonspecific reference to child prostitution, the rights of child victims of sexual exploitation are affected. The prostitution clauses harm the child while benefiting the buyer. Litigation for child victims of prostitution must be instituted based on a wide interpretation of the provisions of the Criminal Code to cover child prostitution. This will provide potential supplementation of laws that do not specifically mention child prostitution.

4.3 Recovery of Commercial Sex Victims

Recovery and reintegration of child victims of exploitation in the commercial sex industry is a strategic step that must be taken. Prioritizing a non-punitive approach toward child prostitutes in all legal proceedings and providing psychological medical services to victims of commercial sexual exploitation are among the steps forward. Handling child prostitution cannot be done arbitrarily and must take more than just moral considerations into account. Prostitution is a complex problem with social, cultural, economic, political, moral, and religious implications. Thus, the government and the entire community should find a solution through legal enforcement as well as sociocultural, economic, and political means other than morals and religion.

Policy options for preventing and combating child prostitution in Indonesia include consistently enforcing laws and regulations. The entire society should carry out these efforts systematically in collaboration with law enforcement. The concrete actions that must be taken include the following:

312 Protection of the rights and best interests of children who engage in prostitution, including recognizing their particular needs, seriously considering their opinions, and providing the necessary support during the legal process; and
313 Possible steps to ensure the availability of appropriate assistance for child prostitutes, such as social reintegration and complete physical and psychological rehabilitation.

More importantly, rehabilitation needs to be carried out to reintegrate child perpetrators into society after they have been educated and trained in various skills and counseled over a certain period, to place them on a righteous path under applicable norms. The rehabilitation process for children who engage in prostitution must be consistent and must not be a mere governmental formality. There must be an effective method for carrying out developmental efforts in various areas, including physical, spiritual, moral, and behavioral efforts toward children involved in prostitution. Finally, the entire community's role and concern are critical in actively participating in and supporting the government's efforts to enact comprehensive laws and provide supervision to keep children out of prostitution.

5. Conclusion

From the foregoing discussion, it is reasonable to argue that Indonesian children are at risk of sexual exploitation due to the gaps in national laws that do not recognize child prostitution. As a result, children involved in prostitution remain in environments where they are subjected to sexual exploitation due to poverty, maltreatment, coercion, and their social environments. Furthermore, it appears that the gaps in national legislation resulting from not perceiving children as victims of sexual exploitation sometimes invalidates their legal position as sexually abused children.

Law as a form of social control, which does not allow for the proper regulation of sexual exploitation of children, renders them powerless and prevents the effective prosecution of perpetrators. This study's findings are significant as children are increasingly becoming victims of sexual abuse due to economic reasons, coercion, and

maltreatment and because of sluggish legislation that does not protect children's rights as survivors of sexual exploitation.

However, there are several limitations of this study. First, the prostitutes in this study were sexually abused children, not adult prostitutes. As a result, the findings cannot be applied to other sexual exploitation victims. The second limitation is that this study only considers laws governing child prostitution. Thus, further research investigating adult prostitution in a legal context is critical. Third, because this study employs law as a social control theory in qualitative research, future research is required to test the loopholes and gaps in national legislation.

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