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Immigration Reasons: Legal Instruments for Refusing Entry of Foreigners into Indonesia

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Abstract
The reasons for immigration rejection are regulated in Article 13 of Law Number 6 of 2011 concerning immigration. This article stipulates ten criteria for reasons for rejection of foreigners. However, the problem is that this article has limited the reasons for immigration rejection to only ten reasons and there are no provisions that open up space for other regulations to further regulate the reasons for immigration rejection. However, in reality, there are reasons for immigration rejection outside of Article 13 of Law Number 6 of 2011 concerning immigration that are applied by immigration officers, then a new legal norm emerged that regulates the reasons for immigration rejection in Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015. This research was conducted using an empirical normative legal research method. Normatively, there is a discrepancy when viewed from the hierarchy of laws and regulations regarding the implementation of reasons for rejection outside of Article 13 of Law Number 6 of 2011. Nevertheless, the existence of these reasons for immigration rejection is very important to maintain state sovereignty and implement selective immigration policies. Therefore, the presence of Law Number 30 of 2014 concerning government administration is a way out of the implementation of reasons for immigration rejection outside of the reasons for rejection in Article 13 of Law Number 6 of 2011, because it has fulfilled the requirements and elements for its implementation as a discretionary decision.

Keywords: Immigration Reasons, Refusal, Foreigners

1. Introduction

The intensity of human traffic, both entering and leaving a country, increases annually. This is due to the increasingly advanced and modern technology created by humans, especially in the fields of information, communication, and transportation. Technological developments in the field of transportation have made it easier for people to travel to other areas, including international travel. This is because modern transportation allows people to move quickly, affordably, and is trusted by the public in terms of safety (Legiani & Lestari, 2018).

People move from one region to another for various reasons, whether it's for vacation, better medical treatment in the destination country, family visits, diplomatic visits, or business. Distance is no longer a barrier to movement, and international travel is now possible. Therefore, it can be said that people can move between countries to fulfill their interests or needs (Legiani & Lestari, 2018).

The increasingly diverse needs of humans and the desire to improve their standard of living have led to increased migration between countries in the future (Testaverde, et.al., 2017). The movement of people between countries has received significant attention from each country around the world. This is based on the fact that the presence of foreigners in a country's territory concerns the sovereignty and security of the country concerned. In this case, sovereignty becomes a very fundamental matter because of the policies taken regarding citizens of other countries and how the country can demonstrate its existence in implementing regulations aimed at maintaining security and sovereignty over its own country.

The movement of people from one country to another requires the regulation of human traffic. International law expert JG Starke stated that it is the full right and authority of a country to regulate the movement of people entering or leaving its territory without any interference or intervention from any party , this is in line with the existence of a country's sovereignty over its territory (Starke, 2015).

It is a fundamental obligation for a country to safeguard its sovereignty. In English, sovereignty comes from the word " sovereignty " and in Latin, it comes from the word "*superanus*," which means supreme. Sovereignty is one of the basic, essential characteristics that a country must possess. A country is said to be sovereign if it can regulate and control the country absolutely without intervention from other parties. However, this power is also accompanied by predetermined boundaries, including the issue of territorial boundaries and areas of the country (Santoso, 2018). The Great Dictionary of the Indonesian Language states that state sovereignty is the highest power that exists in a country. Meanwhile, according to the Great Dictionary of the Indonesian Language, legal sovereignty is located or exists in law.

Speaking of sovereignty, a country implements regulations regarding the passage of foreigners according to its own national interests. For example, the immigration policy implemented by the United States through the Department of Homeland Security and Transportation Security The US Immigration Administration, an agency that handles US immigration matters, refused entry to General Gatot Nurmantyo. This refusal was made even before the person entered the country. This naturally drew criticism from Indonesia, which questioned the reason for the refusal. However, this was an immigration reason given by the US Immigration Department and is a matter of the country's sovereignty. This is done when someone is unwanted in a country, in this case the United States (Park & Kim, 2019).

This can also be done by the Indonesian government through immigration regulations in Indonesia which regulate the entry and exit of Indonesian citizens and foreign citizens in the territory of Indonesia, especially the reasons for refusing foreigners have also been regulated in such a way in Article 13 of the Law Number 6 of 2011 about Immigration which is further regulated in the Regulation of the Minister of Law and Human Rights Number 44 of 2015 concerning Procedures for Entry and Exit Checks at Immigration Checkpoints (hereinafter ... called Minister of Law and Human Rights Regulation Number 44 of 2015), specifically Article 106 concerning the rejection of foreigners. The mandate of this law is implemented by the Ministry of Law and Human Rights through the Directorate General of Immigration. Immigration, in this case, implements immigration policies and functions, requiring everyone entering or leaving Indonesia to comply with and comply with all established regulations.

Article 1 paragraph (3) of the 1945 Constitution states that Indonesia is a state based on law (Republic of Indonesia, 1945). Indonesia is a state based on law with the general principle of a state based on law, namely having written or statutory laws and regulations. To regulate the administration of the state by institutions based on applicable laws and regulations, limit the power of state administrators, and protect the rights of citizens (Siallagan, 2016).

In the immigration law, it has been regulated that everyone who will enter or leave the territory of the Republic of Indonesia, whether Indonesian Citizens or Foreign Citizens, must be carried out and go through Immigration Inspection. The standard carried out is checking the Visa, Travel Documents and Residence Permits concerned whether they are still valid and still valid (Kemenkumham, 2011). This is done at the Immigration Checkpoint and is in line with the implementation of the Immigration Function, namely maintaining national security. Legal certainty in a sovereign country must be upheld, this aims to increase public trust in the government as well as to

realize the image of a dignified nation in the eyes of the international world (Arifin, 2018). The realization of legal certainty implemented by the government, especially in the field of immigration, is by implementing selective immigration policies through immigration checks on people who will cross to enter or leave Indonesian territory.

In this case, immigration has the authority to reject or accept foreigners who will enter Indonesian territory, where the decision taken is a manifestation of state sovereignty implemented through immigration officials. Since the enactment of Law Number 6 of 2011, the crossing route has been regulated in such a way.

There are two things that the author is concerned about, the first is that in Article 13 paragraph (1) of Law Number 6 of 2011 there are ten reasons for rejection of Immigration which state:
"(1) Immigration officers will refuse entry to Indonesian territory to foreigners if the foreigner:"
a. his name is listed on the Deterrence list;
b. does not have a valid and valid Travel Document;
c. having fake immigration documents;
d. do not have a visa, except those who are exempt from the obligation to have a visa;
e. has provided false information in obtaining a visa;
f. suffering from an infectious disease that is dangerous to public health;
g. involved in international crimes and organized transnational crimes;
h. included in the list of wanted persons to be arrested from a foreign country;
i. involved in treasonous activities against the Government of the Republic of Indonesia; or
j. included in a network of practices or activities of prostitution, human trafficking and smuggling.

Humans are complex creatures, so they need rules that can "contain" all the behavior they might engage in, therefore immigration reasons are needed (Ousey & Kubrin, 2018). It because the reasons for immigration rejection must be holistic and unlimited (Cole, 2014), if the reasons for immigration rejection are only limited to these ten reasons, this can impact the flexibility of decisions that can be taken by immigration officers in providing reasons for rejection of foreigners who are not worthy to enter the territory of Indonesia. The next problem is that in Regulation of the Minister of Law and Human Rights Number 44 of 2015, it has been further regulated regarding the Procedures for Entry and Exit Checks of Indonesian Territory at Immigration Checkpoints, especially the Procedures for Refusal to Enter Indonesian Territory as stated in Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015. The text of Article 106 paragraph (1) and paragraph (2) in the hierarchy of legal norms must be based on the law above it or higher. However, in Article 106 paragraph (2) the text of letters c and d of Regulation of the Minister of Law and Human Rights Number 44 of 2015 (Minister of Law and Human Rights of the Republic of Indonesia, 2015):
c. endanger security; or
d. disturbing public order.

The wording of Article 106 paragraph (2) letters c and d is not stated in Law Number 6 of 2011 as a higher law. This can cause legal uncertainty and it is not impossible that it will become a loophole that will be exploited by the subject of the wording of this Article if it is applied by immigration officers in the future. In his theory, Hans Kelsen states that legal norms are tiered and layered in a hierarchy (arrangement) in the sense that a higher norm applies, originates and is based on an even higher norm, and so on (Indradi, 2005). On this basis, the author sees that there is an oddity seen from the Legal Norm Hierarchy System, so the author is interested in raising a scientific work on the application of Regulation of the Minister of Law and Human Rights Number 44 of 2015, especially Article 106 paragraph (2) letters c and d of Law Number 6 of 2011 Article 13 seen from the hierarchy of legal norms that apply in Indonesia.

Based on the background described above, the problem formulation studied in this research is: (1) how is the immigration reasons clause in Article 13 of Law Number 6 of 2011 applied as a basis for refusing entry to foreigners at the Soekarno Hatta Immigration Checkpoint? (2) What is the legal force of Article 106 paragraph (2) letters c and d of the Minister of Law and Human Rights Regulation Number 44 of 2015 regarding Article 13? Law Number 6 of 2011 reviewed from the Theory of the Hierarchy of Legal Norms?

2. Method

In conducting this scientific research, the author employed the empirical-normative legal research method. This empirical-normative legal research method essentially combines a normative legal approach with the addition of various empirical elements (Ali, 2021). This empirical-normative research method also examines the implementation of normative legal provisions (statutes) in action in each specific legal event that occurs within a society.

This research was conducted by tracing and collecting primary data sources and materials from books, observations, interviews, field questionnaires, and a comprehensive overview of the legal principles, legal rules, and legal provisions regarding the Legitimacy of Immigration Reasons (Tan, 2021). The secondary and primary data obtained will be processed through several methods, including:

a. data editing involves checking the collected data to ensure it is complete, accurate, and relevant to the problem. Correcting any errors, and checking for relevance and consistency between the data and the desired data.
b. data classification, which is carried out by grouping data according to the subject area to make it easier to analyze, in accordance with the rules that have been established in the problem so that actual (valid) data is obtained for this writing.
c. data systematization, which is done by compiling and placing data on each topic by looking at its type and its relationship to the problem so that it makes it easier to discuss it.

3. Discussion

3.1. The Rejection Clause on Immigration Grounds in Article 13 of Law Number 6 of 2011

3.1.1. Immigration Check at Immigration Checkpoint by Immigration Officers

Article 9 paragraph (1) of Law Number 6 of 2011 states that every person who will enter or leave the territory of Indonesia is required to undergo an inspection carried out by an Immigration Officer at an Immigration Checkpoint. Immigration inspections include inspections related to the completeness of travel documents and the identity of the person concerned (Immigration, 2011). This is in line with the direction of Indonesia's immigration policy which implements a selective immigration policy which aims to ensure that only people who meet immigration requirements, are beneficial and do not endanger the security of the Indonesian state are allowed to enter the territory of Indonesia this includes the entry, presence and exit of the foreigner and based on this principle, only people who are beneficial are allowed to enter. Based on Article 1 number 12 of Law Number 6 of 2011, it states that Immigration Checkpoints are checkpoints at seaports, airports, border crossings, or other places as entry and exit points to the territory of Indonesia. Based on the provisions of this regulation, it can be concluded that the implementation of immigration rejection can also be carried out at immigration checkpoints as referred to in Article 1 number 12 of Law Number 6 of 2011 which is an entry point or exit point Indonesian territory.

In order to ensure the implementation of the selective immigration policy, the government implements an immigration policy where the immigration policy is implemented by the minister responsible for the entire Indonesian border line, implemented by Immigration Officers which include immigration checkpoints and border crossing posts (Immigration, 2011). Immigration officers as the ones in control of the implementation of all stages of immigration checks, especially at the immigration checkpoints at Soekarno Hatta International Airport, have the authority to make decisions regarding whether or not foreigners are allowed to enter and exit Indonesian territory (Sjahriful, 2005).

Based on data obtained from the Immigration Checkpoint Division of the Soekarno-Hatta Immigration Office (2020), it shows that in the period of January 1 - January 31, 2020, the number of crossings made by foreigners at the Soekarno Hatta Immigration Checkpoint with the number of arrivals was 685,124 people, departures were 618,285 people with a total number of crossings in January reaching 1,303,409 people., while in the period of February 1-February 28, 2020, the number of crossings of foreign citizens at arrivals was 423,524 people and at departures was 441,112 people. From these data, it can be seen the high intensity of crossings made by foreigners

at the immigration checkpoint of Soekarno Hatta International Airport. Seeing the number of foreigners of more than 400,000 entering or leaving Indonesian territory in a month, of course this requires immigration officers on duty at the Immigration inspection counter as the front line in selecting every person who will enter or leave Indonesian territory to have the competence and expertise and have the courage to reject foreigners who are not worthy of entry.

The procedures for examining foreigners based on Minister of Law and Human Rights Regulation Number 44 of 2015 and SOP IMI-GR.03.02-1189 are as follows:

a. The immigration checkpoint for entry into Indonesian territory at Soekarno Hatta International Airport is located at the immigration counter in the arrival area of terminal 2F or arrival area of Terminal 3 Ultimate.
b. Immigration officers check travel documents, Visa, VOA voucher, boarding pass and return travel ticket to the country of origin or another country
c. Immigration officers conduct a brief interview regarding the foreigner's reasons and purpose for visiting Indonesia. Questions asked include: the foreigner's length of stay in Indonesia, return or onward tickets to another country, and the foreigner's residence or whereabouts while in Indonesia, such as staying with a sponsor or relative.
d. Immigration officers carry out checks regarding the visa used by the foreigner, whether it is a Single Visa Entry, Multiple Entry and Visas on Arrival are exceptions for foreigners exempt from visa requirements, foreigners holding Limited Stay Permits and Permanent Stay Permits, and re-entry permit checks. If a foreigner cannot present the above requirements, they must submit their application to the designated officer.
e. Immigration officers scan foreigners' travel documents in the form of Scans or Swaps via the BCM system to read and record the identity of the travel document owner and the crossing data that has been carried out.
f. Checking Foreigner data on the deterrent list through the Border Control system Management that has been integrated with Hit alert from Interpol.
g. Directing foreigners identified on the deterrent list to designated immigration officials.
h. If the foreigner has fulfilled the requirements to enter Indonesian territory, the immigration officer will then affix an entry stamp and the officer's initials to the travel document and the foreigner's A/D card.
i. In the BCM system, the Immigration officer clicks allow in the BCM system and then the travel documents can be returned to the foreigner and they can enter Indonesian territory legally.
j. If during the inspection process a foreigner cannot fulfill the requirements in accordance with applicable laws and regulations or the immigration officer assesses that the foreigner is not fit to enter Indonesian territory, the immigration officer will click Refer on the system and will then be submitted to the Supervisor/ Assistant Supervisor and will consider the superior's decision to be refused entry into Indonesian territory and processed to be sent back to the country of departure at the first opportunity.

During the immigration inspection stages, foreigners are required to comply with and obey the regulations in force in Indonesia and the inspection is carried out based on the principle of selective immigration policy.

3.1.2. Rejection of Foreigners Based on the Reasons for Refusing Immigration in Article 13 of Law Number 6 of 2011

Sovereignty is the essential characteristic of an independent nation. A nation is said to be sovereign, meaning it possesses supreme power and authority. This aligns with Jean Bodin's theory of state sovereignty, which posits that a nation's sovereignty must be absolute, meaning that it is supreme, original, and not subject to the influence of any other power. However, this power remains limited by the country's territorial boundaries. Indonesia's immigration law reflects the interests and sovereignty of the nation and aligns with the aspirations and interests of the Indonesian people.

Based on the selective immigration policy implemented by the Indonesian government, which aims to ensure that only those who meet the immigration requirements and are eligible for benefits are allowed to enter Indonesian territory, meaning that foreigners who do not meet these requirements will be refused entry into Indonesian territory. Article 13 of Law Number 6 of 2011 provides 10 reasons for immigration refusal:

a. his name is listed on the Deterrence list;

b. does not have a valid and valid Travel Document;
c. having fake immigration documents;
d. do not have a visa, except those who are exempt from the obligation to have a visa;
e. has provided false information in obtaining a visa;
f. suffering from an infectious disease that is dangerous to public health;
g. included in the wanted list for arrest from a foreign country;
h. involved in treasonous activities against the Government of the Republic of Indonesia; or
i. included in the network of practices or activities of prostitution, human trafficking, and smuggling.

This article mentions the ten criteria for refusals made by immigration officials at Immigration Checkpoints, which are rejected for technical immigration reasons or for reasons of national interest (Düvell, 2003). Immigration refusals are made just before a foreigner is about to enter Indonesian territory, meaning the foreigner is not yet present and has not yet carried out activities in Indonesian territory, but is still at the TPI and is being examined by immigration officials. It is then up to the immigration official to determine whether the foreigner can enter or be refused entry into Indonesian territory. Making a decision requires a thorough assessment from an immigration official and must be based on applicable regulations. The following is a graph of refusals for foreigners at the Soekarno-Hatta International Airport Immigration Checkpoint based on the reasons used.

Table 1: Immigration Refusal Reasons

No	Reason for Rejection	Amount
1	Immigration Reasons	100
2	Not to Landing	35
3	Visa Issues	7
4	Interpol	4
5	Block	9
7	Passport Issues	12
8	Prostitution Problem	1

Source: Soekarno Hatta Immigration Checkpoint Division (2020)

The data shows a very high intensity of crossings carried out by foreigners. Meanwhile, during this period, there have also been rejections of foreigners who, after being assessed by immigration officials, were declared unfit to enter Indonesian territory for various reasons. Meanwhile, based on data obtained in the field, the author divides two categories of reasons for rejection used by immigration officials, namely reasons for rejection based on Article 13 of Law Number 6 of 2011, namely ten immigration reasons and rejections outside Article 13 of Law Number 6 of 2011 or based on immigration reasons. From this division, it was found that foreigners who were rejected for Immigration Reasons had a number of rejections with a percentage of 60% and with reasons in accordance with Article 13 of Law Number 6 of 2011 amounting to 40%.

However, as time goes by, the application of the reasons for immigration rejection based on Article 13 of Law Number 6 of 2011 has become ineffective because it is impossible for the law to regulate all kinds of cases that occur in daily practice (Ansori, 2015). The fact that the Article has been locked on only ten reasons for rejection must be faced with the complexity of new problems and in the field cases have been found that cause foreigners to be unfit to enter Indonesian territory while this is not stated in Article 13 of Law Number 6 of 2011.

Based on the data and facts that occur in the field and in accordance with the explanation above, it can be concluded that the application of immigration reasons as a basis for rejecting foreigners in Indonesia is very important. From the above data, it can be seen that the number of rejections with immigration reasons outside of Article 13 of Law Number 6 of 2011 is more dominantly carried out by immigration officials. However, although the existence of immigration reasons itself is not stated in Article 13 of Law Number 6 of 2011 concerning immigration, the purpose and reasons for implementing rejection reasons based on immigration reasons are very important, namely

a preventive measure in order to select foreigners who are not suitable to enter Indonesian territory for the sake of creating security for the Indonesian people.

In addressing this problem, new legal norms have emerged regarding the reasons for immigration rejection, which are stated in the Minister of Law and Human Rights Regulation Number 44 of 2015 concerning procedures for checking entry and exit from Indonesian territory at Immigration Checkpoints.

The emergence of a new legal norm in the form of a Ministerial Regulation (Regulation of the Minister of Law and Human Rights), which again regulates the grounds for rejection of foreigners, naturally raises the question: can its implementation be recognized as a legally recognized decision, considering that Article 13 of Law Number 6 of 2011 limits the grounds for rejection to only ten? Furthermore, the Article does not contain any additional regulations stating that there will be further regulations governing the grounds for rejection of immigration.

Based on the results of an interview on August 23, 2020 with the Head of Section IV of the Immigration Checkpoint at Soekarno Hatta International Airport, Uckhy Adhitya, it was found that the basis for immigration officials to state immigration reasons outside of the ten reasons contained in Article 13 of Law Number 6 of 2011 is a form of discretionary policy which of course must be with the knowledge of the superior of the official who uses the discretionary authority. This policy was taken as part of the immigration agency's efforts to support the government which is trying to improve the welfare of the Indonesian people through strategic government policies. Discretion in this case is a form of authority in the form of regulations of the Minister of Law and Human Rights which are implemented by immigration officials. The example of the process of refusing entry to foreigners at the Immigration Checkpoint based on an interview with the Assistant Supervisor of Inspection Section III-2 of the Immigration Checkpoint at Soekarno Hatta International Airport, Sahril Wildani on September 2, 2020:

a. When a foreigner arrives at the TPI counter at Soekarno Hatta International Airport, immigration officers will conduct a document check and a brief interview regarding the foreigner's intentions and purposes for coming to Indonesia.
b. Based on the data held by foreigners coming without a visa with the intention of using the visa-free visit to travel in Indonesia
c. Based on information from the results of the examination and interview, foreigners must provide the reason for coming to Indonesia and foreigners are required to have a return ticket, with a period of stay in Indonesia of 25 days from the date of arrival.
d. Furthermore, when the foreigner was asked about his whereabouts during his stay in Indonesia, including tourist destinations and residence, he was unable to answer the immigration officer's questions in detail. Based on this finding, the foreigner was directed to the office for further questioning by the supervisor and assistant supervisor.
e. Once in the office, the assistant supervisor checked the amount of money he had for his stay in Indonesia. The estimated costs were insufficient for the planned 25-day stay.
f. When asked whether a foreigner has someone they know in Indonesia, the foreigner turns out not to have any acquaintances in Indonesia.
g. Based on the foreigner's statement and the results of the above examination, it can be assumed that the foreigner's arrival is contrary to the selective immigration policy and the principle of reciprocity which states that only useful people can enter Indonesian territory. Therefore, it is concluded that the foreigner is not eligible to enter. Next, the supervisor requests the approval of the head of the inspection section to refuse entry to the foreigner in question.
h. With the approval of the head of the inspection section, the foreigner will be refused entry by issuing a letter of refusal to enter.

Based on the rejection process that has been explained by the SPV Examiner III above, the rejection for this reason is not regulated in Article 13 of Law Number 6 of 2011, but this reason is in accordance with Article 106 paragraph (2) of the Minister of Law and Human Rights Regulation Number 44 of 2015. This shows that the emergence of a new legal norm in the form of reasons for rejection contained in the Minister of Law and Human Rights Regulation is very necessary as a basis for immigration officials to reject foreigners because this reason is not

contained in Article 13 of Law Number 6 of 2011. This rejection solely has the same goal, namely to maintain the security and welfare of the Indonesian people.

The existence of discretion itself in principle is not a tool to harm the legislation, but instead discretion is present as a complementary tool to the legislation which of course in its implementation cannot continuously reach every aspect of people's lives. So in the implementation of discretion related to the reasons for rejection, although in Article 13 of Law Number 6/2011 the immigration reasons have been locked to only 10 (ten) immigration reasons, the reasons for rejection with immigration reasons are the discretion of immigration officials which aims to overcome concrete problems faced in the administration of government.

Based on the graphs and facts in In the field, rejections based on immigration reasons are more dominantly applied by immigration officials, so the question now is how is the legality of implementing rejections against foreigners using immigration reasons while this is not stated in Article 13 of Law Number 6 of 2011 as a higher regulation, while in Article 13 the reasons for rejection have been locked to only ten reasons for rejection.

Immigration officers as the cornerstone and spearhead in maintaining the sovereignty of the state to select people who enter and can endanger the security and sovereignty of the Indonesian state of course need rules that can be used as guidelines in implementing immigration policies at immigration checkpoints, because it is impossible for immigration officers in carrying out their functions when seeing foreigners who based on their assessment violate and do not meet the requirements to enter the territory of Indonesia are allowed only because the rules in Article 13 of Law Number 6 of 2011 do not contain the reasons that are currently happening because of course this has contradicted the function of the existence of immigration according to Article 1 number 3 of Law Number 6 of 2011:

"The Immigration function is part of the state government's affairs in providing Immigration services, law enforcement, state security, and facilitating the development of community welfare."

In accordance with its function, immigration is a manifestation of law enforcement and national security guards, in this case from foreigners who do not have a clear purpose, interest in their arrival in Indonesia and have the potential to endanger national security. Departing from these problems, the use of immigration reasons as a basis for refusing entry to foreigners in Indonesia is a decision of immigration officials to address the increasingly complex problems that arise at immigration checkpoints and in fact this is needed even though refusals on immigration grounds are not regulated in Article 13 of Law Number 6 of 2011 which ultimately has the same goal, namely maintaining national security and sovereignty.

3.1.3. Discretionary Implementation Policy as a Form of Authority

In carrying out its function as the main stakeholder in the implementation of government authority, government officials have the authority to support the implementation of strategic programs from the government, this is to ensure the welfare of the community based on the established rules followed by the delegation of tasks in the form of bestuurzorg . It is the government's responsibility to provide services and is not permitted to refuse if it is related to services to the community as long as it is still included in the realm of government authority, this makes the government have an obligation to provide a way out if stagnation occurs in the process. In practice, government officials often take actions outside of written statutory regulations, this is a form of consequence of the fact that existing laws and regulations have loopholes and have been left behind from the development of the times, changes in values, and the increasing or emerging new problems as a result of the development of science and technology.

In state administrative law, the implementation of policies or actions not stipulated in written legal provisions can be justified. This is based on the principle of legality at the operational stage in the field so that the implementation of the intended rules can be carried out dynamically, efficiently, and effectively. The form of authority in question is discretion. Therefore, in reality, when viewed from its implementation in the field, the use and existence of discretion within the applicable regulatory system is essential to complement any shortcomings and weaknesses in the principle of legality (Budi Susilo, 2015).

Based on Article 1 number 9 of Law Number 30 of 2014 concerning Government Administration, it states that: "Discretion is a decision and/or action determined and/or carried out by a government official to overcome concrete problems faced in the administration of government in the case of laws and regulations that provide choices, do not regulate incompletely or are unclear, and/or there is government stagnation."

In every period of government, there are targets to be achieved and to achieve the goals of the country, public officials as an extension of the government in implementing its policies act in accordance with the authority they have, this includes actions related to the law, especially in the form of decisions (Lotulung, 2013). Government officials in making or taking decisions use their authority to act in accordance with the law (legal authority) and this becomes the basis for their power or as a source of power. In terms of authority, it means the ability to do or not do something by placing the law as a guideline. In its implementation, authority has requirements that must be met because the form of legal action produced concerns the wider community (Manan, 2004).

From the explanation related to the meaning of authority of government officials, it is necessary to know with certainty about the source of how this authority is obtained by officials according to its nature, there are three types, namely (Indroharto, 2000):

a. Optional authority

In its implementation, this authority is based on norms which in the regulations determine when and under what circumstances this authority is exercised.

b. Bound authority

In the basic regulations, norms have been regulated to determine the content of the decisions to be taken.

c. Discretionary authority

In basic regulations, the authority granted is not binding but rather public officials can carry out actions taken based on their interpretation.

In its application, discretionary authority not binding but the basic regulations provide a scope of freedom to the public officials concerned.

Indroharto, a constitutional law expert, argues in his book that discretion is essentially the freedom taken to decide on a policy or the freedom to provide observation regarding what is good or bad. Indroharto also divides discretion into two patterns, namely (Indroharto, 2000):

a. Freedom to assess objectively, which is applied when the norms in the law are vague even though they are essentially intended as objective legal norms, because it is difficult to provide an explicit formulation.
b. Freedom to assess subjectively, namely in its application, freedom is given to carry out one's own policy, because the law gives authority to government officials to determine for themselves the decisions that must be taken when facing concrete events.

If seen from the explanation above, the authority of immigration officials in rejecting immigration based on immigration reasons is obtained based on discretionary nature (Giuntella, et.al., 2018), namely in its implementation, immigration rejection is based on the assessment of immigration officials and their personal interpretation to select foreigners who wish to enter the territory of Indonesia. Meanwhile, based on the pattern of the implementation of discretion in the form of immigration rejection based on the freedom to assess objectively, which is applied because the norms in the law are vague, in Article 13 the reasons for rejection have been locked ten reasons for immigration rejection so that a discretionary policy is needed in the form of the emergence of new legal norms in Regulation of the Minister of Law and Human Rights Number 44 of 2015 which is a complement to the reasons for rejection contained in Law Number 6 of 2011.

In Article 22 of Law Number 30 of 2014 concerning Government Administration, paragraph (1), discretion may only be exercised by authorized Government Officials. Furthermore, in paragraph (2), every use of Discretion by Government Officials is aimed at:

Article 22

a. Carrying out government administration
b. Filling the legal gap
c. Providing legal certainty; and
d. Overcoming government stagnation in certain circumstances for the benefit and public interest.

Further information regarding discretion in Article 24 of Law Number 30 of 2014 concerning Government Administration stipulates that government officials must fulfill the following requirements in implementing discretion:

Article 24
a. in accordance with the objectives of Discretion as referred to in Article 22 paragraph (2);
b. does not conflict with the provisions of statutory regulations;
c. in accordance with general principles of good governance;
d. based on objective reasons;
e. does not give rise to a Conflict of Interest; and
f. done in good faith.

3.1.4. Refusal of Foreigners on Immigration Grounds as a Matter of Discretion

Based on the explanation of discretion mentioned previously, it can be concluded that discretion is a decision and/or action of government officials who make decisions under certain conditions or in urgent circumstances required to provide solutions to a problem being faced. Related to the decision on immigration reasons applied by immigration officials in imposing a refusal on foreigners who wish to enter Indonesian territory, can it be said to be a valid decision and not contrary to Article 13 of Law 6 Number 13 of 2011?

Based on the results of research carried out by the author, the application of immigration reasons in the form of discretion as the basis for rejecting foreigners is justified because it fulfills the elements of implementing said discretion:

a. Implemented by Government Officials
In this case, government officials according to Article 1 number 3 of Law Number 30 of 2014:
"Government Agencies and/or Officials are elements that carry out Government Functions, both within the government and other state administrators"

Based on government regulations regarding overall government administration, the Government Administration Officials or Agencies that have the authority to make discretionary decisions are:
1) President;
2) Ministers or Ministerial level officials;
3) Commander of the Indonesian National Armed Forces and Chiefs of Staff of the Army, Navy and Air Force;
4) Chief of the National Police;
5) Chairperson of Commission/Council and equivalent Institutions;
6) Governor;
7) Regents and Mayors;
8) Echelon I Officials in the Central and Provincial Governments;
9) Regional Secretary of Regency/City;
10) Agency Leaders. Operational officials who have the authority to make discretionary decisions because their duties are directly related to public services, such as:
    a) Head of the State Police Resort ;
    b) Sub-district Head

In terms of carrying out immigration functions, Article 3 of Law Number 6 of 2011 states that:
Article 3
(1) To carry out the Immigration Function, the Government establishes Immigration policies.

(2) Immigration policy is implemented by the Minister.
(3) Immigration functions along the Indonesian border are carried out by Immigration Officers, which include Immigration Checkpoints and border crossing posts.

b. Carrying out State Administration

In order for public services to be carried out optimally and support the government's strategic programs, the state administration has been given the freedom to act on its own initiative to overcome problems in this case by refusing on immigration grounds, while immigration grounds themselves have not been stated in Article 13 of Law Number 6 of 2011 which aims to overcome complex problems with quick handling.

c. Filling the Legal Gap

Considering that in Article 13 of Law Number 6 of 2011 the reasons for rejection have been limited to only ten immigration reasons, this has resulted in the ineffectiveness of implementing selective immigration policies in filtering and ensuring that only useful people are allowed to enter Indonesian territory, so that additional regulations (Regulation of the Minister of Law and Human Rights) are needed in the form of authority of government officials as regulated in Law Number 30 of 2014, namely discretion.

d. Providing Legal Certainty

With discretion, immigration reasons can be justified when applied to refuse an immigration permit. This also provides legal certainty, as Article 13 of Law Number 6 of 2011 has established grounds for immigration refusal.

e. Overcoming government stagnation

Overcoming government stagnation under certain circumstances for the benefit and public interest. What is meant by government stagnation is the inability to carry out government activities as a result of deadlock or dysfunction in the administration of government.

In this case, it is related to Article 13 of Law Number 6 of 2011 which has locked ten immigration reasons and this has caused government stagnation because in fact in its implementation in the field there are cases of foreigners who must be refused entry but are not stated in Article 13. This has given rise to the emergence of new legal norms to address this problem in the form of a Ministerial Regulation of Law and Human Rights. However, because Article 13 has been locked, this new legal norm is justified in its implementation in the form of discretion. when making decisions and/or actions to deal with government stagnation, according to Article 25 of Law Number 30 of 2014:

"Government officials are required to notify their superiors before using discretion and report to their superiors after using discretion."

In its implementation, immigration reasons have also fulfilled discretionary authority and must be able to fulfill the requirements as stated in Article 24 of Law Number 30 of 2014, namely, one of which must be in accordance with the General Principles of Good Governance as stated in Article 10 of Law Number 30 of 2014, including:

a. Legal certainty

is a principle in a state of law that prioritizes the basis of statutory regulations, propriety and justice in every policy of state administration, which can be interpreted as meaning that a person who has obtained a legal decision from a state administrative body or official must have the rights obtained based on the decision respected.

b. Benefits

has the intention that there are benefits that must be prioritized in a balanced manner in this case the use of discretion as the basis for implementing a refusal using immigration reasons.

c. Impartiality

which means that government agencies/or officials must be neutral in implementing decisions and/or actions by looking at various aspects for the benefit of the parties as a whole.

d. Accuracy
This means that in taking action or implementing decisions related to discretion, it must be based on careful consideration supported by complete information and documents so that the intent and purpose of the action taken can be legally recognized.

e. Do not abuse authority
This is fulfilled by ensuring that decision-making based on discretion is carried out with the aim of maintaining state sovereignty and selecting foreigners, not exploiting the authority that is in his possession for personal gain.

f. Openness
This is proven by the existence of regulations and information that can be accessed by the public.

g. Public interest
fulfilled because the purpose of implementing this discretion is ultimately implemented for the welfare and benefit of the public.

h. Good service
This means that in providing timely services, it must be in accordance with procedures and have clear service standards and be in accordance with applicable regulations.

In the framework of government administration, general principles of good governance is present as a form of written regulation that has the power to control every action and policy of the government, this also fully applies to the implementation of immigration rejection as a form of discretion of immigration officials. If seen from the principle of benefit as one of the conditions that must be fulfilled in general principles of good governance in the implementation of discretion, it is clear that the reason for immigration is implemented to apply new legal norms in the form of immigration reasons to complement the laws and regulations that do not regulate completely regarding the reasons for rejection of foreigners (Miller, 2013), which in the end the benefits that will be achieved are to create security and welfare of the community because only people who are not dangerous and useful can enter the territory of Indonesia. Furthermore, the principle of accuracy is also fulfilled, namely the emergence of new norms in the form of reasons for rejection on the basis of immigration as one of the discretionary measures to overcome the stagnation of the government (Kukathas, 2013) as a consequence of Article 13 of Law Number 6 of 2011 which has locked immigration reasons to only ten immigration reasons. Ultimately, the purpose of applying immigration reasons as the basis for refusal is carried out with good intentions and goals, namely to maintain the welfare, public benefit and sovereignty of the Indonesian state (Carens, 2013).

Of course, in its implementation, the discretion that grants government officials, in this case immigration officials, the authority to take action based on their own interpretation and assessment, must meet the requirements of the general principles of good governance, namely the prohibition on abuse of authority. In other words, any policy or action based on discretion issued by immigration officials regarding the rejection of foreigners will be categorized as deviant if the decision contains elements of arbitrariness and is contrary to the public interest.

Based on the explanation above, it can be concluded that the use of immigration grounds as a basis for refusing entry to Indonesia for foreigners can be justified within the realm of discretion because existing laws and regulations have not yet regulated it or because the laws and regulations governing immigration grounds are unclear and this is done in urgent circumstances for the public interest, so that discretionary authority arises in the form of a Regulation of the Minister of Law and Human Rights. The urgent circumstances in this case meet the criteria for the use of discretion because it concerns the selection process for foreigners at immigration checkpoints that must be carried out/completed quickly and accurately because it concerns the public interest, in this case national security and state sovereignty. This is also in line with the theory of law enforcement where immigration agencies enforce the law in accordance with established regulations. Although the reasons for refusing immigration are supported by discretionary reasons, this is solely to maintain the security and sovereignty of the Indonesian state. Therefore, a policy or action that is not fully based on law is something that can be permitted as long as the policy or action does not conflict with the rules and laws.

3.2. *Legal Force of Article 106 Paragraph (2) Letters C and D of Minister of Law and Human Rights Regulation Number 44 of 2015 Regarding Article 13 of Law Number 6 of 2011 Reviewed from the Hierarchy of Legal Norms*

3.2.1. Hierarchy of Legislation in Indonesia

Every statutory regulation must have a legal basis in a higher-level regulation and this requires that lower-level statutory regulations must not conflict with higher-level statutory regulations. The consequence that occurs if there is a lower-level statutory regulation that conflicts with a higher-level regulation is that the regulation can be annulled by law.

Based on the explanation above, a new problem arises, namely that the text of Article 13 of Law Number 6 of 2011 has been locked in only ten reasons for immigration rejection and then the emergence of new legal norms regarding the reasons for immigration rejection in Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015. The question is, does the emergence of this new legal norm not conflict with the Hierarchy of Legal Norms applicable in Indonesia? Based on Article 7 paragraph (1) of Law Number 12 of 2014 concerning the Formation of Legislation, it is stated regarding the hierarchy of legislation applicable in Indonesia. The types and hierarchy of legislation consist of:

The types and hierarchy of statutory regulations consist of:
a. 1945 Constitution of the Republic of Indonesia ;
b. Decree of the People's Consultative Assembly;
c. Laws /Government Regulations in Lieu of Laws ;
d. Government regulations;
e. Presidential decree;
f. Provincial Regional Regulations; and
g. Regency/City Regional Regulations.

From the hierarchy of statutory regulations above, there is no mention of the existence of Ministerial Regulations; however, the existence of ministerial regulations is regulated in Article 8 paragraph (1) of Law Number 12 of 2011 which reads:
"Types of statutory regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Audit Board, the Judicial Commission, Bank Indonesia, Ministers , bodies, institutions or commissions of the same level which are established by law or by the Government on the orders of law , the Provincial People's Representative Council, the Governor, the Regency/City People's Representative Council, the Regent/Mayor, the Village Head or those of the same level."

From the text of the article above, the author emphasizes the phrase ".. Regulations stipulated by ... ministers... ". Based on this, it can be assessed that the existence of ministerial regulations is a type of statutory regulation and its existence is recognized based on Law Number 12 of 2011.

3.2.2. Position of Ministerial Regulations in the Hierarchy of Legislation

Based on the provisions of Article 22 of Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011, it is necessary to stipulate a Regulation of the Minister of Law and Human Rights concerning Procedures for Inspection of Entry and Exit into Indonesian Territory at Immigration Checkpoints.

The importance of the minister's position within an institution can be seen from the provisions on state ministries in Chapter V, which is separate from Chapter II on state government authority (Asshiddiqie, 2006) . Law Number 39 of 2008 on State Ministries states that each minister is responsible for certain state affairs. Important affairs include:

a. Government affairs whose ministerial nomenclature is expressly stated in the 1945 Constitution of the Republic of Indonesia:
b. Government affairs whose scope is stated in the 1945 Constitution of the Republic of Indonesia; and
c. Government affairs in the context of sharpening, coordinating and synchronizing government programs.

The importance of the existence and position of the minister in carrying out governmental powers and also efforts to carry out government affairs in his field, the minister is given the authority to form legislation. However, regulations formed by the minister in the form of ministerial regulations are not mentioned in the hierarchy of statutory regulations as mandated in Article 7 paragraph (1) of Law Number 12 of 2011, however, in the explanation of Article 8 paragraph (1) and paragraph (2) of Law Number 12 of 2011 which states that Ministerial Regulations are regulations stipulated by the minister based on the content of the material in the context of organizing certain affairs in government and organizing certain government affairs in accordance with the provisions of the Laws and Regulations.

From these provisions it can be seen that the emergence of ministerial regulations is motivated by various specific matters in government, namely matters that have become the affairs of the relevant Ministry and matters that have been stipulated by statutory regulations.

The existence of the Regulation of the Minister of Law and Human Rights Number 44 of 2015 in order to support the implementation of state administration affairs in terms of Procedures for the Implementation of Foreigner Examination at Immigration Checkpoints. However, the point of the author's discussion in the formulation of this problem is the existence of the sound of the Article in the Minister of Law and Human Rights, especially Article 106 paragraph (2) letters c and d which appears while in Law Number 6 of 2011 as a higher regulation it is not sounded and has been locked.

3.2.3. 3. Legal Force of Article 106 paragraph (2) letters c and d of Minister of Law and Human Rights Regulation Number 44 of 2015 concerning Procedures for Inspection of Entry and Exit into Indonesian Territory at Immigration Checkpoints against Article 13 of Law Number 6 of 2011 concerning Immigration

Immigration is an institution that plays a very strategic role in maintaining national sovereignty and security. Article 1, number 1 of Law Number 6 of 2011 concerning Immigration states that:
"Immigration is the matter of the movement of people entering or leaving the territory of Indonesia and its supervision in order to maintain the sovereignty of the state."

Based on the text of this article, it can be concluded that Immigration has the authority to conduct immigration supervision of people entering or leaving Indonesian territory. This supervision is carried out by conducting immigration checks at immigration checkpoints. This is also based on the direction of Indonesia's immigration policy, namely the selective immigration policy, which requires that anyone entering Indonesian territory must be someone who can provide benefits and not endanger the security and sovereignty of the Indonesian state. Meanwhile, Article 32 of Minister of Law and Human Rights Regulation Number 44 of 2015 stipulates that if during an immigration inspection, the officer finds no problems, the examiner can grant approval for entry or exit by affixing an entry or exit mark on the travel document.

During immigration checks, immigration officials may refuse entry to foreigners who, based on their assessment and immigration requirements, do not meet the requirements for entry into Indonesia. The immigration official has the authority to refuse entry to the foreigner. The refusal is carried out by providing reasons for the immigration refusal as stated in Article 13 of Law Number 6 of 2011 and Article 106 of Minister of Law and Human Rights Regulation Number 44 of 2015.

However, over time, the use of rejections based on Article 13 of Law Number 6 of 2011 has become less effective. This is because the article has limited the criteria for immigration rejections to only ten reasons, which means that the legal validity of immigration rejections outside the ten reasons in Article 13 is questionable. This is because,

in addition to limiting Article 13 to only ten immigration reasons, this article also does not provide space for other regulations to further regulate the issue of immigration rejections.

In reality, a new legal norm regarding immigration refusals has emerged in Article 106 of Minister of Law and Human Rights Regulation Number 44 of 2015, and an additional paragraph has been added to the regulation. The comparison between the reasons for refusal in Law Number 6 of 2011 and Minister of Law and Human Rights Regulation Number 44 of 2015 is as follows:

Table 2: Immigration Refusal Reasons for Foreigner

Article 13 of Law Number 6 of 2011	**Article 106 of the Minister of Law and Human Rights Regulation Number 44 of 2015**
(1) Immigration officers will refuse entry to Indonesian territory to foreigners if the foreigner: a. his name is listed on the Deterrence list b. does not have a valid and valid Travel Document; c. having fake immigration documents; d. do not have a visa, except those who are exempt from the obligation to have a visa e. has provided false information in obtaining a visa; f. suffering from an infectious disease that is dangerous to public health; g. involved in international crimes and transnational organized crime; h. included in the wanted list for arrest from a foreign country; i. involved in treasonous activities against the Government of the Republic of Indonesia; or j. included in the network of practices or activities of prostitution, human trafficking, and human smuggling.	(1) Immigration officers may refuse entry to Indonesian territory to a foreigner if the foreigner is a. His name is listed on the blacklist b. Not having valid and current travel documents c. Have fake immigration documents and/or visas d. Not having a Visa, except those exempt from the requirement to have a Visa e. Has provided false information in obtaining a visa f. suffering from an infectious disease that endangers public health g. involved in international crimes and transnational organized crime; h. included in the wanted list for arrest from a foreign country i. involved in treasonous activities against the Government of the Republic of Indonesia; or j. included in the network of practices or activities of prostitution, human trafficking, and human smuggling. (2) Immigration officers can also refuse entry to Indonesian territory to foreigners in the following cases: a. not listed in the crew list of the means of transport or the passenger list b. do not have sufficient living expenses while in Indonesia; c. endanger security; or d. disturbing public order.

From the table above, it can be seen that in Article 106 paragraph (2) of Regulation of the Minister of Law and Human Rights Number 44 of 2015, a new norm has emerged regarding the reasons for immigration rejection which has not been included in Article 13 of Law Number 6 of 2011 as a higher regulation. This is certainly inconsistency when viewed from the hierarchy of statutory norms because in his theory Hanskelsen is of the opinion that legal rules are a tiered and layered arrangement in a hierarchy. The validity of lower norms applies, is based on and has a source in higher norms and so on.

The main problem is that the application of the reasons for rejection based on Article 106 paragraph (2) letters c and d is still being used today. Meanwhile, the impacts that could arise as a result of the consequences of the emergence of new legal norms in the form of a regulation on law and human rights that do not comply with the hierarchy of applicable legal norms are:

a. Impact on foreigners who are refused entry into Indonesian territory

The application of the grounds for refusal based on Article 106 of Ministerial Regulation Number 44 of 2015 certainly has a direct impact on foreigners who are the primary subjects of immigration refusals. Indonesia, which is currently focusing on the tourism sector to increase foreign exchange, must continue to improve itself in this regard related to regulations concerning foreigners. The impact is that foreigners who are refused entry into Indonesian territory based on reasons in the Ministerial Regulation that do not comply with the hierarchy of legal norms can receive complaints from foreigners who are knowledgeable about the laws and regulations. Of course, this is not good for Indonesia's image in the eyes of the international community. Indonesia, which is known as a country based on the rule of law, has an unclear hierarchy of laws and regulations.

b. Impact on immigration officers in the field

Immigration officers who are an extension of the government, in this case the immigration agency, reject foreigners at the Immigration Checkpoint. In its implementation, officers must have a strong basis in the form of regulations to be a weapon because officers have a big responsibility as gatekeepers of the country to select and ensure that only useful people can enter the territory of Indonesia. Therefore, it is very important for immigration officers at the Immigration Checkpoint to clearly understand the basis for rejecting foreigners who will be refused entry into the territory of Indonesia. In reality, the regulations used so far as the basis for rejecting immigration, namely Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015, are in fact contradictory to Article 13 of Law Number 6 of 2011 as a higher regulation. How could it not be that Article 13 of Law Number 6 of 2011 has locked the reasons for rejection to only 10 immigration reasons and does not provide room for additions in other regulations. Meanwhile, in Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015, a new norm appears, namely in paragraph (2). Although ultimately the aim of the emergence of this new legal norm is to maintain state sovereignty, this cannot be justified when viewed from the perspective of the hierarchy of legal norms.

c. Impact on Immigration Agencies

Immigration as one of the law enforcement agencies in Indonesia must certainly have laws and regulations that can support the principle of legal certainty to be the basis for its implementation by immigration officials. Although in its implementation, immigration rejection becomes the absolute sovereignty of Indonesia in this case Indonesian immigration to reject foreigners who are not useful in accordance with the principle of selective immigration policy, nevertheless, Indonesia as a country of law must be able to show a good image, namely by having a set of appropriate regulations because in this case it directly touches foreigners who indirectly bring Indonesia's good image in the eyes of the international community.

The worst risk is if the rejected foreigner questions the reason for the rejection against him, and finds out that there is a gap between Article 13 of Law Number 6 of 2011 and Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015, then the reason for the rejection against the foreigner will not have legal force and will make this matter a dispute in state administration.

Law Number 5 of 1986 concerning the State Administrative Court

Article 53

(1) A person or civil legal entity who feels that their interests have been harmed by a State Administrative Decision may submit a written lawsuit to the competent court containing a demand that the disputed State Administrative Decision be declared null and void or invalid, with or without a claim for compensation and/or rehabilitation.
(2) The reasons that can be used in a lawsuit as referred to in paragraph (1) are:
    a. The State Administrative Decision being contested is contrary to the applicable laws and regulations;
    b. The State Administrative Agency or Official at the time of issuing the decision as referred to in paragraph (1) has used its authority for a purpose other than that for which the authority was granted;
    c. The State Administrative Agency or Official when issuing or not issuing a decision as referred to in paragraph (1) after considering all interests related to the decision should not lead to the decision being taken or not being taken.

Based on this article, it can be concluded that Article 106 paragraph (2) letters c and d of the Minister of Law and Human Rights Regulation Number 44 of 2011 can be the object of a lawsuit in the State Administrative Court, because it provides a decision of rejection for reasons that do not comply with those stated in the applicable laws and regulations.

Based on the three impacts that could occur or have even occurred, adjustments are needed to the Minister of Law and Human Rights Regulation that regulates the reasons for immigration rejection, or legislation is needed that is equivalent to Law Number 6 of 2011 to justify the implementation of Minister of Law and Human Rights Regulation Number 44 of 2015, especially regarding the reasons for immigration rejection so that in the end its implementation does not conflict with the hierarchy of legislation.

Basically, the application of reasons for immigration rejection based on Article 13 of Law Number 6 of 2011 and the emergence of new legal norms related to reasons for immigration rejection in Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015 have good and the same goal, namely to maintain state sovereignty and support strategic government policies. Therefore, the implementation of rejection of foreigners using the new legal norms contained in Article 106 of Regulation of the Minister of Law and Human Rights Number 44 of 2015 must continue to be implemented. The presence of Law Number 30 of 2014 concerning Government Administration is a way out in its implementation. Based on the results of the author's research, the application of reasons for rejection as stated in Regulation of the Minister of Law and Human Rights Number 44 of 2015 concerning Procedures for Entry and Exit of Indonesian Territory at Immigration Checkpoints can be justified because this falls within the realm of discretion in accordance with the laws and regulations regulated in Law Number 30 of 2014 concerning Government Administration.

4. Conclusion

Based on data from the Immigration Checkpoint sector and the discussion description, it can be concluded that the use of reasons for rejection outside of Article 13 of Law Number 6 of 2011 can be justified because it falls within the realm of immigration officer discretion. Although in this Article the provisions regarding reasons for immigration rejection have been locked to only ten reasons for immigration rejection and there are no provisions that regulate further regarding the reasons for immigration rejection. Based on information from the results of interviews with Immigration Officers at Soekarno Hatta Checkpoint said that the basis for immigration officers to state reasons for immigration rejection outside of Article 13 of Law Number 6 of 2011 is a form of discretionary policy. Based on Law Number 30 of 2014, it states that one of the requirements for implementing discretion is the existence of government stagnation in this case, Article 13 of Law Number 6 of 2011 concerning Immigration has locked into ten immigration reasons which causes the application of the article to be vague (Wellman & Cole, 2011). Based on this, a discretionary policy is needed in the form of the emergence of a new legal norm in the form of Article 106 of the Minister of Law and Human Rights Regulation Number 44 of 2015 which complements the reasons for rejection contained in Article 13 of Law Number 6 of 2011.

According to Hans Kelsen in his theory, legal norms must have levels and layers in a hierarchy, where lower norms apply, are based on and originate from higher norms. If seen from the perspective of the hierarchy of laws and regulations, normatively the application of Article 106 paragraph (2) letters c and d of Regulation of the Minister of Law and Human Rights Number 44 of 2015 has contradicted Article 13 of Law Number 6 of 2011 which has locked the reasons for rejection to only ten reasons for rejection of immigration. If it continues to be applied, the consequences that could arise could have an impact on Indonesia's image as a country of law, plus this could also be the object of a lawsuit in the State Administrative Court based on Article 53 of Law Number 5 of 1986 concerning the State Administrative Court because it provides a rejection decision for reasons that are not in accordance with those stated in the applicable laws and regulations. Based on the impacts that could occur or have even occurred, adjustments are needed to the Regulation of the Minister of Law and Human Rights or laws and regulations that are equivalent to Law Number 6 of 2011 to justify the implementation of Regulation of the Minister of Law and Human Rights Number 44 of 2015, especially regarding the reasons for immigration rejection, so that its implementation does not conflict with the hierarchy of legal norms. Considering the importance of the reasons for rejection contained in Article 106 paragraph (2) letters c and d of Regulation of the Minister of Law

and Human Rights Number 44 of 2015 to maintain the sovereignty and security of the state, these regulations must continue to be implemented. Based on the results of the author's research, it can be concluded that the application of the reasons for rejection as stated in Regulation of the Minister of Law and Human Rights Number 44 of 2015 can be justified because this falls within the realm of discretion in accordance with the laws and regulations regulated in Law Number 30 of 2014.

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Negotiating Ethics in Digital Communication: WhatsApp and Maqasid al-Shariah

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Abstract
This study offers a narrative review examining the use of WhatsApp through the lens of Maqasid al-Shariah (the objectives of Islamic law), thereby contributing to interdisciplinary discussions on digital culture, ethics, and social practices. The five objectives—preservation of religion, life, intellect, lineage, and property are traditionally rooted in Islamic jurisprudence but here are applied to the contemporary context of social media use. By analyzing how reliance on WhatsApp may support or challenge these objectives, the paper situates Islamic ethical frameworks within broader cultural studies debates on the social and moral implications of communication technologies. The review highlights concerns around excessive and uncritical use of WhatsApp, including risks to intellectual integrity, family cohesion, and personal wellbeing, while also acknowledging its role in sustaining community, religious practice, and social connectivity. Drawing on prior studies and media reports, the paper argues that Maqasid al-Shariah can serve as a culturally grounded ethical compass for navigating the complexities of digital life. It concludes by calling for further empirical and comparative research to deepen understanding of how Islamic values and global digital cultures intersect in shaping everyday practices of communication.

Keywords: Digital Culture, Maqasid Al-Shariah, Social Media Ethics, Whatsapp, Islamic Perspectives On Technology

1. Introduction

Whatsapp has been reported to have acquired a total of 2 billion users to date and this number has been at half a billion every two years (Lin, 2021). The application has been reported be blocked in China and utilized the highest in India with an astounding population of 340 million users of the social media app (Lin, 2021). Despite its popularity among most countries, several issues have surfaced regarding the apps terms of service and its security and privacy issues. With regards to the security issues, the app is reported to be able to access personal information of its users such as phone numbers and contacts which means that it is an easy target for hackers. Despite an encryption and privacy setting embedded within the app, users are still at risk from spyware that can access user contact information, track their users' online activity and is considered a potential threat to users' privacy and personal information (Nelson, 2022). The app has the ability to track users online behavior and online interaction with others as well as have access to other private information such as time, frequency and duration of these interactions. Cybercrime is becoming increasingly prevalent today with a recorded 1300 complaints in the United States alone causing individuals and businesses to lose more than 3.5 billion due to these cybercrimes (Nelson, 2022). These cybercrimes prey on our data which is accessed from our phones and computer devices. These data

include information such as passwords, personal information, addresses, credit card information and so on and so forth. In cultural studies, such platforms are seen not merely as tools of communication, but as spaces where values, identities, and social norms are produced and negotiated. Against this backdrop, the study of WhatsApp offers a critical lens into how technology mediates ethical choices and cultural practices in contemporary digital life.

The purpose of this study is to analyze the issue with reference to the 5 objectives of Shariah which are: preservation of religion, preservation of life, lineage, intellect and property. The study will conduct a thematic analysis of the issues relating to Whatsapp from various research articles from Asia, Europe and the United States to gain various insights to the use of the app. Apart from research from literature, the latest news reports will also be included within the study in order to incorporate updated information.

2. Literature Review

Whatsapp is categorized as one among many social media applications existing in today's world which have become particularly popular within the years 2010 to date. The internet messaging application was conceptualized because of an actual need (democratising phone-based communications), and it succeeded because it was able to capitalise on almost every emerging trend like push notifications and needs like encryption (Lin, 2021).

Whatsapp was conceptualized and founded by two employees who left their job at Yahoo! It was launched in 2009 under the version Whatsapp 1.0 and later upgraded to Whatsapp 2.0. The main difference was an upgrade from push notifications to logging in with a phone number. Whatsapp differs from other social media as it features no advertisement pop-ups, no games and no gimmicks, just plain straightforward instant messaging. It was, however, later acquired by Facebook in February 2014 with the aim to collaborate data for the purpose of marketing. The main difference was Whatsapp does not have advertisements whereas Facebook has advertisements.

Apparently, Facebook did interfere with the existing WhatsApp business model and added its Facebook touch to it. Initially, data like verified phone number, status and display picture, and frequency of using WhatsApp were shared with the parent company. Then features were eventually added to make it more business-friendly (Lin, 2021).

Chapra (2008) has iterated several aspects of the Treatise on Maqasid al-Syariah for one who is not well-versed in the concept. First of all, he highlights that in order to apply the knowledge of Maqasid al-Syariah, a person needs to understand it on five different levels: First to understand its expressions and grasp its meanings according to the rules of language; second is to search for anything that may clash with the indicants; third, give by way of analogy, the rules in accordance to the divine law giver; fourth, give a specific rule to a specific act that has not yet been assigned a rule in the textual indicants; fifth; to accept some textually established rules of the Syariah without knowledge of its causes due to incapacity to comprehend the inner wisdom of Syariah.

Although, this study may not include an exhaustive approaches mentioned above, the researcher will adopt a means of **conceptual analysis** in which the universal terms have already been discussed and studied before using Maqasid Al-Syariah Framework. Conceptual Study is a means of referring to past research on the conceptualization of the 5 Objectives of Syariah.

The theoretical framework that will be used in this study is Maqasid Al-Syariah. Maqasid Al-Syariah is a combination of both inductive and deductive approaches resolving contemporary issues within the scope of Islamic worldview. The five objectives of Syariah looks at both the preservation as well as the promotion of the main Islamic elements which have been rationalized to be important as mentioned within Al-Quran. Maqasid Al-Syariah aims to facilitate benefits (Maslahah) as well as secure against harm (Mafsadah) towards these elements. In the purview of Conventional Business Ethics, the framework makes use of a virtue-based consequentialist paradigm taking into account contingencies and situations which serve for the better good (Malik, 2015).

While WhatsApp facilitates social connectivity, concerns about its overuse and potential misuse are increasingly raised. Studies in digital culture highlight issues such as misinformation, privacy breaches, and declining

interpersonal wellbeing linked to social media reliance. For Muslim communities, these concerns intersect with religious and ethical considerations, where communication is not only a social act but also a moral responsibility. Here, the objectives of Shariah (*maqasid al-shariah*)—the preservation of religion, life, intellect, lineage, and property—offer a framework to evaluate whether digital practices align with or threaten essential human values. Past research in the west that has already adopted Industry 4.0 and artificial intelligence into their daily business and governments at some level have suggested that the main ethical risks that have been experienced and anticipated to progress are threats towards the following aspects: (1) maintaining justice, (2) security, (3) social equality and (4) privacy of individuals. This paper positions *maqasid al-shariah* as a culturally grounded ethical framework for analyzing the use of WhatsApp. By conceptualizing the relationship between digital practices and the objectives of Shariah, the study aims to contribute to broader interdisciplinary debates on media ethics and cultural sustainability. Rather than presenting an exclusively theological discussion, the paper situates Islamic perspectives within the global discourse on digital communication, offering insights into how culturally embedded ethical systems can enrich understandings of technology's role in shaping social life.

3. Methodology

This narrative review employs a semi-systematic approach towards gathering data in the form of empirical studies based on the keywords in the following table.

Table 1: Search String

Database	Search String
Google Scholar Selection criteria: Articles sorted and selected by **relevance**	"Religion" AND "Whatsapp" AND "Ïslam"
	"Life" AND "Whatsapp" AND "Ïslam"
	"Intellect" AND "Whatsapp" AND "Ïslam"
	"Lineage" AND "Whatsapp" AND "Ïslam"
	"Property" OR "Wealth" AND "Whatsapp" AND "Ïslam"

Table 2: Selection Criteria of Literature

Criteria	Inclusion	Exclusion
Publication timeline	2019 - 2021 above	2018 below
Document type	Article (empirical data)	Conference paper, proceedings, book
Language	English	Other languages

The top three most relevant articles are selected from the database which are pertinent to the keywords. Only one database is selected which is comprised of open-access articles. The selection criteria is prioritized on high ranking indexed journals from renown databases such as SCOPUS, Emerald, MDPI and so on. A total of 20 empirical research articles were derived based on the semi-systematic review and were further conceptualized according to the themes of Maqasid Shariah in this narrative review. Apart from these articles, several additional sources such as white paper reports were used to support the literature. The disciplines remain inclusive of all disciplines allowing interdisciplinary synthesis, bridging Islamic ethics with cultural/media studies.

4. Findings

Cultural studies scholars often examine the ethical dimensions of digital communication in terms of power, responsibility, and the shaping of everyday life (Couldry & Hepp, 2017). WhatsApp, like other social media platforms, has been implicated in issues of information reliability, privacy, and emotional well-being. Excessive reliance on the application has been associated with digital fatigue, reduced face-to-face interaction, and diminished concentration, raising concerns about its long-term impact on individuals and communities

(Boczkowski et al., 2018; Twenge, 2019). In parallel, media ethics literature highlights how social media design encourages overuse through constant notifications and an "attention economy" model that monetizes user engagement (Zuboff, 2019). These concerns frame WhatsApp not merely as a technological tool but as a cultural phenomenon that can both enhance and erode human flourishing.

5. Preservation of religion

The first and foremost priority in this framework looks at the preservation of religion as the tantamount objective as stated in the Quran. Aspects of future of work that may go against the teachings of Quran and Sunnah will be shown at a high risk. The ethical skills play a role in mitigating this risk in order to maintain the role of a Muslim as a vicegerent on earth. Several studies showed the use of the social media to impact religion with regard to trust and harmony among the community. Rajan & Venkatraman (2021) used semantic analysis to reveal the polarizing and Islamophobic content circulating on two Instagram pages/accounts use color, religious structures, clothing, and physical features to encode stereotypes of treatment towards India's Muslim community. This has led to Islamophobic acts of violence and marginalization in biased news reporting and other social media platforms. Analogously, issues of content moderation have recently come under scrutiny as a recent whistleblower exposed the damage of certain content portrayed on social media sites which portrays a negative reality of the world influencing the way people think. Some of this content was exposed by the whistleblower and include issues relating to user privacy (the Cambridge Analytica data scandal), political manipulation (the 2016 and 2020 U S. elections), mass surveillance accusations, encouraging addiction and low self-esteem, and content integrity, such as fake news, conspiracy theories, copyright infringement, and hate speech (Hemphill & Banerjee, 2021). Although these issues were associated with the social media Facebook, the same can be experienced through the exploitation of Whatsapp groups.

Another recent study, a mixed methods approach by Ateeq Abdul Rauf, 2022 showed the proliferated use of the social media app namely whatsapp during the COVID-19 pandemic. One focus group within the study revealed the Tablighi Jamaat members shifted to the digital space, leading to a fragmentation of the Islamic revivalist movement community due to multiple dynamics. The move towards making sense of the COVID-19 pandemic was hindered by the asymmetrical logics of the digital platform and the disruption of the very foundations of the movement authority, trust, and communal harmony.

Similarly, Rosidi et al. (2022) also conducted a study on the social media app to reveal that the use of social media can have its effects on Maqasid Al-shariah, particularly to the 5 essential principles that are necessary to be preserved in every individual's life. Rosdi et al (2022) qualitative approach was able to produce a conceptual model comprising of the effects of five essential principles (Al-Daruriyat al-khams) in social media usage and acceptance. With this knowledge, the knowledge can become both the basic and primary ethics & principles in guiding individuals during their social media use. Similarly, a quantitative study of a substantial sample of youth was used to explore the level of religiouslity of behviours while using social media such as whatsapp. The results show that consumers agree to the implementation of maqasid Shariah behaviors, while those who did not behave negatively were the strongest determinants of Muslim behaviors and religiosity (Abu Bakar et al 2018).

6. Preservation of life

The preservation of life is the second highest priority in which a quality standard of living is required in order to ensure resources are available and sustainable. Apart from standard of living, physical safety due to adoption of Artificial Intelligence may pose a threat to the safety of lives in the following aspects: autonomous-vehicles malfunctions may lead to injury or death; machine-learning models may misdiagnose illnesses, and the overreliance on inadequate equipment using predictive maintenance decisions may lead to worker injury (McKinsey Quarterly, 2020).

In relation to this particular theme, one study showed how mobile communication has both positive and negative impacts on people, such as forgetting to do important work and causing health issues. To prevent these issues, people should try to keep their phones away from children and set a time when they should and should not use

them (Md. Atiqur.R and Md. Ashraful Islam (2020). While appropriate regulations have been put into place, reports show that using mobile phones while driving and failing to use seatbelt continue to happen on a frequent basis (Kon, 2021). Studies in other parts of the world, have shown that young drivers use their smartphone screens on average 1.6 times per minute of driving. Alarmingly, more than half of the screen-touches are performed while the vehicle is in motion, and some occur even at speeds higher than 100 km/h (Albert & Lotan, 2018).

However, it is noted that the role of Information Technology (IT) in serving the Maqasid Al-Shari'ah should be preserved. For example, during the Covid-19 pandemic. Tarshany & Moaied (2021) studies the potential of IT to provide accurate and timely information, facilitate remote communication and collaboration among healthcare professionals and researchers, and enable remote learning and worship for students and worshippers. It also emphasizes the importance of ensuring that IT is used in a way that aligns with the objectives of Shari'ahs, such as the protection of human life, the preservation of religion, and the promotion of social justice. The authors recommend that policymakers, healthcare professionals, educators, and others work together to develop IT solutions that promote the Maaqasid AI and benefit society (Tarshany & Moaied (2021).

7. Preservation of Intellect

The preservation of the Intellect refer to the enrichment of mankind's intellect through high quality education. According to Chapra, Khan & Al Shaikh (2008), education in this sense plays a dual prupose which is: (1) enlighten members of society about the worldview and moral values of Islam as well as their mission in this world as a Vicegerent of God. Secondly, it should enable them to not only perform their jobs efficiently by working hard conscientiously but also expand the knowledge and technological base of their society. Without these two criteria, it may not be possible to enrich the intellect and enable it to contribute richly to the goal of accelerating and sustaining development. A recent study on preservation of Intellect (Aql) looks at the thematic analysis of the word Aql in the Quran, it shows that the main objective of Aql is intended to look for signs using heart, eyes and ears and use the knowledge and information from that sign to achieve something higher than worldly life (Siti Noor Mawar Abdul Rahman & Azrin Ibrahim, 2019).

One aspect of human intellect is communication which one of the most vital factors contributing towards sound intellect. Being able to communicate effectively is the challenge of the current global job market and young people who are flexible, active, innovative and creative in problem solving and decision making through effective communication of ideas (Eid, Al-Attas & Sulaiman, 2020). Communication skills have changed tremendously with the advent of social media apps such as Whatsapp. In order to prepare or adapt to the digitalization process, not only do we embrace the change but we can control it as a means to preserve our intellect as it has been one of the objectives of Shariah. Islam sets an excellent example of how communication, if practiced correct, will be a means for success in this world as well as hereafter. The communication process relies profoundly on non-verbal communication (Baguelzi, Badjenna & Keddouci, 2020) including non-written communication such as body language, tone, expression among other factors which will enable the receiver to interpret messages more effectively. Emojis may be considered a replacement to this feature however real-time experiences are more enhanced. Ending a vocal transcription with the emoji "smiling to tears" to represent a hilarious attitude regarding a remark is not the same as smiling or laughing to tears while saying the same content as an oral statement (Leone, 2020). This is what is referred to as soft skills.

Specific studies on the Whatsapp application have shown both positive and negative findings. For instance, one report showed that social networks such as Whatsapp enhance interpersonal communication skills although real-time communication is significantly reduced. The findings showed that convenience and efficiency are emphasized nowadays in terms of delivering the message across rather than real-time communication (Chan, Yong, Harmizi, 2020). Another study show that university students from Islamic universities were able to exhibit excellent Islamic values when it comes to using social media, with most using WhatsApp, Instagram and Facebook. Questions related to protecting oneself and others involved the values of faith, lives, intellect, posterity and wealth. All students followed the Islamic values and values, such as Taqwa and respect, which were very important to their lives (Shompa et al., 2019). Another author used mixed methods to examine the potential of WhatsApp as a platform for delivering Islamic religious education and promoting religious values. It highlights the importance of

using WhatsApp to foster interaction, collaboration, and communication between teachers and students, as well as various learning strategies Muslim religious education teachers can use on WhatsApp. The findings of the study can be used to improve students' learning experiences (Az Zafi et al., 2021). This was supported by another study that used whatsapp as a tool for Learning the Arabic language through WhatsApp (Ando & N, 2017). qualitative findings found that the social media provides a platform for students to engage with their friends online, with simultaneous communication, reciprocal interactions, and stored communications. It also enables people to be more involved in the learning process, and those who are embarrassed to learn or lack a study companion can easily learn the language. Additionally, WhatsApp can connect to a wider community, allowing people around the world to have easy access to learning Arabic for free.

In contrast however, another study shows that the use of Whatsapp shows that there exist a substantial barrier between the sender of the message and the receiver (Naidoo, 2021). In some cases, miscommunications may, messages may be misinterpreted wrongly and will lead to conflicts (Hafiar et al, 2020). On the other hand, a quantitative research showed a positive correlation between the exposure to political-religious statuses and religious connection, with most respondents finding 5-10 updates per day and developing stronger religious associations after exposure (Saleem et al., 2022).

The trend in recent studies has seen artificial intelligence likely to replace straightforward communication such as the recent HR trends of chatbots which is an automated reply and query system for customers. Skills required for future of work will rely on interpersonal and intrapersonal skills that cannot be done by a robot, therefore to enhance their employability; youth must have exceptionally good communication skills which have been confirmed by studies by HR professionals (Torraco & Lundgren, 2020). 31% HR professionals report difficulty in recruiting candidates with effective communication skills, 32% report a lack of ability in dealing with complexity and ambiguity and 37% HR report a lack of problem-solving, critical thinking, innovation and creativity among candidates in the United States. Therefore, the approaches towards mass communication and perception towards this phenomenon are dynamically changing the way we interpret it, which requires a flexible approach towards fulfilling the objectives of Maqasid Shariah.

On the other hand, mental health has also been discerned to be affected by excessive social media time. Self-harm, depression and low self-esteem were found to exist in the excessive use of social media (Barthorpe et al, 2020). One particular study examined the psychological distress of Singapore citizens who are informed about the recent news of COVID-19 through Whatsapp. The results showed that most participants display depression, anxiety and stress symptoms after spending most of their time searching for the current updates themselves. The study also concluded that one of the effective ways to help reduce the anxiety and tension levels of the citizens is by Whatsapp, where information can be quickly and easily spread out to the public. However, the study had some limitations, as the 65 participants did not represent and generalise the whole population, and the study may differ due to age or gender of participants(Liu & Tong, 2020). Another study apprehended the app to be addictive and had a negative relationship towards the behaviours of youth and their emotional health in general (mangla et al., 2020).

From the trends of studies relating to communication skills, it can be seen that in order to gain effective communication skills, overreliance on social media should be reduced while making an effort to communicate in real-time is emphasized.

8. Preservation of property

The word *Mal* can be referred to either property of wealth (Chapra, Khan, & Al-Shaikh, 2008). The preservation of property is somewhat different to what is seen in generations before. Property may exist in different forms. In connection to this study on whatsapp, it has been found that social media poses a threat towards intellectual property (Johnson, 2020). This theme overlaps with the theme on intellect, however also has a significance towards the maintenance of property.

With reference to this particular theme, one study revealed that students in the Islamic Banking Study Program discovered that online transactions can make it easier for students to buy and sell, save time and energy, but there are still discrepancies such as goods that don't arrive. To overcome these issues, buyers must look at the description, find out the seller's reputation, check product reviews, see the terms and conditions of the order, save proof of payment, contact the seller, submit a complaint, explain the reason for the return, and return the goods within the specified time period (M.Wandisyah R.Hutagalung, Ihdi Aini, Arti Damisah, Nazmi Darmawanti Harahap, 2022). Another source showed how digital technology is also a powerful tool for promoting halal products and services as well as Muslim lifestyles among Muslim populations. This has created a structure that allows smaller shari'ah-centric groups to take part in social organizations that support their identity (Bambang, 2022).

Preservation of property/ wealth is important in the future of work as unintended consequences of Artificial Intelligence will affect national security, economic stability, infrastructure integrity, among other issues that affect society (Torraco & Lundgren, 2020). The Islamic concept of property rights according to (Mirakhor & Askari, 2010) forbids the acquisition of property ownership without effort in earning it. Initially all property is the property of the Creator. He has created natural-physical resources for the benefit of all of mankind. Disposal of an asset rules against waste, destruction, and luxurious use. God grants rights of the human collectivity to these resources. Full possession of the property does not diminish God’s property right over it, nor the individuals. Mirakhor, Abbas & Askari, Hossein (2015) assert only two ways in which individuals gain legitimate property rights: (1) through their own creative labor, and/or (2) through transfers—via exchange, contracts, grants, or inheritance—from others who have gained the property rights title to an asset through their own labor.

9. Discussion

Cultural studies and media ethics literature often frame the challenges of social media in terms of privacy, autonomy, transparency, and well-being (Floridi, 2013; Zuboff, 2019). These frameworks resonate with aspects of maqasid, such as protecting intellect (through safeguarding knowledge integrity) and protecting life (through maintaining mental and social well-being). However, Maqasid adds an additional dimension by emphasizing collective responsibility and spiritual accountability. Whereas Western digital ethics often prioritize the rights of the individual, maqasid situates ethical evaluation within a communal and transcendental horizon, asking not only whether technology harms the self, but also whether it disrupts family, community, and ultimately one’s relationship with God.

The juxtaposition of Maqasid and global digital ethics highlights areas of convergence and divergence. Both recognize the risks of misinformation, overreliance, and exploitation of user data, but Maqasid frames these risks in terms of undermining fundamental values of human dignity and faith. For example, the preservation of lineage aligns with global concerns about family well-being but extends the discussion to include intergenerational trust and moral responsibility. Similarly, the preservation of property resonates with debates on data ownership and cyber fraud but links these to broader ethical concerns about justice and fairness in economic transactions. This comparative approach illustrates that Islamic ethical frameworks are not isolated from global discourses but can enrich them with holistic perspectives that balance material, social, and spiritual well-being.

The findings show how the first objective on preservation of religion relates mostly to how the use of the application may affect the political factors that will impact on the religion such as through the creation of Islamophobia, creating a biased image towards the religion. Moreover, this causes a disruption in trust and mutual discord among Muslim community. This highlights the need for Maqasid Shariah to be used a conceptual model to regulate the behaviors of Muslims in the use of social media to be underpinned by the guidelines of Islamic ethics and principles.

Secondly on preservation of life, it was found that studies show both a positive as well as negative impact of the social media app towards health and safety. Again, Maqasid was highlighted as a benchmark to ensure that IT is used ethically and effectively to serve the preservation of human life.

With respect to the preservation of intellect, a lot of studies have shown how the social media has played an important role in enhancing learning and communication skills. The findings show that it has enabled Muslims to promote Islamic values and education online through a more vast audience. Although it inhibits real-time communication, it facilitates collaborative learning through a larger audience. However, there are concerns that the value of real-time verbal communication skills may be undermined with the over dependance of this app which may necessitate further research in this aspect.

Lastly, in terms of preservation of property, the findings have been able to uncover the contribution of the app in terms of facilitating online transactions and digital marketing of halal products. This phenomena was particularly enhanced during the COVID-9 pandemic which served to help those in expanding their businesses during a time which crucially reduced the mobility of physical business transactions. However, discrepancies in online transactions that do not conform to Shariat are still being questioned which shows a need for studies to explore on the possibility of regulating more closely the practice in accordance with the objectives of Shariah.

In the Islamic perspective, the consumption of all worldly aspects require moderation in order for it not to corrupt the 5 objectives mentioned above. Maqasid al-Shariah has a threefold tier of needs which encompass: 1) Daruriyyat[1], 2) Hajjiyyat[2] and 3) Tahsiniyyat[3]. These different levels of needs serve as a guidance for mankind in the use of all commodities in life in which a man is entrusted with the intellect to think and make choices accordingly. With Whatsapp, however, the investment becomes indispensable due to the fact that the mindset has already been set that the app is imperative for the purpose of daily endurance, hence the use of Whatsapp as a tool of communication becomes an added expense, a need allocated under the Hajjiyyat level of needs, even though, in reality, such communication are in fact under the Tahsiniyyat level of needs. As a disclaimer, such allocation of needs rests under the seven levels of human nafs of each and every individual as each individual varies in their level of nafs (Rassool, 2021). This notion remains to be confirmed for further research in the area. The study is not without its limitations. Based upon the literature that was sourced from the selection criteria in Table 2, there was a lack of studies that were aligned with the objective on preservation of lineage. Preservation of lineage, sometimes referred to as *Nasl* can be referred to the importance of posterity of the family institutions (Chapra, Khan & Al Shaikh-Ali, 2008). Lineage in this point is referred to family relations which may include relations between husband and wife, parents and children, close and distant relatives among others. This shows that there is a lack of literature exploring the concept of social media, namely Whatsapp in relation to this particular objective.

10. Conclusion

To conclude, the use of WhatsApp in daily life has become increasingly ubiquitous among society to such an extent that it is hard to find a person who does not have the application downloaded on their phone, much less one who does not make use of it in personal and professional contexts. It has become a cultural norm to rely on the application for communication in virtually all aspects of life. Numerous other issues may surface if properly examined, indicating potential correlations between WhatsApp use and wider social, political, and ethical concerns, not only within WhatsApp itself but across the broader social media ecosystem. Based on this concern, this study explored the literature through a narrative review using a semi-systematic method of examining the main keywords in this study. Findings from various empirical studies were further conceptualized according to the themes of *maqasid al-shariah*. Many studies highlight how WhatsApp can be associated with the preservation of intellect through education and knowledge-sharing, yet concerns arise in relation to the preservation of religion, where misinformation and unregulated use can pose political and spiritual risks. In terms of life, issues of health and mental well-being emerge alongside opportunities for health communication, especially evident during the

[1] The word Daruriyyat is defined as a thing that must be acquired in order to uphold the welfare for both religion and the world. If this thing does not exist, then the welfare of the world will be ruined if the activities of the world do not go well, and from the aspect of religion, Allah's punishment in the hereafter will not be spared and will be in great loss (Susilo, 2020).

[2] The word Hajjiyyat is defined as something that is very necessary to eliminate the difficulties that can lead to the loss of something that is needed, but not to the detriment of the public interest (Susilo, 2020).

[3] The word Tahsinniyyat is to take something better than the good according to custom and stay away from bad things that are not accepted by common sense, or in other words, it means what is gathered within the limits of morality (Susilo, 2020).

COVID-19 pandemic. Lastly, property considerations point to both the potential of digital marketing and the risks of unethical financial practices.

Future research is therefore needed to extend these findings by conducting empirical studies with Muslim users in different cultural contexts to examine how WhatsApp practices vary across regions and demographics. Comparative studies between Islamic ethical frameworks and Western digital ethics can provide deeper insights into how Maqasid-based evaluations intersect with global approaches to digital well-being, privacy, and data protection. Further work could also focus on longitudinal studies that explore how sustained use of WhatsApp impacts religious practice, intellectual growth, and family cohesion over time. Additionally, cross-platform research could investigate whether the challenges and opportunities identified here extend to other applications such as Telegram, Signal, or emerging AI-driven platforms, thereby situating WhatsApp within the wider digital culture ecosystem. Such research would not only deepen the scholarly understanding of Islamic perspectives on digital culture but also contribute to broader intercultural dialogues on ethics, technology, and society.

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The Intelligence Cycle in Indonesian Immigration: Improving Service Quality through Responsive Legal Frameworks

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Abstract
The Indonesian Immigration Service faces systemic failures, notably critical digital infrastructure fragility highlighted by the PDN disruption and rampant maladministration (*pungli*) that compromises its integrity and public trust. This research employs a normative legal methodology using Responsive Legal Theory (RLT) to diagnose these issues, arguing that the failures stem from the structural rigidity of Autonomous Law, which prevents the system from achieving *Substantive Justice* or enacting institutional *Learning and Self-Correction* . The study proposes integrating the Intelligence Cycle (IC) as the operational solution: the IC uses forensic and open-source data to precisely diagnose vulnerabilities, such as specific procedural loopholes facilitating corruption or cyber risks. This IC-RLT integration resolves the issues by institutionalizing continuous *Feedback* to enhance digital *Security and Resilience* and enforcing *Goal-Oriented Discretion* to eliminate *pungli*. This dynamic framework provides the necessary adaptability to sustainably balance the state's law enforcement functions with its mandate for high-quality service delivery.

Keywords: Responsive Legal Theory, Intelligence Cycle, Immigration Service, Digital Fragility, Maladministration, Substantive Justice

1. Introduction

Immigration in Indonesia has strategic role in maintaining state sovereignty while facilitating the movement of people across borders. This dual function places the Directorate General of Immigration in a crucial position to ensure national security, but at the same time, it is obliged to provide high-quality public services. Amidst increasingly complex global migration dynamics, characterized by an increased volume of human movement and the emergence of cross-border threats such as irregular migration and transnational crime, the need for efficient and secure systems is becoming more urgent. Academic studies affirm that the transformation of immigration services must balance security and service efficiency, especially in the context of digitalization vulnerable to cyber threats (Betts & Loescher, 2021).

The impetus for digital transformation in public administration, including in the immigration sector, aims to enhance service efficiency and accessibility. However, the implementation of this digitalization often faces real challenges that directly affect service quality. One crucial incident highlighting the fragility of digital infrastructure was the system disruption due to a National Data Center (PDN) issue in June 2024. This event paralyzed

immigration services at Soekarno-Hatta International Airport, forcing officers to conduct manual checks, which led to long queues and widespread public complaints. The disruption was allegedly caused by ransomware and DDoS attacks, indicating that reliance on technology has not been fully balanced with system resilience and adequate cyber risk management (Antaranews, 2024; Kompas, 2024; Liputan6, 2024). International research highlights the importance of cyber resilience in digital public service systems to prevent similar disruptions (Kshetri, 2023), while national studies emphasize the need for responsive regulations to support public service digitalization (Pratama & Sari, 2022).

In addition to technical challenges, the quality of immigration services is also marred by internal integrity issues. The practice of illegal levies (pungli) remains rampant at Soekarno-Hatta Airport, with Chinese foreign nationals slipping Rp500,000 for green lane access between February 2024 and January 2025, totaling Rp32.75 million from 60 foreign nationals. Similarly, at I Gusti Ngurah Rai Airport, officers collected Rp100,000–Rp250,000 for free fast track services, earning Rp100–200 million per month. The misuse of fast track and priority lane services, which should be free for the elderly, children, pregnant women, and migrant workers, indicates a lack of internal oversight and integrity (BBC Indonesia, 2025). The Indonesian Ombudsman consistently calls for improvements in public service systems and promotes an anti-maladministration stance within the Ministry of Law and Human Rights (Ombudsman of The Republic of Indonesia, 2024a). Furthermore, the Riau Islands Ombudsman specifically requested Immigration to monitor and prevent pungli that went viral in the mass media (Ombudsman of Kepri, 2024). National research underscores that maladministration such as pungli erodes public trust and requires an intelligence-based approach for prevention (Widodo & Santoso, 2023).

On the other hand, immigration law enforcement functions have also seen significant increases. Law enforcement by Immigration against foreign nationals in 2024 doubled, with the number of suspects in immigration crimes surging by 228% and immigration administrative actions (TAK) rising by 150%. The Directorate General of Immigration also conducted the Wira Waspada Serentak 2025 Operation, apprehending 294 foreign nationals suspected of violating regulations (Indonesian Directorate of Immigration, 2024; Imigrasi.go.id, 2025), as stipulated in Law No. 6 of 2011 concerning Immigration, as last amended by Law No. 63 of 2024 (UU No. 6 Tahun 2011 jo. UU No. 63 Tahun 2024). While crucial for maintaining state sovereignty and security, this increase in law enforcement needs to be balanced so as not to compromise efficiency and ease of service for legitimate parties. The tension between these enforcement and service mandates indicates a complex dilemma in immigration governance, as analyzed in international literature on balancing security and public service (Hollifield & Wong, 2022).

In this context, the intelligence cycle offers potential as a comprehensive solution. Immigration intelligence, traditionally focused on threat identification and surveillance, has significant potential to proactively enhance the efficiency, accuracy, and transparency of public services. This potential includes leveraging cyber security intelligence for system risk mitigation, internal intelligence for early detection of maladministration, and operational intelligence for workflow optimization. This optimization requires a responsive legal framework, capable of adapting to technological and social dynamics, balancing various interests, and ensuring accountability and human rights protection, as regulated in Law No. 25 of 2009 concerning Public Services (UU No. 25 Tahun 2009), Law No. 30 of 2014 concerning Government Administration (UU No. 30 Tahun 2014), and Law No. 27 of 2022 concerning Personal Data Protection (UU No. 27 Tahun 2022). The concept of "public service intelligence" is even explicitly highlighted by the Ombudsman as a tool for "transforming maladministration prevention in optimizing public service system improvements" (Ombudsman of The Republic of Indonesia, 2024b). Furthermore, international legal frameworks such as the International Covenant on Civil and Political Rights (ICCPR) (UU No. 12 Tahun 2005) and the UNTOC Protocol against the Smuggling of Migrants (United Nations, 2000) affirm the importance of human rights protection in immigration policies, although Indonesia has not ratified all related conventions.

2. Method

Normative qualitative research is a methodological approach primarily used in fields such as law, political science, ethics, and public policy, focusing on the analysis of norms, rules, principles, and values that govern human conduct

or societal structures, aiming to interpret, critique, or construct ideal frameworks by examining what ought to be (Smith & Jones, 2020). This method delves into the conceptual and theoretical underpinnings of a subject to understand the coherence and implications of normative systems, typically involving doctrinal or conceptual analysis where data is primarily collected from primary legal sources (statutes, regulations, judicial decisions) and secondary scholarly sources (academic journals, books) that interpret these norms (Brown & Davis, 2019). Analytical techniques employed include hermeneutics for interpreting legal texts, content analysis for examining documents, logical coherence analysis for assessing consistency, and comparative analysis for comparing different normative systems. The strength of this research lies in its ability to provide in-depth conceptual clarity and theoretical robustness, identifying gaps or contradictions in existing frameworks for refinement (Green & White, 2021), making it valuable for developing new theories or policy recommendations; while its reliance on interpretation can be seen as subjective, rigorous application offers crucial insights into prescriptive dimensions of governance.

3. Discussions

This discussion section critically evaluates the operational failures within the Indonesian immigration system using the Responsive Legal Theory (RLT) as a diagnostic tool and firmly establishes the Intelligence Cycle (IC) as the necessary operational mechanism to restore service quality and fulfill the strategic mandate of the Immigration Service. The analysis explicitly integrates the conceptual frameworks to address the specific empirical problems of digital fragility and maladministration.

3.1. Current Issues in Immigration Service Delivery

The Immigration Service in Indonesia operates under a complex dual mandate: maintaining national sovereignty and security while simultaneously facilitating international mobility (FitzGerald & Cook-Martín, 2014; Castles & Miller, 2009). The tension between these functions—the security-facilitation paradox (Huysmans, 2006)—is exacerbated by two major systemic failures, which RLT diagnoses as a failure of the legal order to maintain adaptability and accountability.

3.1.1. Fragility of Digital Infrastructure

The ongoing digitalization of the Immigration Service, intended to boost *Efficiency* and *Accessibility* (Pratama & Sari, 2022), has been exposed as fundamentally vulnerable. The June 2024 system disruption caused by issues at the National Data Center (PDN) is a prime case study, resulting in the paralysis of critical services at major international airports and forcing a disruptive return to manual processing (Antaranews, 2024; Kompas, 2024). This catastrophic failure, linked to potential ransomware attacks (Liputan6, 2024), demonstrates a critical lapse in the service indicator of *Security and Resilience* (Kshetri, 2023). RLT interprets this not as a mere technical fault, but as evidence of a systemic failure of *Learning and Self-Correction*. The prevailing legal and administrative framework, dominated by the procedural focus of Autonomous Law, proved too rigid to adapt quickly to the dynamic and rapidly evolving nature of cyber threats (Nonet & Selznick, 1978).

3.1.2. Maladministration and the Erosion of Integrity

The quality of the Immigration Service is further deeply compromised by persistent maladministration, specifically the widespread practice of illegal levies (*pungli*) (Widodo & Santoso, 2023). Detailed reports cite officers at airports charging substantial fees (Rp100,000 to Rp500,000) for expedited services that should be free, thereby violating the service indicators of *Integrity, Fairness, and Accountability* (BBC Indonesia, 2025). The Indonesian Ombudsman has repeatedly emphasized the need for intensive internal oversight to curb such endemic corruption (Ombudsman of The Republic of Indonesia, 2024a). RLT provides the crucial theoretical diagnosis: this practice constitutes a dangerous functional regression. While the system maintains the *form* of Autonomous Law (procedural rules), the exercise of arbitrary power for personal financial gain shifts the system toward the instrumental abuse of authority characteristic of Repressive Law, ultimately betraying the commitment to *Substantive Justice* (Nonet & Selznick, 1978).

3.2. The Role of the Intelligence Cycle in Problem Diagnosis

The IC must be integrated into the Immigration Service as the institutional sensor mechanism required by RLT to diagnose systemic failures and root causes, thereby moving beyond procedural formalities to address real-world problems (Lowenthal, 2017).

3.2.1. Diagnosing Fragility of Digital Infrastructure

In the context of cyber risk, the IC provides a precise framework for diagnosis. The Planning and Direction phase must redirect intelligence resources (Herman, 2018) away from generic security reports toward identifying the specific procedural and architectural vulnerabilities that enabled the PDN disruption, linking technical flaws to service failures. The Collection phase is crucial, requiring the gathering of technical data (e.g., SIGINT/network logs), internal audit reports, and records of system outages to acquire empirical data on the state of *Security and Resilience*. This raw data is synthesized during Analysis and Production, where analysts assess the precise impact of the disruption on the *Efficiency* indicator and diagnose the underlying technical and regulatory lapses responsible for the failure (Lowenthal, 2017). This output provides RLT with actionable evidence to critique where compliance with existing security laws has failed to deliver the intended social goal of a resilient public system.

3.2.2. Diagnosing Maladministration and the Erosion of Integrity

To diagnose systemic corruption, the IC leverages non-traditional intelligence sources. The Planning and Direction phase focuses on targeting procedural loopholes in priority service delivery, linking operational patterns to service corruption (Herman, 2018). The Collection phase is heavily reliant on gathering public feedback (Open-Source Intelligence/OSINT), analyzing service complaints on social media, and scrutinizing internal audit trails and transaction volume data related to services susceptible to *pungli* (Gill & Phythian, 2018; MoldStud, 2025). Subsequently, the Analysis and Production phase identifies the exact *patterns* of abuse of official discretion, pinpointing which specific policies or lack of oversight mechanisms facilitate rent-seeking behavior (Lowenthal, 2017). This diagnostic intelligence confirms the RLT critique: the legal system failed to establish sufficient mechanisms for *Fairness and Accountability* in the daily execution of the Immigration Service.

3.3. Obstacles to Achieving Ideal Immigration Service Delivery

While the IC offers a robust solution, its implementation is hampered by systemic obstacles rooted in the inertia of the existing legal culture and specific operational gaps related to the identified problems.

3.3.1. Obstacles to Resolving Digital Fragility

The conceptual rigidity of Autonomous Law poses a significant theoretical obstacle, as it inherently resists the RLT principle of *Shift from Rules to Principles* (Nonet & Selznick, 1978; Dworkin, 1977). Consequently, the detailed rules governing digital security often become obsolete faster than the bureaucratic or legislative process can update them, rendering the entire legal framework unresponsive to new cyber threats (Gardner, 2011). On the operational side, the lack of local expertise in complex cyber intelligence significantly hinders the ability of the Immigration Service to effectively execute the *Collection* and *Analysis* phases of the IC, limiting the system's capacity to proactively restore *Security and Resilience* (Chen & Hsieh, 2020).

3.3.2. Obstacles to Resolving Maladministration and Integrity Issues

The most significant impediment to eradicating *pungli* is rooted in the political economy, which frequently sabotages the IC's Feedback mechanism (World Bank, 2012). RLT mandates a commitment to *Substantive Justice* over formal compliance (Nonet & Selznick, 1978). However, if the intelligence generated during *Analysis* exposes widespread corruption involving high-ranking figures, the political costs of implementing corrective action—the crucial Feedback step—often exceed the political appetite for reform (World Bank, 2012). This resistance from

entrenched bureaucratic power structures prevents the Immigration Service from truly achieving institutional self-correction and guarantees that the maladministration will continue to plague the service indicators of *Integrity and Accountability*.

3.4. IC Implementation Linked to Responsive Legal Theory in Problem Resolution

The integration of the IC is the functional tool that enables the Immigration Service to realize the normative imperatives of RLT, thereby resolving the diagnosed systemic failures.

3.4.1. Resolving Digital Fragility through Learning and Self-Correction

The IC institutionalizes RLT's core principle of *Learning and Self-Correction* (Black, 1989). The system addresses digital fragility by creating a continuous, adaptive security framework. Intelligence reports concerning cyber vulnerabilities are immediately disseminated to technical stakeholders and integrated into revised security protocols (Feedback), forcing the legal and technical framework of the Immigration Service to dynamically adapt to threats rather than remaining static (Lowenthal, 2017). This iterative cycle, supported by frameworks like the NIST Cybersecurity Framework (National Institute of Standards and Technology, 2014), actively ensures the framework remains compliant with the *Security and Resilience* indicator.

3.4.2. Resolving Maladministration through Goal-Oriented Discretion and Substantive Justice

The IC directly operationalizes the RLT principle of *Goal-Oriented Discretion* (Nonet & Selznick, 1978). To eliminate *pungli*, the system utilizes the *Analysis* phase to continuously monitor operational data (e.g., service transaction logs) in real-time, detecting and flagging anomalous patterns indicative of abuse in areas like *fast track* management (Lowenthal, 2017). This systematic oversight ensures that the officer's discretionary authority is intentionally guided toward achieving the public goal of service *Fairness and Equity*, rather than self-enrichment, thereby guaranteeing *Substantive Justice* for all users, including vulnerable groups (Nonet & Selznick, 1978). By leveraging the intelligence mechanism to force the discretionary application of authority to serve the public good, the Immigration Service is compelled to transition from the functional characteristics of Repressive Law toward a genuinely responsive and accountable administration.

4. Conclusion

The dysfunctionality within Indonesian Immigration services, evidenced by the National Data Center (PDN) incident and persistent practices of extortion (*'Pungli'*), reveals a fundamental failure in the legal framework, which is currently dominated by the rigidity of Autonomous Law. This framework proves insufficient in fostering the necessary Learning and Self-Correction required for dynamic cybersecurity governance and fails to uphold Substantive Justice in anti-corruption efforts.

The integration of the Intelligence Cycle (IC) offers a functional solution. The IC acts as an institutional sensor, compelling the legal and administrative system to embrace the normative imperatives of Responsive Law Theory (RLT). By leveraging the IC to detect real-time cyber vulnerabilities and monitor patterns of maladministration through audit data and Open Source Intelligence (OSINT), Immigration can effectively implement Learning and Self-Correction and facilitate Goal-Oriented Discretion. Ultimately, a responsive legal reform is imperative to codify the legality of the IC, ensuring it functions as an adaptive, ethical, and accountable tool that drives the Directorate General of Immigration towards the provision of high-quality public service.

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Disclosure Methods of Beneficial Ownership by Notaries in Money Laundering Crimes: A Case Study

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Abstract
Money laundering often occurs alongside corruption. Although qualitatively distinct, the two crimes remain closely connected. Perpetrators use money laundering as a method to conceal the proceeds of corruption. This study focuses on the role of notaries in preventing money laundering through the disclosure of corporate beneficial ownership. The researchers applied a qualitative case study method. The findings reveal that money laundering networks position beneficial owners as the main actors who control other participants within corporations, personal relationships, and professional intermediaries such as accountants, lawyers, and notaries. This study supports white-collar crime theory and money laundering network theory by highlighting Politically Exposed Persons (PEPs) as beneficial owners who use corporations as vehicles for laundering illicit funds.

Keywords: Money Laundering, Professional Mediator, Beneficial Ownership, Corporation

1. Introduction

Research on money laundering over the past decades has firmly established that corruption and money laundering are closely related, distinct yet interconnected phenomena (Gordon, 2009). Corruption generates demand for money laundering, while money laundering provides the mechanism that enables corruption (Christensen, 2011; Barone, 2019).

Contemporary corruption in the modern era often relies on cross-border networks and financial transactions that conceal ties between political elites and business actors who expand their enterprises through bribery of corrupt officials (Cooley & Sharman, 2015). These relational and financial spaces consist of national and transnational corporate networks, offshore companies, professional intermediaries, corporate service providers, and financial institutions that cooperate to channel illicit funds and disguise them from public and legal scrutiny. Cooley and Sharman (2017) emphasize the role of financial and legal professionals in managing these networks.

Certain jurisdictions protect confidentiality and adopt “criminogenic” regulations that foster criminal behavior in otherwise legal activities (Tillman, 2009). Despite jurisdictional differences, some multinational companies design and provide financial services to corporations and foreign nationals, enabling the laundering of corrupt proceeds from other countries (Sharman, 2010; Christensen, 2011). Evidence of corporate misuse for money laundering

appears in schemes that move illicit funds into the public domain (Willebois, 2011). Leaked confidential information from the Panama and Paradise Papers exposed the extensive reach of these offshore financial networks (Obermaier & Obermayer, 2017). Research has identified key jurisdictions that facilitate laundering within multinational corporate networks, including the British Virgin Islands, Hong Kong, Singapore, Taiwan, China, and the United States.

These jurisdictions and service providers separate ownership from non-ownership of resources and assets. On one hand, they guarantee indirect control mediated through corporate beneficiaries and other financial entities; on the other, they systematically obscure links between companies and their beneficial owners through intermediaries, nominees, front men, and cross-border corporate networks (Sharman, 2010).

Kejriwal and Dang (2020) found that concealing beneficial owners depends on network structures with different classes and specific structural, functional, and operational characteristics. These mechanisms separate various financial and relational clusters, such as the use of financial companies, cooperation with corporate service providers, and the employment of nominees and associates to obscure the identity of beneficial owners.

In the private sector, literature highlights the role of entrepreneurs as initiators of corruption schemes. Ariano-Gault (2019) describes the practices and routines actors use to repeatedly engage in corruption, such as building covert communication networks, forming decision-making chains within companies, and designing organizational structures to manage corrupt activities. Through internal processes, perpetrators establish procedures and operational strategies to sustain these crimes. Willebois (2011) stresses that beneficial owners play a pivotal role in linking corruption and money laundering. They are often Politically Exposed Persons (PEPs), assisted by nominees and individuals in close social relationships with politicians and business elites. Beneficial owners ultimately control and profit from assets, even when their control remains indirect and hidden.

PEPs are individuals who hold public trust and official functions, are publicly known, and generally face higher risks of corruption due to their influence and authority. A core anti–money laundering technique is to specifically monitor PEPs (Gordon & Sharman, 2009). PEPs who exploit their privileged access for corruption rarely act alone; instead, they rely on inner circles that include political allies, family members, business partners, close friends, and trusted associates. These inner circles help PEPs manage finances, facilitate connections with private actors, launder funds, and control the legal status of assets concealed in corporate financial structures. Members of the inner circle often assume formal contractual roles as substitutes or responsible parties for assets within companies to disguise the identities of beneficial owners. The primary entities in these arrangements include corporate service providers, trusts, companies, and foundations.

Operational companies run real businesses, employ workers, and manage asset inflows and outflows, often functioning as front companies for money laundering schemes. Trusts establish fiduciary relationships in which one party, the settlor, authorizes another to hold property rights for the benefit of a third party (the beneficiary). Foundations serve as legal entities without ownership, where asset contributors transfer both ownership rights and benefits to the foundation.

Money laundering plays a central role in organized crime because it integrates criminal proceeds into legal business activities, such as establishing legal entities or conducting legitimate business transactions. The goal of money laundering is to conceal the origin of illicit funds. For example, a drug dealer may build a property or restaurant business to create seemingly lawful profits (Soudijn, 2014).

A proper understanding of clients and their sources of funds helps prevent the spread of money laundering. Financial institutions and other parties capable of conducting business transactions must perform customer due diligence or know-your-customer checks to detect possible money laundering activities. Customer due diligence requires more than storing and reporting data; it involves uncovering the true identity of transactions to identify potential crimes.

FATF case studies reveal that corrupt actors often use laundering methods similar to those employed by organized crime. Corrupt officials conceal their ownership by exploiting corporations and companies suitable for laundering, and they employ gatekeepers as the first line of defense. When corrupt actors are public officials, they use their authority to seize state assets, manipulate law enforcement, and intervene in financial institutions (FATF, 2015).

Hutajulu (2016) found that money laundering consists of two acts: committing a predicate crime that generates illicit funds and channeling those funds into legitimate activities. Consequently, the term "predicate crime" refers to the initial offense, while money laundering constitutes the subsequent handling of criminal proceeds. According to Law No. 8 of 2010 on Money Laundering, predicate crimes may occur outside business activities, such as corruption, or within business activities, such as market manipulation or securities fraud.

In organized crime, launderers use corporations, social organizations, and other entities to obscure individual involvement, since these entities can hide ownership and transactions for the benefit of criminals. Beneficial owners are individuals who receive advantages from corporate transactions and investments while concealing their identity. They play a crucial role in corporations because corporate profits may stem from illegal practices such as tax evasion or money laundering. To prevent laundering, governments require disclosure of beneficial ownership information (Wijaya, 2019).

Beneficial owners are the actual owners of corporate funds and therefore hold the right to benefits from company-managed accounts. Legal ownership differs from beneficial ownership because formal owners may act only as nominees, while another person substantively controls the assets (Sinaga, 2019). Beneficial owners hold control over corporations and possess entitlement to corporate benefits. They are the true owners of corporate assets as defined by relevant regulations. To prevent crime, protect corporations, and support ease of doing business, governments mandate transparency in beneficial ownership information (Tan, 2021).
The disclosure of corporate beneficial ownership forms part of policies to prevent money laundering (ML) and terrorism financing (TF). These policies assume that corporations are vulnerable to misuse as laundering vehicles, making open and accessible information necessary. Crimes increasingly involve not only individuals but also corporations, which function as instruments to obscure and conceal unlawful activities.

2. Method

This study applied a qualitative method using secondary data in the form of case studies. The case studies involved money laundering cases that used corporations and had obtained permanent legal force (*in kracht van gewijsde*) through:

1. The Case Tracking Information System (SIPP) in the databases of District Courts, High Courts, and the Supreme Court, filtered within the last five years and limited to corporate-related money laundering cases;
2. Official institutional reports on suspicious financial transactions and corporate beneficial ownership reporting;
3. Relevant prior research.

The analysis examined the patterns and methods of corporate-related money laundering cases, mapped them to each stage of corruption risk, identified corporate profiles with opportunities to engage in laundering, and assessed legal, social, and institutional responses. The results then informed follow-up interviews to deepen the research analysis.

3. Results

The documentary study results about money laundering cases are useful for further analysis matters and essential to determine any notary roles in revealing money laundering committed by corporation. The observed cases already have legitimate law. Here are the breakdown.

3.1. MAL Case

Case Description

ADI, as Director of Capital Market at PT. MSS Sekuritas, and MAL, as Head of the Treasury Division at PT. Bank SUT, engaged in a corruption case involving the issuance of Medium Term Notes (MTN) by PT. SNP to cover additional operational expenses. They offered these securities to PT. Bank SUT, represented by MAL as the investor, with PT. MSS Sekuritas, represented by ADI, acting as the underwriter, through three consecutive offering schemes.

In the process, MAL failed to review PT. SNP's request to set a credit line was ignored, with the requirement to determine the Maximum Credit Submission Limit (BMPK). Meanwhile, ADI facilitated the underwriting process by PT. MSS Sekuritas so that the nominal offer would be approved. In fact, the offering was unreasonable and disproportionate to the funds disbursed, considering PT. SNP was a financing company operating in retail with a high risk of default. As a result, the state suffered a loss through the funds disbursed by PT. Bank SUT. From the collected funds, PT. SNP, as the debtor, received part of the proceeds, while both defendants also took money that they used to purchase assets and transfer to associates at PT. Bank SUT. In this case, investigators alleged both defendants committed corruption and money laundering, causing state losses amounting to Rp202,072,450,000.

Money Laundering Crime

ADI personally received Rp1,286,750,000 to settle a house purchase and a transfer of Rp1,156,109,244 between October 30, 2017, and November 24, 2017. He then funneled part of the funds to associates at PT. Bank SUT which helped facilitate the MTN disbursement, including Rp514 million to MAL, Rp200 million to NAN (Head of the Global Market Division at PT. Bank SUT), and Rp100 million to RPH (Commissioner of PT. Bank SUT). These fee payments allegedly originated from 55 holding accounts under ARF, whose whereabouts remain unknown.

The case also revealed a land purchase transaction from MAL to ADI worth Rp500 million, although the court could not prove it, and no notary was presented to validate the transaction. The typology of money laundering in this case remains unclear, since LDR (the child of PT. SNP's owner) and SLG controlled the proceeds of MTN sales. Interpol is still searching for LDR, who is strongly suspected to be in Japan.

Variable Descriptions of Money Laundering

Predicate Crime	: Corruption
Perpetrator Profile	: Director of a Private Company (ADI)
Transaction Type	: Transfer via RTGS
Transaction Instruments	: Savings Account and Shares
Industry Sector	: Banking and Securities
Source of Funds	: Domestic Third Party
Involved Parties	: Colleagues
Type of Asset	: House

Money Laundering Typology

a. The perpetrator misused a legitimate business by falsifying documents, which caused administrative defects.
b. The perpetrator purchased a luxury house as an asset.

3.2. Case 2 (PT. TRD)

Case Description

In 2018, the court sentenced MYZ, the Regent of KBM, to four years in prison, a fine of IDR 300 million, and the revocation of political rights for three years for violating Article 12(a) of Law No. 31/1999 as amended by Law No. 20/2001 on the Eradication of Corruption Crimes. The court found MYZ guilty of accepting bribes totaling IDR 12 billion from several project partners in KBM Regency. He used part of the money for his inauguration celebration, and transferred another portion to his company PT. TRD, and distributed the rest to other parties.

The court also convicted PT. TRD of violating Articles 3 and 5(1) of Law No. 8/2010 on the Prevention and Eradication of Money Laundering. It imposed a fine of IDR 500 million, with subsidiary confiscation of assets belonging to PT. TRD or MYF (the Regent of KBM) as the beneficial owner of PT. TRD, equal to the fine. Additionally, the court ordered the confiscation of assets for the state amounting to IDR 3.605 billion and IDR 2.330 billion, after deducting restitution payments made through the Corruption Eradication Commission.

After winning the KBM Regional Election, two days before his inauguration as Regent, MYF resigned from PT. TRD's management through a General Meeting of Shareholders' Deed executed before a notary in February 2016. Despite his formal resignation, MYF maintained control over PT. TRD as its beneficial owner. In July 2016, MYF met with KML and AP and informed them that KBM Regency would receive approximately IDR 100 billion in Special Allocation Funds (DAK) for Fiscal Year 2016.

During the meeting, MYF, acting as Regent, interfered in the procurement of goods and services by allocating DAK funds: IDR 15 billion to HA, IDR 15 billion to MH alias A, IDR 36 billion to KML, and IDR 23 billion to PT. TRD, with a 7% advance fee, except for PT. TRD because it was his.

Following this allocation, PT. TRD secured several projects from the 2016 DAK budget using other companies as fronts: PT. MAK (two road projects, total contract IDR 6.7 billion), PT. CGB (road project, contract IDR 10.8 billion), and PT. SMU (road project, contract IDR 18 billion). PT. TRD earned IDR 3.2 billion in profits, which it booked as company income. Between December 2016 and July 2017, under MYF's instructions, PT. TRD mixed these funds with company finances and used them to pay MYF's salary (IDR 50 million), his wife's salary (IDR 60 million), land purchases for his wife (IDR 150 million), Alphard car installments (IDR 35 million), his wife's expenses (IDR 500 million), transfers for his wife's needs (IDR 20 million), his personal expenses (IDR 60 million), family holiday allowances (IDR 500 million), household expenses (IDR 36 million), the Director of PT. TRD (IDR 81 million), and equipment and labor rentals (IDR 36 million).

In 2017, PT. TRD also received projects funded by the General Allocation Fund (DAU) using other companies as fronts: PT. CGB (road project, IDR 7 billion), PT. LJU (road project, IDR 2.7 billion), and PT. APS (road projects, IDR 6.8 billion and IDR 8.4 billion). PT. TRD gained IDR 387 million in profits, which it mixed with its company finances and used to pay MYF's salary (IDR 50 million), his family's credit card (IDR 40 million), car installments (IDR 35 million), household expenses (IDR 10 million), plaques, and daily labor (IDR 65 million).

PT. TRD operated under the control of MYF as the beneficial owner, with PN as president and director, and employees AM, PK, and MF acting as his representatives by dividing tasks under his direction. The company also used affiliated firms, including PT. ABS and CV. ASR, to support operations. PT. TRD supplied operational needs for PT. ABS and CV. ASR merged its finances and bookkeeping with those companies, managed by the same individuals under MYF's control.

This case demonstrates how MYF, the Regent of KBM, and the beneficial owner of PT. TRD and its affiliates PT. APS and CV. ASR used these companies to channel funds from DAU and DAK projects in KBM Regency by borrowing the names of other companies for procurement processes he controlled. MYF and his family used the profits from PT. TRD, PT. APS and CV. ASR to further their own interests. PT. TRD also acted as a conduit for bribe payments from project partners in KBM Regency. PT. TRD functioned as a front company engaged in operational activities. MYF's role as beneficial owner was evident from his control of PT. TRD's operations, despite not being its formal president director. The court also qualified him as the beneficial owner of PT. TRD and its two affiliates because he controlled their operations and received the ultimate benefits. Supporting evidence included deeds of establishment, articles of association, and amendments for PT. SA, PT. APS and CV. ASR; bank

statements and financial records; financial transactions of borrowed companies; and witness testimony confirming MYF's role as owner, controller, and beneficiary of PT. TRD, PT. APS and CV. ASR.

Money Laundering Scheme

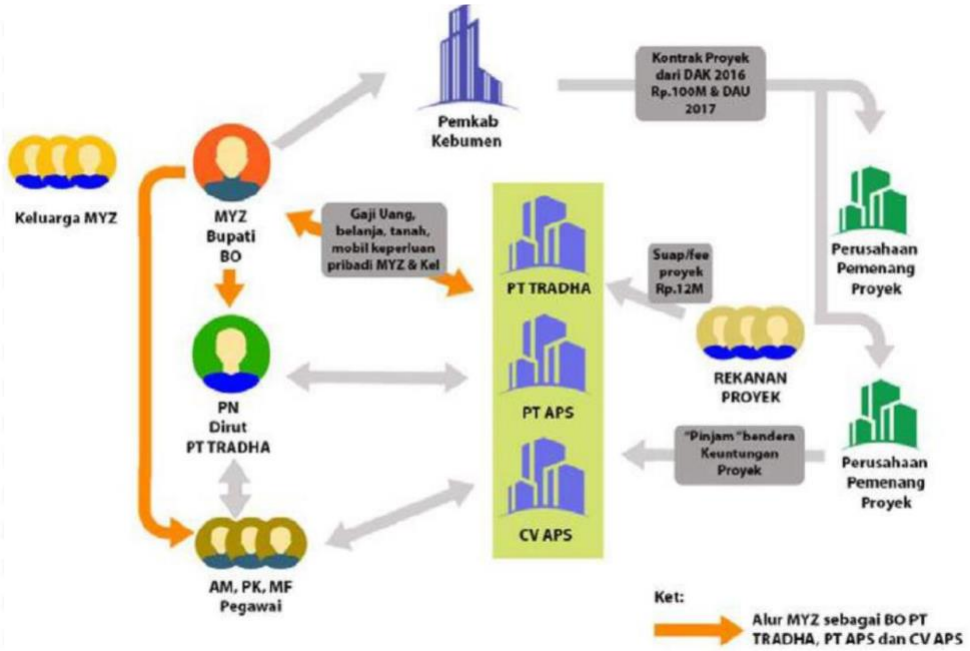

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Figure 1: Processed from varius sources by the researchers

Variable Descriptions of Money Laundering

Predicate Crime	: Corruption (Misuse of Regional Budget/APBD)
Offender Profile	: State Officials, PEPs (Politically Exposed Persons)
Transaction Type	: Bank Transfers & Cash
Transaction Instrument	: Savings Accounts
Industry Group	: Construction Companies
Source of Funds	: Local Government
Related Parties	: Colleagues & Family (Wife)
Asset Types	: Land, Cars, Machinery/Equipment

Money Laundering Typology

a. Mixing company funds with personal funds for private or family use.
b. Purchasing assets such as land and financing luxury daily needs.
c. Abusing power to use state funds.

3.3. Case 3 (ZAI-Regent LS)

Case Description

ZAI, Regent of LS District (2016–2021), exercised his authority from 2016 to 2018 to receive money or commitment fees through AGU (Head of Finance Subdivision, PUPR Office, 2015–Jan 2017) and ANJ (Head of PUPR LS, Dec 2017–Jul 2018). Together with HER and SYA, ZAI accepted cash payments in stages from contractors related to infrastructure project tenders at the LS PUPR Office. From 2016 to 2018, they collected a

total of IDR 72,742,792,145 from contractors who obtained project packages at the PUPR Office, Ministry of Public Works and Public Housing.

Variable Descriptions of Money Laundering

Predicate Crime : Corruption
Offender Profile : Executive, Legislative, and Judicial Officials
Transaction Types : Cash Deposits via Teller, Investment Product Openings, Loan/Credit Installment Payments, Transfers, Cash Transactions
Transaction Instruments : Cash, Checks/Giros
Industry Groups : Banks, Financing Companies, Motor Vehicle Dealers
Source of Funds : Domestic Third Parties
Related Parties : Children, Colleagues, Other Parties/Intermediaries
Asset Types : Cash, Land and Buildings, Cars, Motorcycles, Ships, Operational Machinery

Money Laundering Typology

1. ZAI used nominees, trusts, family members, or third parties—SDR, SJN, GTS, and BBZ—as company executives in PT. ASM, PT. BLK, PT. BCM and PT. PLS, where he acted as the beneficial owner.
2. ZAI purchased valuable assets—cars, large motorcycles, land, and buildings—either under his own name or under nominees.
3. ZAI invested funds in financial products such as stocks.
4. ZAI conducted transactions mainly in cash rather than through the banking industry.
5. ZAI purchased assets using company accounts.

Financial Transaction Redflag

1. Transactions deviated from the user's profile, characteristics, or usual patterns.
2. The user's accounts received frequent deposits or transfers from unrelated third parties.
3. The user made large cash deposits to other parties.

3.4. Case 4 – Toledo (External Case of Indonesia)

President Toledo's corruption and money laundering occurred through a transnational network that exploited hidden financial infrastructure connected to private and public actors. The crime cycle began in late 2004, when Maiman and Toledo's associates demanded a USD 35 million bribe from Jorge Barata, Director of Odebrecht in Peru, in exchange for awarding part of the Interoceanic Highway South project. After Barata and Toledo's associates agreed, President Toledo used his influence over bureaucratic and political actors to shape decision-making and administrative procedures for awarding the contract.

Toledo legitimized the project by enacting legislation that declared it strategic for public interest, ensured Odebrecht and its partners received the contract, and granted private contractors concession rights to manage the highway (Pari, 2016). At the same time, Barata informed Odebrecht's president about Toledo's demand for USD 35 million. DOE, operating in Brazil and other countries, used its financial infrastructure to deliver the payments. In 2007, after Toledo's presidency ended in 2006, DOE activated the flow of funds from Odebrecht and related companies into Toledo's inner circle.

The first stage of the scheme involved transfers among private entities. Odebrecht subsidiaries, including CNO, wired money from their bank accounts to shell companies in the British Virgin Islands, Panama, Antigua, Uruguay, and Belize. Offshore service providers formally managed these firms, while Odebrecht employees controlled them informally. The funds passed through a Peruvian sub-network serving as a financial gateway. Odebrecht's offshore entities then transferred funds to Constructora Area SAC and Construmaq SAC in Peru. At this point, Gonzalo

Monteverde Bussalleu and his associates controlled the funds, cycling them through Peruvian and offshore companies they owned. The funds later moved to another Odebrecht offshore chain, including Panama-based Balmer Holding Assets (C32), formally managed by a Panamanian service provider but informally run by Odebrecht employees.

Balmer Holding Assets, along with other Odebrecht offshore companies, transferred funds to three firms controlled by Toledo's close collaborator, Josef Maiman. These firms moved the money among themselves to obscure its origin, then transferred it to Confiado International in Panama, also tied to Maiman. Confiado moved the funds to Milan Ecotech and Ecostate Consulting, managed by Toledo's associates, such as Avraham Dan On. Finally, Milan Ecotech and Ecostate Consulting transferred the funds to Ecoteva Consulting in Costa Rica, headed by Toledo's mother-in-law. Toledo and his wife accessed these accounts to buy a house registered under their daughter's name, two offices in Lima, and two coastal houses in Peru. They also purchased real estate in the United States, where Toledo relocated after leaving the office. On paper, Toledo rented these properties from the offshore firm, but in reality, he was the beneficial owner. Safeguards such as omitting his name from mailboxes and issuing bank checks as "rent" payments preserved his anonymity.

The bribery scheme relied on ongoing polyadic relationships involving multiple actors. For example, two directors of Banca Privada d'Andorra contracted with Odebrecht's DOE to manage illicit financial flows and corrupt agreements. Court records and national reports revealed that DOE staff often introduced these financiers to politicians and officials as consultants who could build financial infrastructure to launder corruption proceeds.

Odebrecht's network used complex strategies to separate legal and illegal activities. Under Marcelo Odebrecht's leadership, the group created internal departments with specialized roles. DOE operated under the guise of routine procedures, enabling it to conduct illicit activities. The scale of corruption allowed standardized protocols and repetitive use of offshore vehicles and OFCs. Service providers further professionalized the system by acting as shareholders, directors, and resident agents for shell companies, concealing Odebrecht employees' roles in managing hidden infrastructure.

Analysis shows that Toledo's inner circle—family, friends, and associates—managed the financial infrastructure. Maiman's expertise and social capital proved critical in building this network. For example, Maiman opened Confiado in Panama in 2003, managed through a Swiss law firm that acted as a financial intermediary (Peacock, 2018). Formally, Panamanian service providers incorporated the company and appointed their employees as shareholders and directors. These nominal managers held only administrative powers; Maiman retained ultimate control. Living between Israel and Peru, Maiman issued instructions through his sister, who relayed them to the Swiss law firm, which then instructed Panamanian resident agents to execute them.

The creation of Costa Rican shell companies Milan Ecotech, Ecostate Consulting, and Ecoteva followed a different approach. Toledo, with support from Maiman and his security chief Avraham Dan On, traveled to Costa Rica to meet with notaries. For Ecoteva, Toledo arranged for his mother-in-law to serve as the nominal head, while he maintained de facto control over its finances. Toledo's inner circle employed an Israeli lawyer to manage Ecoteva's bank accounts, which included Toledo's mother-in-law.

3.5. Case 5 Anaylsis

The primary functional role in this case belongs to the owners and beneficiaries of the corruption and money laundering scheme. They act as the main actors who profit from illegal transactions on both the demand side (receiving bribes) and the supply side (paying bribes to win contracts). In this case study, they refer to Alejandro Toledo and the senior managers and directors of the Odebrecht Group. Private actors gained benefits by illegally obtaining public contracts worth millions of dollars, while public actors profited from bribes. These private and public actors provided the main operational inputs that formed the basis of the corruption and money laundering scheme.

Both groups maintained mutually beneficial ties with political and business elites. For example, they joined official meetings and philanthropic, cultural, and social events. They used these ties to present to society, politicians, the international community, and civil society the image of a public–private partnership that promoted modernization, economic growth, and development. This visible relationship paralleled the hidden financial ties that connected the groups through informal transnational networks.

The executors were the inner-circle members who surrounded the owners and beneficiaries. Members of each corrupt bloc's inner circle organized and carried out the scheme to conceal the links between Toledo and Odebrecht. These executors included Odebrecht's senior and mid-level managers and financial operators, as well as Toledo's relatives, friends, and associates.

Executors handled multiple tasks: they operationalized the inputs of the main corruption actors, negotiated corrupt agreements, and designed modalities for transferring financial flows. They coordinated with service providers to establish shell companies, offshore vehicles, and bank accounts as basic money laundering mechanisms. At the same time, they managed the smooth integration of public and private financial infrastructures.

Toledo's inner circle directly managed the financial infrastructure. Odebrecht's higher professionalism and economic capacity allowed it to exploit routine practices and outsourcing mechanisms more effectively. Odebrecht's financial infrastructure facilitated hundreds of corrupt deals, while Toledo's infrastructure only supported a few. As a result, the public-side infrastructure remained amateurish compared to Odebrecht's professional system.

Operators were service providers and financial intermediaries who implemented mechanisms to separate corruption proceeds from illegal financial flows. They built and managed infrastructure that transferred illicit funds worldwide. After receiving inputs from scheme designers, operators created and structured shell companies, offshore vehicles, and bank accounts, thereby establishing a highly complex financial system. Service providers and intermediaries offered complete administrative packages, including expertise, skills, and human resources, as well as the creation of offshore instruments tailored to client needs. Acting as shareholders, directors, presidents, or secretaries, they could register and manage offshore vehicles. They also handled accounting, tax payments, and contract signing. Within this framework, service providers and intermediaries acted as skilled suppliers operating legally within their jurisdictions.

The transnational network featured complex socio-financial ties: individuals acting as nominees and front men, companies, shell firms, and offshore vehicles constituted its core. Sub-networks functioned as transit hubs for financial flows. Their specific role was to further obscure and launder funds moving from private to public clusters, making the laundering scheme more complex. These sub-networks are formally detached from the core corruption and money laundering network. Small clusters of operational firms mixed corruption proceeds with legal business revenues, ensuring financial flows were better hidden and harder to trace.

The Toledo case revealed corruption and money laundering in cross-border exchanges that used advanced technology in financially and socially complex networks. A hidden financial infrastructure was built to conceal the beneficiaries of corruption proceeds by exploiting political and business pillars. Public and private financial infrastructures interacted smoothly and efficiently. Inner-circle members and service providers coordinated this interaction. The network facilitated it through shell companies, offshore vehicles, and bank accounts under their management. Relationships between individuals and companies created what is called a socio-financial complex, which constituted the relational and operational substance of financial infrastructure. This socio-financial complex enabled corrupt actors to achieve their goals through money laundering and served to disconnect beneficiaries from the illicit transactions.

4. Discussion

4.1. Notary Duty to Keep Data Secret

The establishment of a corporation in Indonesia begins with fulfilling legal requirements for legal entity status. This process requires a notary to prepare the deed of incorporation and any amendments, including access to the Legal Entity Administration System. As required by law and the code of ethics, before drafting a deed, notaries must identify their clients and the services requested.

Clients seek authentic proof of their transactions. Notaries typically identify clients through their official identification and written evidence of the transaction's object. Article 16(1) of Law No. 2 of 2014 on the Notary Profession obliges notaries to keep confidential all matters regarding deeds they draft and any information obtained in preparing those deeds, consistent with their oath of office, unless otherwise required by law. The explanation of this article clarifies that the duty of confidentiality protects the interests of all parties related to the deed. When taking their oath, notaries also pledge to keep secret the contents of deeds and any information obtained in the course of their duties. Any breach of this duty is subject to sanctions under Article 322 of the Indonesian Penal Code (KUHP).

Article 41(1) of Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering states: "In performing its functions of preventing and eradicating money laundering, the Financial Transaction Reports and Analysis Center (PPATK) has the authority to request and obtain data and information from government agencies and private institutions authorized to manage such data and information, including government agencies and private institutions that receive reports from certain professions." The explanation specifies that private institutions include lawyers, notary associations, and accountant associations, while the designated professions include lawyers, financial consultants, notaries, land deed officials, and independent accountants.

4.2. Notary Roles in Revealing Corporate Beneficial Owner

According to Presidential Regulation No. 13 of 2018, a beneficial owner is a natural person who can appoint or dismiss a company's directors and board of commissioners, foundation management, supervisors, or trustees, and who can control the corporation as well as directly or indirectly receive benefits from it. The author emphasizes that a beneficial owner is the person who truly owns the capital or assets of a corporation and thus can control it informally.

As part of the anti–money laundering system (Go-AML), notaries must report the beneficial owners identified through client transactions involving their services. Corporations must submit beneficial owner information during incorporation and when making changes. This information includes the beneficial owner's identity and the criteria described above. If the notary does not obtain beneficial owner information from the client, then a member of the board of directors is designated as the beneficial owner.

In practice, research data show that many notaries interviewed do not fully understand the concept of beneficial ownership or its criteria. Most report the majority shareholder as the beneficial owner, especially if the person also serves as a director. Reporting of corporate beneficial owners reaches 100%, as corporations that fail to report are subject to blocked access to the Legal Entity Administration System.

However, the reported beneficial owner information has not yet advanced to the stage of full disclosure. Corporations have not prioritized beneficial owner reporting, and there is no uniform understanding of the concept. Based on notary interviews, several measures are needed:

1. Government agencies overseeing notaries and notary organizations must provide training on the notary's role in anti–money laundering.
2. Authorities must establish uniform standard procedures for notaries to identify clients in the anti–money laundering context so they can accurately obtain beneficial owner information.
3. Professional service providers must adopt a shared perspective to support disclosure of corporate beneficial owners.

4. The law must provide protection for notaries who disclose corporate beneficial owners, not only require them to comply with reporting obligations.
5. Notaries must receive more detailed information on the criteria of suspicious financial transactions that they are required to report.
6. Requiring further detailed information related to suspicious financial transaction criteria to report by notary

5. Conclusion

The corruption and money laundering network perspective shows that corporations launder money from corruption through systemic schemes and networks. These schemes involve not only corporations and corrupt bureaucrats/politicians but also financial and non-financial professionals. In this context, both corruption and money laundering pursue mutual gain for the original offenders and the launderers. They achieve these gains through organized criminal actions involving key actors—beneficial owners, namely Politically Exposed Persons (PEPs), corporations, and third parties such as financial and non-financial professionals.

Case analysis shows how the main actors and their relationships shape corruption and money laundering networks. First, beneficial owners—corrupt bureaucrats or politicians—dominate the network. This dominance creates an unequal relationship between beneficial owners, corporations, and third parties. Third parties act as intermediaries who provide financial and legal mechanisms to facilitate cooperation between corporations and PEPs/beneficial owners.

From a white-collar crime perspective, corruption arises when actors exploit power to form mutually beneficial relationships. The involvement of corporations and professional intermediaries adds further complexity to money laundering networks.

Second, corporations sometimes dominate the relationship. In this case, the relationship becomes more balanced: corruption requires laundering mechanisms, and corporations can offer them under market-based arrangements.

Third, corruption and money laundering networks operate through structured and professional systems and schemes that assign roles and tasks to each member. The beneficial owners (PEPs) serve as the main strategists. They control corporations and third-party intermediaries—such as accountants, lawyers, and notaries—and involve trusted individuals in their inner circle, including family members, relatives, close friends, and associates.

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Toeing the Line to Teach Online: Legal Issues on Copyright Ownership

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Abstract
When teachers produce and upload instructional materials for online teaching, one might assume that the same teachers must be the copyright owners of such materials. Under Philippine law, however, more often it is the school—as the employer of the faculty—that enjoys the exclusive copyright and the privilege to determine through institutional policies which economic rights are vested in whom. Questions on ethics and equity have arisen from this, particularly in cases where no added compensation is given to authors of digital teaching materials stored in school-sponsored repositories. Using critical policy analysis in the context of education and power relations, this study discusses the legal implications of such rules when viewed in light of constitutional policies governing contracts, property, academic freedom, and labor-management relations. Guiding the analysis are the doctrinal and comparative methods of legal research, through which this paper explores the wider legal framework impacting copyright ownership in the academe and highlights how norms from foreign legal systems may help enhance Philippine copyright legislation. Having examined the issues, this article then proposes viable policy modifications for the consideration of legislators and institutional stakeholders.

Keywords: Academic Freedom, Blended Learning, Contracts, Copyright Law, Intellectual Property Policies, Management Prerogative, Online Teaching, UN SDG 4

1. Introduction

The importance of knowledge sharing is highlighted in the United Nations (UN) Sustainable Development Goals, particularly Goal 4 on Quality Education. Outcome Target 4.A underscores the need to attract more qualified persons to the teaching profession to help speed up development in the Global South. Emphasizing the role of education in societal development, it has been said that "the most important ideas are those that are generated in universities" (Stiglitz, 2008, p. 1697). Unfortunately, some national and institutional policies governing teacher-made intellectual property (IP) may repel rather than attract the best minds to the teaching profession. This article focuses on the issue of copyright ownership by faculty in the Philippines.

As more educators become online teachers—by choice or by necessity—they inevitably contribute to the ever-growing pool of presentation files, lectures, audio/video recordings, study guides, and other instructional materials stored in learning management systems (LMSs), shared drives, and other online repositories. Though these

materials are copyrightable as "original works" under IP law, it does not follow that the teachers automatically own the copyright in their created content (Authors Alliance, 2021). Depending on the legal system, copyright may even be vested in a juridical entity, such as a university. In Philippine law, for example, it is the school as employer that is more often legally bestowed the copyright ownership—or the right to determine who enjoys it—under Republic Act No. 8293, the Intellectual Property Code (IPC), as amended by Republic Act No. 10372.

While IP law does provide a solid basis for ascribing authorship, along with its consequent moral and economic rights, this has not prevented controversies from arising as educators and legal scholars started seeing the bigger picture of copyright in connection with regulations governing contracts, property, academic freedom, and labor-management relations (Birnhack, 2009; Carlson, 2015; Garon, 2018; Hofileña, 2020; Klein & Blanchard, 2012; Pila, 2010). Questions on the scope of management prerogative vis-à-vis the right of professors to control the use of IP they created have become more persistent in the context of online teaching (Crews, 2006; Guri-Rosenblit, 2018), particularly given the possible commercial applications of digital content produced by faculty. Beyond the usual considerations of economics, however, these questions also concern ethics and equity.

The COVID-19 pandemic further complicated matters as it forced schools to adopt remote teaching approaches at first, before allowing them to transition to blended learning while retaining a significant online component (Deflem, 2021). Conforming to the new standard suddenly became the norm (Stephen et al., 2022). In the Philippines, online modes of delivery and other distance-learning strategies were implemented by colleges and universities in compliance with pandemic-related policies (Commission on Higher Education, 2020), with teachers expressing their willingness to go the extra mile to provide educational content for their students (Cabauatan et al., 2021).

As the effects of the pandemic on the education sector now abate, teachers continue to upload recorded lectures and other digital instructional materials as part of the blended learning modality. Given that copyright ownership issues are expected to persist, this study underscores the legal controversies, elucidates on their theoretical roots, and proposes ways to achieve more equitable outcomes for educators.

2. Method

This article adopted a critical policy analysis approach in the context of education and power relations (Apple, 2019) between the faculty and their employers. As discussed by Diem et al. (2019), critical policy analysis tends to focus on five concerns, and two of these pertain to "the policy, its roots, and its development" as well as the "social stratification and the broader effect a given policy has on relationships of inequality and privilege" (p. 6). In this work, policies embodied in the IPC that determine copyright ownership of digital instructional materials were examined using a combination of doctrinal legal research, which correlates textual inferences from various legal materials (Van Gestel, 2023), and comparative legal research, which evaluates parallels in the legal norms of at least two different jurisdictions (Van Hoecke, 2015). Such policies, as well as the moral and economic rights associated with them, were analyzed in relation to superior policies and rights guaranteed by the Philippine Constitution to show the wider framework of rules governing educators and academic institutions. In the process, the study clarified the meanings and underlying principles of such rules, considered criticisms on how copyright ownership of teaching materials was determined, and offered ways to address identified problem areas. Furthermore, it highlighted similarities and differences between copyright policies in Philippine law and their counterparts in other jurisdictions, examined how other states have handled similar controversies, and drew out possible solutions to local issues based on the practices observed in foreign legal systems.

Sources of data consisted primarily of the official text of the Philippine laws being analyzed, particularly copyright legislation and relevant constitutional provisions on contracts, property, academic freedom, and labor-management relations. The legal discourse was further enriched by reference to related statutory enactments, jurisprudence from Supreme Court decisions, relevant international covenants, scholarly writings, and authoritative commentaries on IP law and policy. As the study had no human participants and obtained its data entirely from publicly available documents, no ethics clearance was necessary.

3. Analyzing the legal framework

"In the digital world, everything is a copy, and is potentially subject to the control of copyright owners" (Khong, 2021, p. 105). This statement puts in proper context the whole theme of this paper. When professors produce instructional materials for sharing in the school-sponsored drive or LMS, do they retain control over how their works will be stored after uploading? When they share video recordings of their academic lectures on YouTube and later start earning income from sponsored ads, can they claim exclusive copyright ownership over such lectures? If they wish to reuse their presentation materials in paid engagements outside of their own institutions, are they entitled to do so without any legal obstacles?

Under Philippine law, the copyright owner basically controls if and how the work may be used after its creation. Article XIV, Section 13 of the 1987 Constitution declares the State's commitment to "protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations," especially those that are valuable to society. Complementing this mandate are Article 721 of the Civil Code (1949), which recognizes "intellectual creation" as a mode of acquiring ownership of property, and Section 177 of the IPC (1997), which grants various economic rights in favor of a copyright holder, such as reproduction, transformation, first distribution, rental, and public performance, in addition to the author's moral right to proper attribution (Gepty, 2019).

The work created need not even be noteworthy; the legal requisite of "originality" mainly means "that the work is an independent creation of the author" (Aquino, 2014, p. 25) and was "not just copied from another work" (Sta. Maria et al., 2022, p. 49). Nonetheless, it must be stressed that independent creation alone does not determine originality, as jurisprudence likewise requires at least a minimal level of creativity and aesthetic value in the work. The doctrines laid down in *Ching v. Salinas* (2005) and *Olaño v. Lim Eng Co* (2016) are instructive.

Legal protection to authors is consistent with the Philippines' commitments under the International Covenant on Economic, Social and Cultural Rights (1966), particularly Article 15 which states that everyone has the right to "benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." This also aligns with Article 8 of the World Intellectual Property Organization (WIPO) Copyright Treaty (1996), which provides in part that "authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them." The provision protects works in the digital environment and complements Section 193.2 of the IPC that allows authors to withhold publication of their creations.

However, the author of the work may not be the copyright owner, legally speaking. If the work was produced in connection with its author's "regularly-assigned duties" as an employee, then the employer is normally considered as the copyright owner under Section 178.3 (b) of the IPC. Applied to instructional materials, this would imply that schools—not professors—presumably own all the educational outputs produced by the latter in their capacity as employees of the former (Hofileña, 2020). This position is strengthened when viewed in relation to the academic freedom of the institution, which is likewise guaranteed by the 1987 Constitution (Article XIV, Section 5). Such institutional academic freedom has been consistently held in Philippine jurisprudence to include the right of the school to decide based on academic grounds who will teach, who will be taught, what will be taught, and how it will be taught (Terrado & Aquino, 2020). In the landmark case of *Garcia v. The Faculty Admission Committee, Loyola School of Theology* (1975), the Philippine Supreme Court referred to such rights as "the 'four essential freedoms' of a university." Hence, a professor's regularly-assigned duties are primarily determined by the school in relation to the latter's freedom to dictate how work will be rendered by its academic staff.

There was thus no question that when higher education institutions (HEIs) were forced to deal with COVID-19 pandemic restrictions, school administrators—in the exercise of institutional academic freedom—had the right to decide how lessons would be taught remotely to students. They determined that e-learning was an acceptable mode

of instructional delivery (Cabauatan et al., 2021; Perrin & Wang, 2021). It was far from ideal, and many felt inadequately prepared to properly implement it (Watermeyer et al., 2021) but it was considered a viable alternative (Jain et al., 2020). Most of all, it was their call to make.

Professors who were not quite ready and willing to transition to internet-based teaching found themselves with no choice but to comply, as their employers wielded management prerogative to maximum effect. Such power has been defined by the Philippine Supreme Court as the employer's right "to regulate, according to their discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations..." (*St. Luke's Medical Center, Inc. v. Maria Theresa V. Sanchez*, 2015).

As class instruction shifted from onsite delivery to online delivery in line with the "flexible learning" mode mandated in Commission on Higher Education Memorandum Order No. 4, Series of 2020, the faculty found themselves producing teaching materials in digital formats for easier sharing with their students. Directed by their school administrators, many professors started storing copies of their recorded lectures and synchronous class sessions in their school's official online repository. Systems that had applied mainly to open distance learning (ODL) under Republic Act No. 10650 of 2014, such as development of instructional materials in digital formats, suddenly became part of the new norm in higher education. These developments were hardly surprising, as recent research had already predicted that universities would "exert greater control over academics to ensure uniformity and regulation of changes to teaching and assessment" (Watermeyer et al., 2021, p. 631).

In recent years, many institutions already transitioned to blended learning—a mix of face-to-face instruction and remote delivery, with much of the latter being done online (Zhang & Zhu, 2017). According to Perrin and Wang (2021), "the future seems to be with blended or hybrid learning" (p. 472). With new educational materials being created and uploaded by academic staff, the question is once again asked: Who owns the copyright in all these materials? Generally, the law recognizes the actual creator of the work as the copyright owner. But when the actual creator happens to be an employee who produced the work as part of regularly-assigned duties, then the law presumes that the employer is the copyright owner. This rule applies similarly to employees of educational institutions, though in this particular context the copyright ownership would be primarily determined by institutional IP policies—which, at the discretion of the HEI, may provide for exclusive ownership by either the employer or the employee, or shared ownership by both.

4. Comparing copyright laws

The Philippine rule providing for employer copyright ownership somehow echoes the United States Copyright Act of 1976, which states in similar language that the copyright in an employee's work created within the scope of the employment contract belongs to the employer (Garon, 2018). This is often referred to as the "Work-for-Hire" doctrine that vests copyright ownership not in the actual creator of the work but in the person or entity employing such creator (Blanchard, 2010). It seems to be a typical feature in Anglo-American copyright law, given that a variation of this rule exists in the Copyrights, Designs and Patents Act of 1988 of the United Kingdom (Gadd & Weedon, 2017; Rahmatian, 2015).

The main legal theory behind this doctrine is "because the creativity and originality of the project flows directly from the employer, the employer is the true author of the work" (Hill, 1989, p. 561). It has been argued that "when an employee-author prepares a work for hire he is waiving his moral rights by waiving his ability to assert full creative control over the work" (Hayes, 2000, p. 1029). In other words, this theory assumes that the employer's power over the employee makes the employer both the author and the copyright owner of the employee's works produced within the scope of employment duties. While this rule does not perfectly accord with Philippine copyright law—which recognizes the separate rights of the employee as author and the employer as copyright holder over the same works—it helps clarify the basis for the ownership guideline in Section 178.3 (b) of the IPC.

Another theory presupposes that since the employer is in a better position to exploit the work commercially and share its benefits with the rest of society, then the employer generally must be considered as the default copyright holder (Birnhack, 2009). This is meant to "put decisions on disseminating, revising, or building on works in the

hands of the entity that will maximize creative value" (Dreyfuss, 2000, p. 1202). After all, copyright law exists "not only to reward innovation but to disseminate knowledge for the public good" (Blanchard, 2010, p. 66) because society "will greatly benefit from the abundance of literary and artistic works" (Bernardo, 2021, p. 58). Or, in the words of Aquino (2014): "There are, on the other hand, the interests of the general public that should be ultimately served by the products of the ingenuity and creativity of members of the human family" (p. 12).

Such declarations find support in Article XII, Section 6 of the 1987 Constitution: "The use of property bears a social function, and all economic agents shall contribute to the common good." In turn, Section 2 of the IPC reiterates this constitutional provision as a State policy: "The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good."

It is worth noting that before the amended Copyright Act of 1976 took effect in the United States, an older law had already codified the rules on works made for hire. Under the Federal Copyright Act of 1909, the term "author" was said to include "an employer in the case of works made for hire" (Blanchard, 2010, p. 62). However, as the "Work-for-Hire" doctrine evolved in American jurisprudence in the early 20th Century, U.S. case law started recognizing a "Teacher Exception" rule that bestowed copyright ownership upon the faculty insofar as their teaching materials were concerned. Apparently, some U.S. courts saw it fit to treat educators differently from other employees producing copyrightable materials for the benefit of their employers (Strom, 2002). As discussed by Deflem (2021), one of the landmark rulings can be found in *Williams v. Weisser*, a 1969 case where the professor's ownership of his class lectures was upheld.

Nevertheless, when the Copyright Act of 1976 reworded the 1909 statute, the newer law did not provide for any "Teacher Exception" rule to temper the sweeping language of the "Work-for-Hire" doctrine that still applied to works created by employees. This in turn led to two diverging legal interpretations, as observed by Blanchard (2010) and Garon (2018). One is that by not incorporating the "Teacher Exception" rule in the 1976 law, American legislators had indirectly declared that teachers should be treated like all other employees; hence, teachers should not enjoy copyright ownership over their works, unless otherwise agreed with their school administrators. The other interpretation is that since the 1976 statute did not categorically abandon the old "Teacher Exception" rule that had evolved in American case law, then the exception still stands.

Philippine jurisprudence has no equivalent for the "Teacher Exception" rule applicable to instructional materials. However, Section 178.3 (a) of the IPC does provide that copyright would belong to the employee "if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer." This rule is not subject to contrary stipulation allowing the employer to own the copyright.

Another exception is provided in the same law: Notwithstanding the fact that the work was created in relation to regularly-assigned duties, the copyright will belong to the employee if there is an express or implied agreement to this effect, as stated in Section 178.3 (b). The Philippine Supreme Court has characterized freedom of contract as "both a constitutional and statutory right" (*Rodolfo Morla v. Corazon Nisperos Belmonte*, 2011). It is protected under Article III, Section 10 of the 1987 Philippine Constitution and is likewise guaranteed by the Civil Code (1949). Article 1306 of this Code provides that "the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." Such agreed terms will have the force of law between both parties, obliging their compliance in good faith (Article 1159, Civil Code). Applied to copyright ownership, this means an employer may waive the benefit of Section 178.3 (b) of the IPC by stipulating in the employment contract or in any separate contract that copyright ownership would pertain to the employee-author instead (Hofileña, 2020).

It is also possible to incorporate this waiver in a collective bargaining agreement (Klein & Blanchard, 2012) or in school policy manuals (Garon, 2018). The disadvantage in the latter, however, would be in the control exercised by the school over the crafting and revision of such manuals (Laughlin, 2000). Nevertheless, having such policies is mandatory, given that Section 230 of the IPC, as amended by Republic Act No. 10372 of 2013, requires all

schools to "adopt intellectual property policies that would govern the use and creation of intellectual property with the purpose of safeguarding the intellectual creations of the learning institution and its employees.…"

As previously expounded, both Philippine and American copyright laws are founded upon principles that uphold employer ownership as a rule whenever original works are produced by an employee within the scope of employment duties. Copyright ownership by the employee is considered as the exception to the rule, availing only in certain instances.

In contrast, German law is more empowering for the employee-author (Birnhack, 2009) as it vests copyright ownership in the actual creator of the work, any employment contract notwithstanding. As observed by Carlson (2015), "German law does not recognize any equivalent to the 'work-made-for-hire' doctrine as under the United States Copyright Act" (p. 388). Unlike Anglo-American law, German law typically settles the issue of copyright ownership in teaching materials in favor of the faculty, leaving only the question of whether universities have a license to exploit such materials by virtue of the employer-employee relationship.

It is also worth mentioning that while German copyright law, like its Philippine counterpart, recognizes that some authors do produce copyrightable works in the fulfillment of their employment duties, under German rules such circumstances only create an implied grant of a license to the employer but do not designate the employer as the copyright owner by default. Thus, while a university may insist that it has a license to exploit the teaching materials created by its faculty as part of the latter's duties as employees, it cannot consider itself as the copyright holder of such original works. As emphasized by Carlson (2015): "Only a natural person can be the author of a work, as only individuals are capable of bringing intellectual creations into being" (p. 387) and thus under German IP law, only a natural person may own the copyright in something created by the intellect. An artificial person may be given a license to use the copyright for its own benefit, but the ownership of copyright generally cannot be separated from the true author. This is where the German copyright system clearly diverges from those of the Philippines, the United States, and the United Kingdom. While Section 171.1 of the Philippine IPC similarly defines an author as "the natural person who has created the work," the same law allows the copyright ownership to be enjoyed from the start by a juridical entity employing the actual creator of the work.

5. Blending ethics and equity with economics

The main criticism against the sweeping language of Section 178.3 (b) of the IPC is that it puts all employees in the same box. The IPC simply assumes employer copyright ownership in all works of employees created in the performance of the latter's regularly-assigned duties. No exception is recognized for works created by faculty, even if most teachers are compensated primarily to render in-person teaching service and not to produce recorded lectures and similar outputs (Rahmatian, 2015).

Where faculty employment contracts do not specify that teachers are obliged to create digital instructional materials for the benefit of their employer, schools can still find a way around this limitation by invoking management prerogative and institutional academic freedom, both of which allow them to reasonably modify the regularly-assigned duties of their teaching staff. Section 230 of the IPC even fortifies these norms by empowering schools to adopt institutional IP policies without requiring them to consult with their stakeholders first.

While the law does allow for employee copyright ownership by way of exception, it still upholds the employer's ownership as the general rule when works are created by an employee in connection with regularly-assigned duties. The clause in IPC Section 178.3 (b) allowing employees to own the copyright in their work only when there is an agreement to that effect fails to seriously consider that employees "do not stand on equal footing" with their employer (*Julita M. Aldovino v. Gold and Green Manpower Management and Development Services, Inc.*, 2019). In light of this lack of bargaining power on the part of the employee (Hill, 1989), it may be said that Section 178.3 (b) lacks harmony with labor law and jurisprudence, favoring as it does the party that is already favored from the start: the employer. Indeed, given "the strong economic position and high bargaining power of employers" that negate the employment agreement as "a true contractual bargain" (Shahrilnizam et al., 2015, p. 228), it is less likely that an employer would propose any contract shifting the copyright to the employee-author or even allowing

for joint ownership by both parties. The overbearing authority of the employer in this set-up is still reminiscent of the pre-industrial relationship of master and servant, which could hardly be called a contract (Tomassetti, 2023).

Furthermore, the theoretical underpinnings of the Anglo-American laws on copyright ownership—as mirrored in Philippine copyright law—do not seem to align with present-day realities in teaching. For one, the academic practice of allowing faculty to determine the specific methods of course delivery (Deflem, 2021) casts serious doubt on the legal fiction that "the creativity and originality of the project flows directly from the employer" (Hill, 1989, p. 561). Indeed, why should the school be the exclusive owner of the work if the teacher was the one who conceptualized, produced, and uploaded it for student consumption? This is "unjust and defies common sense" (Pila, 2010, p. 6). As Tomassetti (2023) had pointed out, the theory of employer ownership seems to have evolved from the time when everything that the servant produced was attributed to the master—which should not apply to instructional materials created by faculty, owing mainly to the latter's distinguished position as content experts in their own disciplines.

Even the presumption that the employer is in a better position to exploit the work commercially to allow society to benefit from it (Birnhack, 2009) is no longer accurate. Given the ubiquity of social media technology, content creators can now share their work with global audiences and monetize their content through online platforms without having to rely on the resources of their employer. A decade ago, Vie (2015) found that 21st-Century teachers were already more open to integrating YouTube and Facebook in their instruction. If today's teachers happen to produce and upload academic lectures in their own social media accounts not just for their current students but for all their subscribers and followers, should their employers have control—as copyright owners—over how such materials are used?

Also, if schools automatically owned the copyright in all teaching materials created by their faculty, would this mean that all derivative rights—such as the right to publish a book or compendium based on faculty lectures—belong not to the actual lecturer but to the school employing such lecturer? Such questions must be asked, considering that copyright ownership and the exercise of related rights in the academe are mainly governed by each institution's IP policies. As long as such institutional policies do not contravene law or public policy, then they will "govern the use and creation of intellectual property" in the school setting and may be enforced consistently with the mandate of Section 230 of the IPC.

The boundaries for traditional teaching were clearer during the pre-pandemic era, when universities normally just allowed academic staff to determine for themselves how best to teach their own students (Perrin & Wang, 2021). Under this system, institutional academic freedom empowered the school to dictate the course outcomes, grading system, and basic class policies. However, the specific teaching approaches were usually left to the discretion of the individual faculty members (Burr, 1990), who could even decide to "enter the classroom without teaching aids and conduct the class orally" (Carlson, 2015, p. 359). Hence, professors could choose if they would allow their lectures and teaching materials to be reproduced or stored in any repository (Laughlin, 2000). Their typical duties included meeting their classes face-to-face, delivering instruction efficiently, providing appropriate assessments, and submitting grades (Guri-Rosenblit, 2018). Recording lectures and producing specific course materials for uploading in an LMS or shared drive were probably expected of distance educators but were arguably not the norm for most other academic staff.

As classes shifted to the virtual space, however, onsite teachers suddenly became online teachers, and their job description likewise morphed into one that necessitated the creation of significantly more copyrightable content for student consumption (Authors Alliance, 2021). Given further that such content was produced in the performance of regularly-assigned duties, a presumption thus arose that the school owned all of it from the moment of creation (Strom, 2002)—particularly in the absence of any school policy or contractual stipulation declaring otherwise.

Thus, with the simple issuance of a memorandum directing teachers to upload their recorded lectures and other instructional materials in an online repository, administrators were able to considerably increase the number of intangible assets owned by their school without necessarily having to compensate the teacher-authors for the

additional work done. The teachers' enjoyment of just and favorable conditions of work, and in particular, of remuneration that constitutes fair wages under Article 7 of the ICESCR (1966), thus became a matter of rhetoric. Carlson (2015) underscored the need to take note of this trend: "As teaching materials become more and more digitally manageable, even to the extent of virtual classrooms, the issue of rights takes on radically different legal as well as financial values" (p. 358). Ethical considerations likewise come to the fore.

IP rights are "essential assets for universities" (Patil & Sagar, 2024, p. 8628). Copyright in academic work is intellectual property, and property has economic value (Pila, 2010; Strom, 2002). Whoever owns the copyright generally enjoys the economic rights, regardless of who the actual creator of the work happens to be (Laughlin, 2000). In the case of faculty-authored digital instructional materials, there is no question that the production of such copyrighted works is related to the teaching job (Rahmatian, 2015). Thus, one might presume that the school, as employer, would probably own the copyright based on Section 178.3 (b) of the IPC, particularly if institutional IP policies affirm this.

Considering, however, that digital instructional materials are often produced by faculty for no additional compensation, it does not seem equitable to designate the school as sole owner by default, given the works' potential for commercial use. It would be relevant to aver how the 1987 Philippine Constitution recognizes "the right of labor to its just share in the fruits of production" as the State regulates labor-management relations (Article XIII, Section 3). This is complemented by the State policy to "protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people," as provided by Section 2 of the IPC.

Likewise, Article XIII, Section 3 of the Constitution guarantees the right of employees to go on strike whenever the legal requisites of Article 278 of the amended and renumbered Labor Code (1974) are satisfied. However, in cases of unfair labor practices or collective bargaining deadlocks when teachers vote to go on strike, the main objective of paralyzing school operations might not be attained if school administrators could simply hire substitute faculty to re-deploy previously uploaded teaching materials of striking faculty to ensure instructional delivery during the work stoppage. The criticism of Birnhack (2009), though pertaining primarily to Anglo-American copyright law, seems apropos to the current state of Philippine copyright law regarding the disconnect between intellectual property law and labor law: "Employment law is strikingly absent from this discourse as well as the economic understanding of copyright law" (p. 99).

6. Recommendations

Hofileña (2020) believes the Philippine Congress should "clarify the ownership of IP created in a university setting" (p. 96). This appears to be the best solution, given the unequal bargaining power that exists between schools and their faculty, which makes it less likely that institutionally crafted IP policies or contracts of adhesion prepared by schools will provide a more equitable arrangement between the parties. Rules governing instructional materials in digital formats are particularly needed at this time when uploading presentations and recorded lectures has become a common practice of educators. The following alternatives are thus proposed for the consideration of lawmakers.

First, amend Section 178.3 (b) of the IPC to provide for shared copyright ownership (Crews, 2006) between the school and the teacher-author of all materials created for online teaching within the scope of the employment contract. This must likewise be echoed in Section 230 of the IPC, which mandates that school policies on IP should safeguard the intellectual creations of "the learning institution and its employees" given how such works can be a significant income source for both schools and teachers (Dio et al., 2015). According to the Intellectual Property Office of the Philippines (2019), creators of works are in fact motivated by both "moral and material benefits" (p. 7). Joint ownership of economic rights may thus be warranted, though this is expected to complicate the way owners of shared copyright enjoy such rights (Dreyfuss, 2000; Margoni & Perry, 2012). Nonetheless, Hayes (2000) justifies this set-up in lieu of sole ownership by the employer in cases where the actual creator would have been the copyright owner if not for the employment relationship; hence, the existence of such relationship must not "divest the employee-author" (p. 1030) of corresponding rights in the work.

Beyond economic considerations, shared copyright ownership is expected to motivate teachers to improve the quality of their instructional materials. Faculty involvement will require devoting more time and energy, but equitable IP policies will encourage teachers to "achieve things for the attainment of the common goals" (Dio et al., 2015, p. 70). Innovative teaching will become the standard. There will be a constant incentive to create, cooperate, and disseminate educational materials (Dreyfuss, 2000) not just for the benefit of enrolled students but possibly also for the development of the larger community outside the school (Dio et al., 2015). This can enhance institutional reputation even as it supports teacher retention and promotes knowledge diffusion.

Assuming the legislature would still prefer to retain copyright ownership in the schools as employers and maintain their full freedom in the crafting of institutional IP policies, another option would be to grant a compulsory license to the faculty-authors, allowing them to explore both educational and commercial applications for their works without directly competing against their employer and without tarnishing the reputation of their school. Teachers must be permitted to find ways to monetize their extra efforts for their own benefit. Otherwise, it would be only fair to oblige schools to provide additional compensation (Dreyfuss, 2000) to teachers who create digital materials that automatically become school property according to institutional IP policies.

Making teachers sole copyright holders by default based on the "Teacher Exception" rule from old American case law may be advantageous for some academics but may also weaken institutional support for others. Though this is considered a less radical shift than adopting the German standard that makes copyright inseparable from the actual creator of the work—irrespective of any employer-employee relationship existing and regardless of the academic or commercial nature of the engagement (Carlson, 2016)—it is admittedly an option that requires sufficient safeguards to protect the interests of schools. Should legislators be inclined to adopt this as the new rule on copyright ownership of digital instructional materials, it is recommended that the law grant a compulsory license in favor of the school, allowing it to store and reuse teaching materials in certain instances (Laughlin, 2000) but not during a lawful work stoppage by the faculty.

Meanwhile, Philippine schools need not wait for legislative action before they review their internal rules and revise them to reflect more equitable terms for their academic staff. As gathered from foreign literature (Authors Alliance, 2021; Campbell, 2019; Carlson, 2015; Gadd and Weedon, 2017; Garon, 2018; Loggie et al., 2006; Pila, 2010;), the copyright laws of the U.S. and the U.K. grant sufficient freedom to HEIs in the crafting of policy manuals governing ownership of academic material. In turn, this flexibility has given rise to several policy variations, ranging from exclusive ownership by one party to joint ownership by employer and employee, with all the permutations of licensing and assignment of rights spelled out in different combinations (Authors Alliance, 2021). And yet at times, faculty are not even aware of such policies when they commence employment (Campbell, 2019). Other times, contradictory institutional guidelines give rise to conflicts requiring court intervention (Patil & Sagar, 2024).

Considering that the Philippine situation is not much different, then local schools should take the initiative to revisit their institutional IP policies and reword them accordingly, bearing in mind that "the effectiveness of any educational policy or practice is directly related to the capacity of that policy or practice to increase individual involvement" (Dio et al., 2015, p. 70). Institutions that have not yet complied with the directive of Section 230 of the IPC should now adopt their own IP policies, properly blending principles of economics with norms of ethics and equity. For this purpose, they may be assisted by the Intellectual Property Office of the Philippines through training provided by its Documentation, Information, and Technology Transfer Bureau.

From their end, faculty unions must be more proactive in pushing for the inclusion of copyright ownership in the collective bargaining agenda. "However, within the realm of the evolving digital world where new questions of copyright ownership arise, recognize that faculty members will not necessarily own everything" (Strom, 2002, p. 12). Shared ownership would be a good start, and clarifying the matter in a ratified collective bargaining agreement is better than relying entirely on the school's sense of fairness in its adoption and future revision of institutional IP policies (Birnhack, 2009). But even if negotiations eventually fail to shift the status quo on ownership of instructional materials, union representatives may still wield sufficient influence to convince school administrators

to reconsider internal rules that restrict faculty rights (Authors Alliance, 2021). After all, management prerogative can be tempered not only by law and contract, but also by changes in employer policy and practice encouraged by fundamental principles of justice and fair play (Tabingan & Gonzales Dhum, 2022).

7. Conclusion

There is a reason why the 1987 Philippine Constitution requires the largest budget allocation for education: True progress can only be attained with an educated citizenry. Similarly, UN Sustainable Development Goal 4 affirms the important role of quality education in societal development, especially in Global South countries. This implies, however, that the main resource in the formal education system—the faculty—would be accorded proper rights and benefits in return for their services, particularly when they are required to go beyond the normal call of duty. When traditional teachers are enjoined to become content creators uploading instructional materials for the benefit of their students, they deserve more than just a pat on the back or a word of thanks. They deserve credit for their work and at the very least a compulsory license allowing them to control how their outputs are used and possibly recycled. Arguably, they deserve copyright ownership, either exclusively under the "Teacher Exception" rule or jointly with their employers. Of course, they can attain any of these through collective bargaining agreements or separate contracts with their schools, or even through the latter's magnanimity in the crafting and subsequent amendment of institutional IP policies. Nonetheless, the surest way is still legislation. At this crucial time when the IPC is undergoing review for revision by the Philippine Congress, the norms articulated in Section 178.3 (b) and Section 230, as well as the institutional IP policies arising from them, need to be revisited and possibly rewritten to reflect more ethical and equitable terms for teachers.

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Discursive Creation in Manga and Anime Titles: A Translation Study

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Abstract
The title is the first thing someone sees when choosing a *manga* to read or *anime* to watch. The titles summarize the main story or main focus of a *manga* or *anime.* In the discursive creative translation method, the translation in the target language will differ from the source language. Some well-known titles, such as *Shingeki no Kyojin*, are better known to fans as Attack on Titan. This research is a descriptive qualitative study with the aim of analyzing the use of discursive creative translation techniques in *manga* and anime titles. This study concludes that translators use these techniques to adapt the language to make it more acceptable to a wider audience or to highlight another aspect of the *manga* or *anime* that is more closely related to the culture of other countries. This technique is so common for *manga* and *anime* titles, primarily for some reasons like marketability, cultural barriers, and linguistic differences and copyright issues.

Keywords: Anime, Manga, Translation

1. Introduction

Japanese entertainment media such as *anime* and *manga* are among the most popular forms of entertainment today. *Manga* is a comic book with a cartoon style that originated in Japan. Meanwhile, *anime* is a cartoon with a Japanese style and language. The popularity of *manga* can be attributed to its abundant and varied material, which covers a wide range of genres and themes, making it appealing to a broad and diverse audience. *Manga* and *anime* feature highly varied stories, ranging from action-packed *shounen* to the subtle storytelling of *seinen manga*, which presents stories with broad scope and depth. The diversity of themes in *manga* allows readers to enjoy a wide range of storylines, making it a universally appealing form of entertainment (Sachdeva & Zisserman, 2024). The title is the face of a work that is seen by the public. An interesting manga or anime title will be an attraction in itself. For example, in the manga "*Shingeki no Kyojin*" which is better known in the world as "Attack on Titan," this is an example of literal translation. Then, there is also a *manga* with the title "*Kimetsu no Yaiba*" which is more commonly known as "Demon Slayer" which when translated into Japanese will become a different title. This is an example of discursive creation translation technique, where the translation will be very different from the source language (Molina & Hurtado Albir, 2004).

Newmark (2009) defines translation as "A skill that seeks to replace a message or written statement in one language with the same message or statement in another language." From Newmark's definition, it can be seen that translation involves the transfer of written messages between different languages, often referred to as written translation, and the transfer of spoken statements, better known as interpreting. However, in this definition, Newmark still emphasizes the importance of message equivalence rather than form equivalence. Meanwhile, Hatim and Mason (1997) define translation as an act of communication to convey a message across cultural and linguistic boundaries between the source text and the target text. This act of communication involves the translator's efforts to communicate with the target audience through the resulting translation. The translated text is adapted to the characteristics and needs of the intended readers or listeners. In this way, the translator will be able to produce a translation that is easy to understand. Shuttleworth & Cowie (1997) state that the essence of translation has a broad meaning in order to understand various linguistic forms. In this case, translation cannot only be considered as a product or process, but also identifies its sub-types. For example, today, audiovisual translation is found in movie cinemas, television, DVDs, or games. Translation technique is a method used by a translator to translate a text from the source language to the target language. Molina and Albir (2004) divided translation technique as:

- Adaptation is a technique of extracting elements from the source language with elements into the target language.
- Amplification is a technique that explains information not included in the source language.
- Borrowing is a technique that uses language from the source language.
- Calque, a literal translation of a word or phrase from the source language, both lexically and structurally.
- Compensation, inserting stylistic information in other parts of the target language.
- Description, replacing terms in the source language with descriptions of their form and function.
- Discursive creation, establishing a temporary equivalent that is completely unrelated to the source language because it is outside the context.
- Conventional equivalence, a technique that uses familiar terms or expressions.
- Generalization, translating words using more general terms.
- Linguistic amplification, a translation technique that adds linguistic elements to the target language.
- Linguistic compression, translating by simplifying linguistic elements in the target language text.
- Literal translation, translating word for word.
- Modulation, a technique that translates by changing the perspective, focus, or cognitive category in relation to the source text.
- Particularization, translating words using more specific terms that are appropriate for the target language culture.
- Reduction, filtering information in the source text because the meaning contained in the source text is already present in the target language.
- Substitution is the replacement of paralinguistic elements (intonation, gestures) with linguistic elements.
- Transposition is the replacement of grammatical categories in the source language.
- Variation is the replacement of linguistic or paralinguistic elements that influence aspects of language variation.

Several studies discussing translation techniques have been conducted, for example "*Strategi penerjemahan pada komik jepang kocchimuite miiko dengan komik terjemahan indonesia hai miiko vol 33 & 34 karya Ono Eriko*" written by (Septiani & Amri, 2024), which explains translation strategies in comics using Baker's (2018) theory, which divides them into eight techniques. This study concludes that there is a shift in meaning caused by translation strategies. In addition, there is an article titled "*Penerjemahan Istilah Ekologi Bahasa Jepang ke Bahasa Indonesia dalam Kumpulan Cerpen Miyazawa Kenji*" written by (Rini & Kusmiati, 2022), which analyzes how Japanese ecological terms are translated into Indonesian using the translation technique theory proposed by (Hasegawa, 2013). This study concludes that there are discrepancies due to cultural differences between the source and target languages, which result in inaccurate translations. The difference between previous research and this study is that this study focuses on one translation technique, namely the technique of discursive creation from various anime and manga titles. The purpose of this study is to describe how the technique of discursive creation is used to translate manga and anime titles so that they can be understood by international audiences.

2. Method

This research is descriptive qualitative research that aims to understand and describe phenomena, events, or behaviors without changing the data or variables being studied. In most cases, the data collected consists of words, images, or events that are natural and not numerical. The focus of this research is data collection through observation, field notes, and documents. After that, this research continues by describing facts or phenomena systematically and in depth according to the conditions in the field.

This method prioritizes data collection consisting of words and actions (Moleong, 2020). It also seeks to understand social phenomena in their original context. Researchers serve as the primary tool in data collection and analysis. their goal is to uncover meanings and patterns related to the research subject without seeking cause-and-effect correlations. The method used in this research is the documentation method, which is defined by Arikunto (2010) as a method that searches for variables in the form of notes, books, newspapers, magazines, etc. The data in this study was obtained by collecting several titles from websites that provide *manga* and *anime,* such as Manga Plus by Shueisha, Crunchyroll, Netflix, etc. The data then analyzed in accordance with the theory explained in the introduction.

3. Results

With the definition of the definition of discursive creation that Molina & Hurtado Albir (2004) explained which is establishing a temporary equivalent that is completely unrelated to the source language because it is outside the context. The authors found several *manga* and *anime* titles from several sources that match the theory.

Table 1: List of *Manga* Titles

No.	Original Manga Titles in Japanese	Translated Titles
1	鬼滅の刃 (*Kimetsu no Yaiba*)	Demon Slayer
2	食戟のソーマ(*Shokugeki no Souma*)	Food Wars!
3	隣の怪物くん (*Tonari no Kaibutsu-Kun*)	My Little Monster
4	かぐや様は告らせたい〜天才たちの恋愛の頭脳戦〜(*Kaguya-Sama wa Kokurasetai Tensai Tachi no Renai Zunousen*)	Kaguya-sama, Love is War
5	名探偵コナン (*Meitantei Konan*)	Case Closed

Below is a list of *anime* titles that have been translated using discursive creativity in their international titles.

Table 2: List of *Anime* Titles

No.	Original *Anime* Titles in Japanese	Translated Titles
1	聲の形 (*Koe no Katachi*)	A Silent Voice
2	千と千尋の神隠し (*Sen to Chihiro no Kamikakushi*)	Spirited Away
3	天気の子 (*Tenki no Ko*)	Weathering with you
4	君と波にのれたら(*Kimi to Nami ni Noretara*)	Ride Your Wave
5	私がモテてどうすんだ！ (*Watashi ga motete dousunda*)	Kiss Him, Not Me

4. Discussion

4.1 Discursive Creation in Manga

(1)

Figure 1: The Cover of manga 「鬼滅の刃」 more known as the translated version "Demon Slayer″

"*Kimetsu no Yaiba*" is a manga by Koyoharu Gotouge that tells the story of a younger brother who travels to fight demons while searching for a way to turn his older brother back into a human. When translated using literal translation techniques, the words "*Kimetsu no Yaiba*" mean "demon slaying sword" However, in the global translated version of this manga or comic, "*Kimetsu no Yaiba*" is better known as "Demon Slayer" which when translated back into Japanese becomes "*Onigari*." This translation is not contextually correct because it differs from the literal translation. The English translation emphasizes the story of demon hunters who in the story belong to a group called "*Kisatsu-Tai*" or in English more commonly known as the "Demon Slayer Corps" Meanwhile, the original title in the source language Japanese, focuses more on the sword used by the main character, which in the story is called "*Nichirin*" the sword that changing its color when used by a demon slayer.

(2)

Figure 2: The cover of *manga* 「食戟のソーマ」 more known as the translated version "Food Wars″

This *manga* is a cooking school manga known as "*Shokugeki no Souma*" written by Yuuto Tsukuda. However, this manga is better known by its translated title "Food Wars". The title "*Shokugeki no Souma*" means "Souma's Cooking Duel" which is far literal translation of the title. The choice of words in this translation is most likely intended to indicate the main story of the manga, which is about the cooking battles fought by the main characters in the storyline. Meanwhile, the original Japanese title places more emphasis on the main character in the storyline, Souma. In this *manga*, "*Shokugeki*" means a cooking battle or war between students at Totsuki Culinary Academy, where students risk everything from their cooking equipment to their status at the academy. This concept of "war" describes the intensity, competition, and fighting spirit that are at the heart of each match. For viewers unfamiliar with the Japanese term "*Shokugeki*" the title "Food Wars" is an easier and more appealing way to convey the genre and theme of the show.

(3)

Figure 3: The cover of *manga* 「となりの怪物くん」 more known as the translated version "My Little Monster″

This *manga* written by Robico is titled "*Tonari no Kaibutsu-kun*" and follows the relationship between Shizuku Mizutani, a serious and ambitious girl and Haru Yoshida, an unruly boy who is considered "wild" or "troubled," often referred to as a "monster" because of his strange behavior. "*Tonari no Kaibutsu-kun*" can literally be translated to "The Monster Sitting Next to Me" or "My Neighbor Monster" This original title emphasizes the character's proximity to a "monster" which may be interpreted metaphorically, hinting that the character has a unique or "wild" nature like a monster.

(4)

Figure 4: The cover of *manga* 「かぐや様は告らせたい〜天才たちの恋愛の頭脳戦〜」 more known as the translated version "Kaguya-Sama: Love is War″

This *manga* has an original Japanese title, "*Kaguya-Sama wa Kokurasetai, Tensai-tachi no Renai Zunoushen*" which literally translates to "Kaguya-sama wants to confess, the war of wits between geniuses" This manga tells the story of two geniuses smart junior high school students who are the president and vice president of the student council. The story focuses on the feelings of the two characters, who don't want to admit that they have fallen in love with each other, so they try various ways to get the other to confess their feelings. Although the translated version of this manga has the title "Kaguya-Sama, Love is War" which is far from the original context, the technique of discourse creation is used here to shorten the title even though the result of the translation is out of context from the source language.

(5)

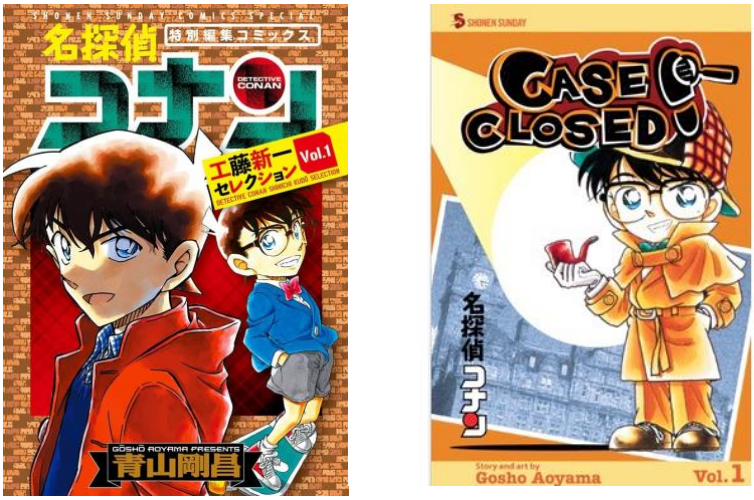

Figure 5: The cover of *manga* 「名探偵コナン」 more known as the translated version "Case Closed!″

"*Meitantei Conan*" is a mystery manga written by Gosho Aoyama in 1994. The story centers on a detective who reverts back to childhood. The main reason why the manga "*Meitantei Conan*" was translated so differently from its original title, which literally translates to "Detective Conan," is due to copyright issues. There are already many titles that use the name Konan with a detective theme, such as "Conan the Barbarian" The translated version of this comic is better known as "Case Closed" which is quite different from the context in the target language. This title choice is a closing phrase often uttered by the main character, Konan, when she successfully solves a case, at which point Konan will say "Case Closed."

4.2. Discursive Creation in Anime Titles

(6)

Figure 6: Promotional Poster of *Anime*「聲の形」 more known as the translated version "A Silent Voice″

"*Koe no Katachi*" literally can be translated as “Form of Sound.” “*koe*” means “sound” which refers to the physical sound produced from speaking or communicating, while “katachi” means "form" or “shape” which can be interpreted literally as physical form or metaphorically as the essence or expression of something. This anime tells the story of a deaf girl named Shouko Nishimiya who was bullied by Shouya Ishida when they were children. After a few years, Shouya tries to make up for his past mistakes and establishes a relationship with Shouko. The elements of “voice” and “communication” are central themes of the story, as Shouko is unable to communicate verbally in the usual way, but she still has other forms of communication, such as sign language and emotional expressions.

(7)

Figure 7: Promotional Poster of *Anime* 「千と千尋の神隠し」 more known as the translated version "Spirited Away″

In Literal Translation Technique, “Sen” and “Chihiro” are two names that refer to the main characters of the movies. Chihiro is the girl's real name, while “Sen” is the new name given to her when she is trapped in the spirit world. "*Kamikakushi"* (神隠し) is a Japanese term that literally means “Mysterious Disappearance.” This is a concept in Japanese mythology where a person, usually a child, mysteriously disappears and is believed to have been taken to the spirit world or another world by supernatural forces. “Spirited Away” is an English phrase that means taken away by spirits or supernatural forces. This phrase describes the main event in the film, which is Chihiro's disappearance into the spirit world.

(8)

Figure 8: Promotional Poster of *Anime*「天気の子」more known as the translated version "Weathering With You″

"*Tenki no Ko*" can be literally translated as “Child of the Weather” or “Child of the Sky” In Japanese, "*Tenki*" means weather, and “*Ko*” means child or someone who is bound to something (in this case, the weather). In the context of the film, “*Tenki no Ko*” refers to the main character who has the ability to control the weather. However, the title also contains poetic and intimate nuances about the character's relationship with nature. Instead of translating it literally as “Child of Weather” the translator used a discursive creation approach by choosing “Weathering with You” which gives the impression that this story is not only about controlling the weather, but about the shared process of facing challenges or situations (metaphorically, “weathering” means facing or enduring difficult conditions). This creates an emotional closeness between the two main characters who are “weathering” or facing challenges together.

(9)

Figure 9: Promotional Poster of *Anime*「君と波にのれたら」more known as the translated version "Ride your Wave″

“*Kimi to Nami ni Noretara*” literally means “If I could ride the waves with you” or “If we could ride the waves together” In translation, the phrase “Your Wave” emphasizes individuality, even though the film is actually about the relationship between two characters. This allows global audiences to interpret the story with a broader theme, namely how everyone needs to face their own challenges in life (likened to waves) and how they learn to navigate those waves, either alone or with others. The translator uses discursive creation techniques to simplify the complex ideas of the original title into phrases that are easier for global audiences to understand. In an international context, the element of “togetherness” implied by "*Kimi*" may not be necessary to convey the essence of the story, and the focus on the individual in “Ride Your Wave” is easier for a wider audience to understand.

(10)

Figure 10: Promotional Poster of *Anime*「私がモテてどうすんだ！」more known as the translated version "Kiss Him, Not Me″

"*Watashi ga Motete Dousunda*" can be literally translated as "What should I do if I become popular?" or "How can I be the chosen one?" This title describes the confusion or disbelief of the main character who suddenly becomes popular among men after previously being ignored. Instead of translating it directly, the translator used a discursive technique by changing the title to "Kiss Him, Not Me" This title refers to the main character's desire for *yaoi* (a genre of fiction about relationships between men) rather than the real situation where men are attracted to her. This translated title directly captures the romantic comedy element of the story, where the protagonist prefers to see men pair up with each other rather than be the object of their affection. In the original title, the focus is on the main character's confusion and disbelief at her sudden popularity. However, in the translated title, this focus shifts to a clearer and more direct statement about the character's preference, namely that she prefers to see men pair up with each other rather than herself being the object of love.

5. Conclusion

Discursive creation is a translation technique, often used as part of a broader localization strategy. Instead of a literal, word-for-word translation, the translator creates a new title that is often completely different from the original. The goal is to capture the essence, theme, or spirit of the work, rather than the literal meaning, to make it more appealing and understandable to the target audience. From a total of 10 data points regarding the use of discursive translation techniques in manga and anime titles, the author concludes that translators use these techniques to adapt the language to make it more acceptable to a wider audience or to highlight another aspect of the *manga* or *anime* that is more closely related to the culture of other countries. This technique is so common for manga and anime titles primarily for some reasons marketability, cultural barriers, linguistic differences and copyright issues.

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Appraisal of Transfer Pricing in Nigeria and its Effect

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Abstract
Transfer pricing can be regarded as an economic and legal tool used by business entities for the optimization of their tax burden. This has become a continuous dilemma in tax revenue collection in the world, and Nigeria is not excluded. The urge to ensure that the tax planning activities of multinationals operating in Nigeria do not escape the country's domestic tax base led to the enactment of the Transfer Pricing Regulations, 2018, in Nigeria. In addition, the new Act, known as the Nigeria Tax Act and Nigerian Tax Administration Act 2025 respectively brought about some changes which aid in regulating TP to ensure that multinationals do not evade tax payment in Nigeria. This paper is aimed at examining the effect of the minimum tax as contained in the old Act and introduction of the Minimum Effective Tax Rate in the new Act on multinational companies. This paper further examined the effect of transfer pricing in Nigeria and the position of law as regards a consistent transfer pricing method as decided in the case of Prime Plastichem Nigeria Limited. The methodology adopted in this work is doctrinal, wherein primary and secondary sources of material were utilized. By way of conclusion, this paper recommends that while the tax authorities need to train and equip their personnel with necessary technology for effective tax administration which will aid in meeting international best practices, it is also paramount that these standards are tailored to fit Nigeria's unique economic and business environment.

Keywords: Transfer Pricing, Tax Avoidance, Regulatory Laws, Multinationals

1. Introduction

Transfer pricing is a technique used by multinational enterprises (MNEs) to shift profits out of the countries of their operation into tax havens. Profit shifting means that MNCs shift income from affiliates in high-tax jurisdictions to those in low-tax jurisdictions to reduce their overall tax liability. Transfer pricing involves transactions that are cross-border and exist between parent company and its subsidiaries or between companies. It is a coherent business practice where interrelated companies transact under the arm's length principle (ALP). The approach involves a multinational company selling to itself goods and or rendering services at an artificially high price. (Ogbaisi & Okeke, 2024, #) (Tax Justice Network, 2004, n.d.) This comes into effect by using its subsidiary in a tax haven to alter and inflate costs from its subsidiary in another country. The motive of this work is centered on the need to unearth how effective transfer pricing regulation has been in curbing tax evasion. Due to corruption and a weak tax system multinational companies have capitalized on it to evade tax payment. This is mostly achieved through mis-invoicing or mispricing practice (ie deliberate falsification of commercial international transactions of goods and services by at least one multinational company with the aim of reducing tax amount). There has been abuse of transfer pricing by foreign investors and a huge amount of money has been lost as a result and this has become worrisome. Because of the susceptibility of developing countries, of which Nigeria is one, multinational companies seize the opportunity to evade tax through transfer pricing. This results in a huge loss of

revenue which negatively affects the economy. In a bid to curb TP, arm's length principle was adopted to ensure that profit which should be liable to domestic tax, does not become a gain to another country to which profit is shifted. (Osho et al., 2020, #)

To cure these defects or anomalies, measures were put in place. Part of it is enacting laws and or policies that will eliminate tax mischief. At the international level, OECD recommended five methods of arm's length principle to regulate transfer pricing. Nigeria, on her part, in section 5 of Regulations 2018 adopted and or incorporated the five methods of OECD recommended arm's length principle even though she is not a member of OECD. The key principle of transfer pricing is based on the arm's length rule which means that pricing terms between related firms or companies in the exchange of goods and services should release the same result as if they were unrelated. More so, related companies should act as if they are unrelated. The purpose of this requirement is to ensure that profit which should be liable to domestic tax does not become a gain to another country to which profit is shifted (Obasi, 2015, #). However, one of the major objectives of the Regulations is to ensure that Nigeria can tax on an appropriate taxable basis corresponding to the economic activities deployed by the appropriate taxable persons in Nigeria, including their dealings with related persons (*Transfer Regulation, 2018*, n.d.). The fundamental reason behind the regulation of Transfer Pricing is to fight tax evasion and the risk of economic double taxation (*Transfer Regulation, 2018*, n.d.). In addition, just recently, new laws like the Nigeria Tax Act and the Nigeria Tax Administration Act 2025 respectively were enacted to tighten the loopholes in the law, which give room to tax evasion. The Transfer pricing regulations have contributed to improving tax compliance and brought about an increase in revenue.

2. Conceptual Clarification

Transfer Pricing: It is a useful tool in moving profits from one company to another through a third company and can result in reduced potential state revenue from the tax Sector of a country because companies tend to shift their tax obligations from countries that have high tax rates to countries that apply low tax rates (Agada, 2025, #) (Septiani & Kutiawan, 2021, #). For example see the case of Google. Google runs a regional headquarters in Singapore and a subsidiary in Australia. The Australian subsidiary provides sales and marketing support services to users and Australian companies. The Australian subsidiary also provides research services to Google worldwide. In FY 2012-13, Google Australia earned around $46 million as profit on revenues of $358 million. The corporate tax payment was estimated at AU$7.1 million, after claiming a tax credit of $4.5 million.

When asked about why Google did not pay more taxes in Australia, Ms. Maile Carnegie, the former chief of Google Australia, replied that Singapore's share in taxes was already paid in the country where they were headquartered. Google reported total tax payments of US $3.3 billion against revenues of $66 billion. The effective tax rates come to 19%, which is less than the statutory corporate tax rate of 35% in the US. Transfer pricing is seen as legitimate business opportunity by transnational corporations. It is often used to misrepresent financial success and evade taxation. This has recently instigated many fiscal agencies and governments to take more draconian measures than ever before to protect national financial interests (Mehafdi, 2000, #). According to Barker and Brickman, transfer pricing is the price at which entities within a group trade. Multi-National Companies are born when an entity moves beyond its borders and acquires another company to create a competitive edge. Market advantage is attained by reducing cost of production, efficiency in management and operations (Barker & Brickman, n.d., #). These functional business transactions are regarded as controlled transactions as distinct from uncontrolled transactions between companies that are not related and can be assumed to operate independently in terms of transactions.

TP is not restricted to taxation but when used in the perspective of international tax, it signifies the artificial maneuvering of internal prices within a multinational group to create a tax advantage. On the other hand, Sheppard (Sheppard, 2012, #) affirms that TP is not illegal; what is abusive is transfer mispricing (Miller & Oats, 2012, #) (Ogidiaka et al., 2022, #).

International transfer pricing, therefore, involves the prices at which a company undertakes cross-border transactions with associated enterprises. By so doing, international transfer pricing determines how the income of a multinational enterprise is shared among countries (host country and country of origin) for income tax purposes as a result of transactions within the firm(Ogbaisi & Okeke, 2024, #) . According to Seth et al., transfer pricing

allows for the establishment of prices for the goods and services exchanged between subsidiaries, affiliates or commonly controlled companies that constitute part of the same larger enterprises. Transfer pricing is a tax-saving means for MNEs, although such claims might be contested by tax authorities (Seth et al., 2024, #).

Transfer pricing, in general, is a component of corporate tax avoidance. Several factors influence multinational transfer pricing. They include; Transfer pricing as a tool to minimize worldwide taxes, duties and tariffs; Avoidance of financial restrictions on profit repatriation imposed by the government; Avoidance of divisional conflicts; General goal congruence, and Inflation (Cristea & Nguyen, n.d., #).

Terminologies such as transfer mispricing, transfer pricing abuse, profit shifting, profit splitting, income splitting, earnings stripping, and tax base erosion, all refer to various acts of manipulating financial transactions in multinational enterprises with the view to reducing the amount of corporate income tax these enterprises should pay. While most of the activities involved in transfer mispricing are not illegal, they are unethical, and have been criticized as irresponsible corporate practices (Addo, n.d., #).

TP is important to all the parties involved (the taxpayers and tax authorities) because it affects the income and expenses as well as the taxable profits in the different tax areas in which the entity operates. It is often used to boost the overall profit of the head office which is at a disadvantage to the associate companies which operate in other countries with different tax jurisdictions. For example, a head office located in Ireland with a tax rate of 12.5% and its subsidiary in Nigeria with a tax rate of 30%. When the Nigeria subsidiary sells goods to the Ireland Company the subsidiary taxable profit is reduced and the tax paid is completely eroded. This leads to a loss of revenue for the country. Whereas, the sales will increase the taxable profit of the head office, which will be taxed at 12.5%, which is low as compared to 30%.

Tax Evasion/Avoidance: Tax evasion is the illegal, non-payment or under payment of tax, usually by deliberately making false declaration or no declaration to the tax authorities such as by declaring less income, profit or gains than the amount actually earned or by outstating deductions. It entails criminal or civil penalties (Transparency International, n.d., #) (Whitfield Hayes, 1936, #)

Tax avoidance implies the legal utilization of tax laws to minimize tax liability (Umenweke, 2024, #). According to Harris, tax avoidance involves using tax exemptions, deductions, and credits to reduce tax payments (Haris, 2019, #). Tax avoidance is different from tax evasion, which involves illegal activities to evade tax. As noted by James and Nobes, (James & Nobes, 2017, #) Tax avoidance is the use of tax laws to reduce tax payments, whereas tax evasion is the illegal non-payment of taxes. In the words of Harris, Tax avoidance is the legal exploitation of tax loopholes to minimize tax liability.

UK Court gave recognition to tax avoidance while discussing avoidance of liability to tax by means of transfer of assets to persons abroad - sole purpose of transfer avoidance of British Death Duties. In 1931, appellant who was ordinarily resident and domiciled in the United Kingdom created a Swiss company to which he and wife transferred certain investments. It was admitted that the appellant and wife had power to enjoy the income of the Swiss Company within the meaning of section 18 of Finance Act 1936. Assessments to Income tax were made upon the appellant to include income of the Swiss company. On Appeal against the assessments, the commissioner accepted evidence that the sole purpose was the avoidance of death duties but held contrary to the contention of the appellant that the word ‘taxation’ in section 18(1) of the Act included British Income Tax and British Death Duties and that the appellant was accordingly not entitled to benefit of the proviso. Refer to the case of *Sassoon v Inland Revenue Commissioner* (*25 Tax Cas 154 CA*, n.d., #).

The Arm’s Length principle as defined in the case of Lola Austin v Indiana Family and Social Services (2011), refers to transactions between parties who are not related and are not in a confidential relationship and are also presumed to have roughly equal bargaining power (Chinonyerem, 2014, #) (*Lola Austin V Indiana Family and Social Services Administration (2011) 947 NE 2d 979*, n.d., #).

3. The Legal Framework of Transfer Pricing in Nigeria

Prior to the promulgation of Transfer Pricing Regulations of 2012 (now repealed), there had been various provisions in the tax statutes that gave directions on how artificial or fictitious (connected taxable persons) transactions should be treated. For instance, the provisions of Section 17 of the Personal Income Tax Act CAP P8 LFN, 2004, Section 22 of the Companies Income Tax Act CAP. C21 LFN, 2004 (as amended), Section 15 of the Petroleum Profits Tax Act CAP P13 LFN 2004 (as amended) and Section 20 of the Capital Gains Tax Act, CAP C1 LFN 2004 now have been consolidated in Nigeria Tax Act 2025. During the period, the General Anti-Avoidance Rules (GAARs) were included in Nigeria's income tax laws as a means of curbing tax avoidance. Tax authorities relied on GAARs to assess and regulate the pricing of inter-group transactions where such transactions appeared to be artificial or sham arrangements. The main purpose of these regulations is to eliminate transfer mispricing among the interrelated companies within and outside Nigeria. However, new approaches and techniques to arrive at the appropriate transfer price from the perspective of one or more actors in the system are constantly being evolved (Agada, 2025, #).

Furthermore, due to no clear guidelines and parameters for application of GAAR it became ineffective. However, the TP Regulations 2012, provided a more structured approach but because low compliance Transfer Pricing Regulations, 2018 were introduced. This was done to implement OECD BEPS project recommendations. The establishment of TPRs marked a significant step towards aligning the country's tax system with international standards. The Regulations 2018 were introduced to replace the 2012 Regulations. This is done to reflect the evolving nature of international business and the challenges associated with transfer pricing practices. The aim of the Regulations is to curb tax evasion by enforcing compliance with the arm's length principle, which is a guideline that ensures that intra-company transactions are priced comparably to those conducted between independent entities (OECD, 2010, n.d., #). Article 9 of the OECD Model Tax Convention describes the rules for the Arm's Length Principle. It states that transfer prices between two commonly controlled entities must be treated as if they are two independent entities, and therefore negotiated at arm's length. It is a recognized approach used in regulating transfer pricing of two related parties or enterprises to ensure fairness and transparency in intercompany transactions. It helps to ensure that companies do not manipulate transactions within their corporate groups to avoid taxes. This is to ensure that the government prevents profit shifting and tax avoidance in cross-border transactions. The Regulations however, conferred supremacy to relevant domestic law where the UN Practical Manual on Transfer Pricing and the OECD Model Tax Convention is inconsistent with it. (section 19 *Transfer Regulation, 2018*, n.d.)

The Regulations were made to ensure that transactions between related entities reflect the arm's length standard. This standard is widely accepted in international tax law. It requires that the terms and conditions of transactions between related parties are consistent with those that would have prevailed had the parties been independent entities dealing at arm's length (Organisation for Economic Co-operation and Development (OECD), 2017, n.d., #). It is of utmost important to apply this principle in order to prevent profit shifting and tax base erosion, common concerns in multinational operations (Akinrinde, 2025, #).

The body saddled with responsibility of administering and enforcing transfer pricing regulations in Nigeria is FIRS. (Pls note that with the new Act ie is Nigeria Tax Act and Nigeria Revenue Establishment Act 2025, FIRS is now renamed as NRS (Nigeria Revenue Service) and this name takes effect from Ist January, 2026 to replace FIRS). The duties include conducting transfer pricing audits, ensuring compliance with documentation requirements, and resolving disputes related to transfer pricing adjustments. The FIRS has been actively building its capacity to handle the complexities of transfer pricing, though challenges remain in terms of resources and expertise (Akande & Adesina, 2020, #).

The methods of transfer pricing in Nigeria are largely in line with OECD guidelines (Organisation for Economic Co-operation and Development (OECD), 2017, n.d., #). These methods include the Comparable Uncontrolled Price (CUP) method, the Resale Price Method (RPM), the Cost Plus Method (CPM), the Transactional Net Margin Method (TNMM), and the Profit Split Method (PSM). Each of these methods has its advantages and limitations, and the choice of method depends on the nature of the transaction and the availability of reliable data for

comparables. In addition, the applicability of these methods in the Nigerian context, particularly in sectors where comparables are scarce, poses significant challenges (Adediran & Alade, (2019), #).

Under the Nigerian Transfer Pricing Regulations, requirements for documentation are cumbersome. Part of the requirements is that companies should maintain and furnish detailed documentation that reveals their compliance with the arm's length principle. This includes information on the nature of the relationships between related parties, the nature and terms of transactions, the method selected for determining transfer prices, and the rationale for that selection. Despite the rigorous procedures for assessment, the FIRS is authorized to request for additional information and conduct audits where necessary. Recently, the new tax regime looked beyond the limitation period of six years just as a measure put in place to eliminate tax evasion. It expanded the year of relevant assessment. Section 36(2) of the Act (*Nigeria Tax Administration Act 2025*, n.d.) provides thus:

> The six-year limitation period stipulated in subsection (1) shall not preclude the relevant tax authority from continuing with a tax audit and from raising additional assessment where the tax audit commenced before the expiration of the six-year limit.

Section 36(4) of the Act now empowers the FIRS to extend beyond the six-year limit where there is a deliberate misstatement by a taxable person with respect to extant tax laws. This implies that where there is evidence of deliberate misstatement by the taxpayer, the FIRS is authorized to exceed the stipulated period of six years.

The TPRs in Nigeria which provide for arm's length principle (*Section 5 of the Regulation 2018*, n.d., #) are the recognized standard for transfer pricing, and it aligns with international best practices. However, because in the Nigerian market comparable data may not be readily available, determining arm's length price becomes challenging. It therefore becomes paramount that while trying to adopt an internationally recognized policy or standard, it should be mindful that Nigeria falls under developing countries. Thus, should adopt a more practical approach that compliments and or considers economic reality of a developing country like ours.

3.1. Removal of Minimum Tax and Introduction of Minimum Effective Tax

The new Act (*Nigeria Tax Administration Act 2025*, n.d.) has abolished the old minimum tax regime for companies and introduced a new concept called 'Minimum Effective Tax' (MET), set as 15% (*Nigeria Tax Act 2025, Section 57*, n.d., #) . The old regime required all companies including those that made profit or not to pay a minimum tax of 0.5% of gross turnover. However, with the introduction of the new regime, profit making companies were liable to pay higher.

This approach ensured that all companies, including those declaring little or no profit, contributed public revenue (*Nigeria Tax Act 2025, Section 33*, n.d., #). This is to ensure fairness and increase in revenue. This is in compliance with pillar 2 of Global Anti-base Erosion (GLOBE) Rules made by OECD. This aids in tackling base erosion and profit shifting. The new Act replaces this blanket system with a new more targeted approach. The Minimum Effective Tax requires certain profit-making companies to ensure their effective tax rate is at least 15%. If after applying tax incentives or deductions, a qualifying company's tax liability falls below this threshold, it must pay the difference as a top-up tax. Though Nigeria has not adopted the Organization For Economic Cooperation and Development's (OECD's) Base Erosion and Profit Shifting (BEPS) Pillar, however this top-up tax aligns with its global minimum principle ensuring profits in low–tax jurisdictions are adequately taxed.

This minimum effective tax is only applicable in 2 instances

a) Multinational Enterprises (MNEs): Where a foreign subsidiary of a Nigerian parent company pays less than 15% (*Nigeria Tax Act 2025, Section 6(3)*, n.d., #) tax in its country of residence, the Nigerian parent is required to pay the difference to bring the total tax on that income up to 15%. This mirrors OECD BEPS Pillar- 2 'top-up tax concept, which seeks to reduce tax avoidance through low-tax jurisdictions.
b) Large Nigerian companies: Where a Nigerian company with an aggregate turnover of ₦20 billion or more in a given assessment year has an effective tax rate below 15%, it must also pay an additional tax to bring the rate up to 15% (*Nigeria Tax Act 2025, Section 57(1) and (2)*, n.d., #). The precise method for

calculating the effective tax rate and the top-up tax amount is expected to be set out in regulations to be issued by the Nigerian Revenue Service.

The Act also introduced a rule known as Controlled Foreign Corporation (CFC). Under section 6 of the Nigerian Tax Act, certain undistributed profits of foreign subsidiaries are deemed to be declared and taxable in the hands of the Nigerian Parent Company. This is to ensure that such profits cannot be deferred from Nigeria taxation simply by being retained abroad (KPMG, 2025, #).

3.2. Effect of Transfer Pricing Regulations on the Tax

Most governments and or nations have limited the extent of transfer mispricing by implementing transfer pricing regulations (TPRs). The regulations would describe the methods allowed to determine arm's-length prices, prescribe documentation requirements, set penalties in case of non-compliance, and determine the probability of a transfer price adjustment. Regulation of transfer pricing can raise the effective tax burden on MNCs, thereby accords protection to domestic revenue and leveling the playing field vis-á-vis domestic companies (From the perspective of the MNC, TPR may also increase tax uncertainty (IMF and OECD, 2017). TPRs may be consequential on multinational entities but on the other hand, increase the revenue of the concerned state or nation. This is because there will no longer be room for profit shifting.

To limit transfer mispricing, several countries have introduced transfer pricing regulations (TPRs). These offer guidance in the implementation of the arm's length principle and often include various specific requirements. In other words, TPRs could affect multinational entities in various forms. It could be through (i) a reduction in total investment due to a higher cost of capital for the entire MNC company group; or (ii) a relocation of investment to other affiliates of the same MNC group. Both investment responses reduce output in the host country in similar ways. Thus, they have very different economic implications for the rest of the world. Where the multinational company invests little or low it would unambiguously reduce global output, and where there is a reallocation of investments across countries, it would imply a shift of production toward countries that enjoy an inflow of investment. Global output might still decline due to production inefficiency, but is smaller under the second scenario (Mooij & Liu, n.d., #). Research has revealed that the effect of transfer pricing regulation on the government is positive. It can be concluded that the greater the tax borne by the company, the greater the transfer pricing (Komarudin et al., n.d., #). Transfer pricing regulations have significantly impacted the tax-to-GDP ratio by curbing tax avoidance strategies like profit shifting, which erodes the domestic tax base. These rules ensure that multinational corporations (MNCs) align intra-group transactions with economic activities in the host country, thereby enhancing revenue collection (Beer et al., 2020, #). However, enforcement challenges, including administrative capacity and transaction complexity, limit effectiveness. Addressing these issues through improved regulatory frameworks and capacity-building for tax authorities can maximize the benefits of transfer pricing regulations, ensuring better revenue outcomes and a higher tax-to-GDP ratio (United Nations Conference on Trade and Development (UNCTAD), 2020, #) (KPMG, 2021, #).

3.3. Effect of Manipulation on Tax Revenue

Tax evasion, tax avoidance, or tax fraud are examples of transfer pricing abuse or manipulation, which is similar to transfer mispricing. In situations where pricing is done in accordance with the law to minimize taxes, it is seen as legal tax avoidance; on the other hand, they are regarded as illegal tax evasion or scams when transactions involve artificial price manipulation (Eden & Kudrle, (2021), #) (Sikka & Wilmott, n.d., #). Statistics made by Global Financial Integrity (GFI) revealed that illicit financial outflows caused developing nations to lose an estimated $8.44 trillion between the decades prior to the end of 2009; of this total, 54% was attributable to transfer pricing abuse. According to Hollingshead, the amount of tax revenue lost in 2006 as a result of MNCs transfer mispricing varied between $125 billion and $135 billion. This amount almost doubled the $64 billion to $68 billion range from 2002 (Hollinghead, 2010, #) ; Christian (Christian, 2011, #) stated that tax dodging by multinational corporations (MNCs) costs developing countries approximately $160 billion a year. He also suggested that there are two types of tax dodging: abusive transfer pricing and false

invoicing. Furthermore, a number of studies have revealed that transfer mispricing causes Nigeria to lose the most tax revenue from various countries (Muhammed & Alhassan, 2024, #).

3.4. Examining Transfer Pricing in Line with the Decision of Tax Appeal Tribunal

There has been a question on whether multinational companies can adopt and or use more than one method in a transaction. In the case between *Prime Plastichem Nigeria Limited v. Federal Inland Revenue Service* (Appeal no: TAT/LZ/CIT/015/2017, n.d., #) (Advocaat Law Practice, 2020, #), the Tax Appeal Tribunal (TAT) was called upon to determine the method that is best suited for the Transfer Pricing.

Brief Facts

The Appellant is a private limited liability company that engages in the business of trading in imported plastics and petrochemicals. On the strength of the commencement of the Income Tax (Transfer Pricing Regulations No.1 2012) Regulation, the Appellant filed its Transfer Pricing Documentation (TPD) for 2013 and 2014. In 2013, the Appellant adopted the Comparable Uncontrolled Price (CUP) Transfer Pricing Method in determining whether the pricing of its transactions with a related company, Vinmar Overseas Limited (VOL) was at arm's length. However, in 2014, the Appellant was unable to adopt CUP due to lack of comparable information as such adopted the Transactional Net Margin Method (TNMM). The Respondent in its review of the Appellant TPD stated that "the only controlled transaction that was disclosed by your company is the purchase of petrochemicals from VOL, a connected person" and that the Appellant's methodology for testing the pricing "was in accordance with the arm's length principle". The sole issue in the contest was the appropriateness of using Net Profit or EBIT/Operating Revenue as Profit Level Indicator (PLI) or Gross Profit/Operating Revenue for the purpose of TNMM. The Appellant used Net Profit/Operating Revenue while the Respondent used Gross Profit/Operating Revenue. The Respondent thereafter served the Appellant with additional assessment of N1,738,481,875.33 (One Billion, Seven Hundred and Thirty Eight Million, Four Hundred and Eighty One Thousand, Eight Hundred and Seventy Five Naira, Thirty Three kobo) based on its own assessment of the Appellant's TPD. The Appellant objected to the additional assessment and appealed to the Tax Appeal Tribunal (TAT). In its decision, the TAT dismissed the Appellant's appeal and held that the use of Gross Profit Margin (GPM) is in line with best practices and the most appropriate PLI to use in similar situations.

The standard is that the party has to be consistent in the adopted method or mode. The Regulations 2018 provide for different methods to be adopted. However, one is not allowed to vary in the adopted method. Sticking to this will help both the company involved and the tax authority to have a smooth and unambiguous result. Considering the position of court in this case, it is therefore advisable that the companies comply with the Regulations especially now that the tax net has been expanded to accommodate top up tax system and additional assessment beyond six years. The position in this case is in line with OECD guidelines which requires MNE's to adopt one method for a given transaction or set of transactions that are appropriately aggregated. (Tax gain, n.d., #).

4. Nigeria and International Tax Compliance

Nigeria's zeal towards aligning with international tax standards is evidenced by its proactive engagement in the BEPS project. The OECD's BEPS initiative, aimed at preventing strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations, has been a key global response to the challenges posed by the digitization of the economy and globalization (OECD/G20, 2020). Nigeria, recognizing the importance of this initiative, has been an active participant, implementing several of the BEPS action points. This commitment is reflected in the amendments to its tax laws and the introduction of new regulations aimed at curbing profit shifting and tax avoidance by multinational enterprises (MNEs) (Ikpefan & Achugamonu, 2019, #).

Furthermore, Nigeria's involvement in partaking in the global conversation on tax matter created avenue to contribute to and learn from global best practices in tax policy and administration (Adegoke, (2021), #). However, aligning with the international standards does not come without its challenges. One of the primary issues faced by Nigeria is the legal and administrative hurdles involved in implementing these standards. The process of amending

existing laws and regulations to conform to BEPS actions and other international norms is complex and often time-consuming. This complexity is compounded by the need to ensure that these changes are compatible with domestic legal frameworks and economic policies.

In addition to legal challenges, Nigeria also grapples with capacity and resource constraints in its quest to adhere to international tax standards. Implementing BEPS actions, for instance, requires a high level of expertise in international taxation, as well as adequate technological and administrative resources. The Federal Inland Revenue Service (FIRS), while making commendable efforts to build its capacity, still faces limitations in terms of trained personnel and the necessary technology to effectively administer and enforce complex international tax rules. While identifying the legal challenges, L.I Jinyan in his book (Jinyan, 2003, #), stated that thus:

> A fundamental tension underlying the whole international tax system is that MNEs [multinational enterprises] operate on a global basis, whereas tax authorities operate on a national basis. The reality of the contemporary world is that separate national governments are not in a position to adequately monitor intra-firm transactions. When tax administrators everywhere do their best to get a "fair" share from an MNE's global income, the absence of effective international coordination is bound to give rise to over-taxation or under-taxation of the MNE's income.

Nigeria needs to find the balance between adopting international standards and considering local economic realities. It has been argued by the critics that though alignment with global standards is important, it is also pertinent to ensure that these standards fit Nigeria's unique economic and business environment. For instance, some of the BEPS actions may not be directly applicable or may require adaptation to be effective in the Nigerian context.

5. Conclusion

Transfer pricing has a negative impact on tax revenue generation. It is capable of causing labour distortion. This study has analyzed how transfer pricing negatively affects tax revenue generation. This was evidenced in the recent press release made by Tax Justice Network with headline '$475bn lost to US-backed global gag order shielding corporate tax cheaters' it states that US-backed global gag order preventing governments from revealing the names of multinational corporations found shifting billions into tax havens has caused countries to miss out on over US$475 billion in corporate tax from 2016 to 2021. According to them, the tax lost is far more than the amount urgently needed for the $300 billion climate finance fund that countries committed to in 2024 (Mansour, 2025, #) (Mansour, 2025, #). This shows that profit shifting is a global issue and if the relevant body continues to tolerate this most countries will continue to be poor while the beneficiary will continue to enrich themselves.

However, the Nigerian government has newly put measures in place through the new tax regime enacted to bring to an end tax dishonesty by multinational companies. A deeper analysis of the effects highlights that tax dodging perpetuates extreme poverty and creates serious economic distortions that hinder sound investment decisions in economies where the practice is predominant. The government should try to go beyond the arm's length method of checking transfer pricing and adopt other methods such as reduction in: ad valorem tariff, capital gain tax, petroleum profit tax and company tax to curtail foreign direct investment engagement in transfer pricing. This in effect will act as an incentive to investment and increase economic growth in Nigeria (Ibitoye, n.d., #) (Osho, 2020, #).

6. Recommendations

1. It is a welcome development that new laws have been enacted to lock the loopholes in the law that aids evasion of tax, however, it is recommended that while automated software as now prescribed by the law is used to capture all transactions of the companies, an agency should be created to monitor it to ensure total and absolute compliance is achieved.
2. There will be a need for tax authorities and companies to have a forum where intra-group transactions are updated and assessed.

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Citizenship Policy for Diaspora: A Comparative Study of Global Citizenship of Indonesia (GCI) with Overseas Citizenship Policies of India, the Philippines, and South Korea in the Perspective of Lawrence M. Friedman's Legal System Theory

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Abstract
Globalization demands that countries adopting the principle of single citizenship innovate in mobilizing the potential of the diaspora without violating national sovereignty. This study examines the Global Citizenship of Indonesia (GCI) policy as a diaspora retention strategy, compared to similar schemes in Asia, namely the Overseas Citizenship of India (OCI), the Balikbayan Program (Philippines), and the F-4 Visa (South Korea). Using a comparative juridical-normative method with a sociological approach to law, this study analyzes the effectiveness of the policy through Lawrence M. Friedman's Legal System Theory, which encompasses the aspects of Structure, Substance, and Legal Culture. The results show significant variations in the functioning of legal systems in each country. India and the Philippines demonstrate positive synergy across all three elements, supported by a societal culture that honors the diaspora, while South Korea emphasizes a pragmatic, economic-based substance. The findings in Indonesia indicate that although GCI represents a progressive breakthrough in structure and substance through the Permanent Stay Permit (ITAP) facility, its effectiveness faces the challenge of dissonance in the Legal Culture aspect. Social resistance and a bureaucratic paradigm that still views the diaspora as a foreign entity are the main obstacles. The study concludes that successful implementation of the Global Citizenship of Indonesia (GCI) requires harmonization of sectoral regulations and the reengineering of the legal culture to shift the national paradigm from protectionism to utilizing the diaspora as a strategic asset.

Keywords: Global Citizenship of Indonesia (GCI), Diaspora, Lawrence M. Friedman, Comparative Law, Overseas Citizenship

1. Introduction

The phenomenon of globalization has created massive cross-border population mobility, leading to the emergence of significant diaspora communities in various countries worldwide (Romdiati, 2015). The Indonesian government recognizes that the Indonesian diaspora, both former Indonesian citizens (WNI) and groups of Indonesian descent, constitutes a strategic asset that has not been optimally managed (Hamdani, 2025). The Global Citizenship of Indonesia (GCI) policy was launched as a strategic response to facilitate ease of residence and work for the diaspora without violating the principle of single citizenship as enshrined in Law Number 12 of 2006. This response is also in line with the Indonesia Emas 2045 program, which aims to make Indonesia one of the world's five largest economies with a high per capita income and a more prosperous quality of life for its people, through long-term development programs and plans focused on improving human resource quality, social transformation, and economic strengthening (Nuriyanti, 2025). The objective of the Global Citizenship of Indonesia (GCI) Policy is to mitigate brain drain, attract investment (capital repatriation), and strengthen Indonesia's global network by providing immigration facilities equivalent to permanent residents.

This citizenship policy for the diaspora represents Indonesia's attempt to address the dilemma of maintaining citizenship sovereignty and harnessing the potential of the diaspora (Dewansyah, 2019). Examples include India's Overseas Citizenship of India (OCI) policy, which grants quasi-citizenship status with extensive economic rights. The Philippines' Balikbayan Program, which grants special privileges to migrant workers and former citizens to return and reside. South Korea's F-4 visa policy for ethnic Koreans abroad addresses the demographic crisis and skilled labor shortage.

In academic discourse, overseas citizenship policies are often discussed as a form of "flexible membership" (Ong, 2022). Previous literature highlights that granting special rights to the diaspora can increase remittances and technology transfer (Gerova, 2004). However, the success of these policies depends not only on written regulations but also on the implementing infrastructure and public acceptance. Therefore, this study utilizes Lawrence M. Friedman's Legal System Theory, which dissects law into three elements: Structure, Substance, and Culture (Friedman, 1969). The use of this theory is crucial to determine whether the GCI policy is merely a "paper tiger" (rules exist but are ineffective) or is truly operational within the Indonesian social system.

This policy scheme offers a unique compromise, namely leveraging the potential of the diaspora without changing the citizenship constitution. To analyze these dynamics, this paper focuses on two research questions: how do the structure, substance, and legal culture of Indonesia's GCI, India's OCI, the Philippines' Balikbayan, and South Korea's F-4 policies compare? And, how does Lawrence M. Friedman's Legal System Theory analyze the effectiveness and implementation challenges of these various diaspora policies in the context of each country?

2. Research methods

This research uses a comparative juridical-normative method with a sociological approach to law. The comparative method is used to compare legal schemes across four countries (Eberle, 2011), while the sociological approach to law is used to analyze the effectiveness of law in society (Selznick, 1960).

The primary data sources used include laws and regulations related to citizenship and immigration, including: Law Number 12 of 2006, Government Regulations, and Regulations of the Minister of Law and Human Rights concerning the regulation of Indonesian citizenship (Indonesia, The Citizenship Act 1955 (India), Republic Act No. 6768 (Philippines), and the Overseas Koreans Act (South Korea). Secondary data were obtained from international journals, government reports, and previous studies on the diaspora.

The data analysis technique was conducted qualitatively using Lawrence M. Friedman's Legal System Theory analysis. Data on legal regulations (Substance) and institutions (Structure) from the four countries were mapped and then compared with the sociological aspects (Culture) of the local communities towards the diaspora. This analysis aims to answer the research problem by identifying patterns of success and failure of legal systems in the

comparison countries, and then drawing out their relevance for the effectiveness of GCI implementation in Indonesia.

3. Results

3.1. Lawrence M. Friedman's Legal System Theory

Viewing law solely as a series of articles in a statute book is a fatal mistake in understanding how justice works in society. Lawrence M. Friedman offers a more vibrant sociological perspective; he dissects the legal system as a breathing organism, whose survival depends on the dynamic interaction of three vital elements: Structure, Substance, and Legal Culture (Friedman L. M., 1969). Friedman doesn't view these three entities as standalone entities, but rather as an interconnected ecosystem, where the failure of one element will paralyze the entire system. The first element, Legal Structure, is the physical and institutional framework of the system, like the "engine" of a vehicle. In empirical reality, this structure takes the form of courts, immigration offices, and even the digital bureaucratic system that regulates the flow of services. A diaspora visa policy, for example, requires an efficient structure, if the immigration office (structure) is riddled with convoluted or corrupt procedures, the legal "machine" will stall, no matter how well-intentioned the law may be. Structure is the vessel that allows law to flow from text to reality.

The second element, Legal Substance, is the "content" or product of the system itself. This includes normative rules, state promises, and rights written in state gazettes. Substance is the blueprint or software that gives instructions to the machine. In an empirical context, good substance must be fair and responsive. However, Friedman warns that even a perfect substance will only be a “paper tiger” if it is not supported by the third, most abstract but most powerful element.

The third element is Legal Culture. Friedman likens it to the "fuel" or atmosphere that powers the engine of structure and substance. Legal culture speaks to the people behind the system, the values, perceptions, and attitudes of society and law enforcement officials. This is a determining variable that is often overlooked. Empirically, we often see dissonance here. Imagine a country with regulations allowing foreigners to stay (good substance) and a sophisticated online application system (good structure). However, if officers in the field have a xenophobic mentality or society views "foreigners" as an economic threat (resistant culture), then the law will fail to achieve its objectives (Wimmer, 1997).

According to Friedman, legal effectiveness is the fruit of harmonious synergy. Law will only be effective if its machinery (structure) is well-maintained, its rules (substance) are clear, and its fuel (culture) is pure. An imbalance between the three will only create a paralyzed system, where justice is only beautiful on paper but hollow in practice.

3.2. Citizenship and Diaspora Policy

1) True citizenship goes beyond a rigid administrative definition, it is the most concrete manifestation of the social contract between the individual and the state that houses him (Turner, 1990). More than simply possessing a passport or an ID card, citizenship empirically operates as the "right to have rights." In everyday reality, this status determines one's access to fundamental privileges, from guaranteed legal protection when caught in trouble abroad to the right to political participation in determining the nation's direction through the voting booth. It is an anchor of identity that provides a sense of existential security, distinguishing between those who are "included" and those who are "excluded" (Bosniak, 2010). In an increasingly fluid world, citizenship remains the last bastion that confirms that a person has a permanent legal home, to which he cannot be denied return.
2) Diaspora is a concept that goes beyond mere immigration statistics. It represents a collective socio-political phenomenon in which a group of people is displaced from their ancestral homeland, whether by force, economic motives, or conflict, yet consciously and collectively maintains ties of identity, memory, and the hope of returning (Hosseini, 2020). This is a sociological journey marked by an unbroken emotional

"umbilical cord" with the homeland. Analytically, diaspora groups have a dual identity, they are loyal citizens of their new country (host country), but at the same time, they are carriers of cultural torch and soft power for their home country (Abdulloeva, 2023). Empirically, the role of the diaspora is very real and measurable. For example, the Indian diaspora (Persons of Indian Origin/PIO) has successfully created substantial global economic networks, characterized by significant remittances and investments. The Indian government responded with the Overseas Citizenship of India (OCI), effectively transforming the diaspora from mere visa recipients into economic partners guaranteed equal rights in investment and education (Bhat, 2025). Likewise, the Filipino diaspora, nicknamed Bagong Bayani (New Heroes), sends remittances that are the lifeblood of the national economy (Encinas-Franco, 2015). Thus, the diaspora is not just a scattered collection of people, but a strategic asset that functions as a cultural bridge, a technological catalyst, and a source of capital that demands that countries of origin formulate inclusive policies that go beyond traditional legal boundaries.

In the landscape of modern constitutional law in Asia, the four countries we focus on which are Indonesia, India, the Philippines, and South Korea, stand on a similar constitutional foundation, adherence to the principle of single citizenship. This principle is not merely an administrative rule, but rather a manifestation of the classical doctrine of sovereignty, which demands an individual's sole loyalty to one state. (Spiro, 1999). Empirically, this is evident in South Korea's strict naturalization regulations, or the requirement to relinquish Indonesian passports for those who swear allegiance to another country. Rigid adherence to this principle, while crucial to national identity, creates a thick wall separating the nation from its diaspora. This leaves millions of Indonesians legally "foreign", yet emotionally and culturally, they remain an inseparable part of the nation.

This paradox has sparked the birth of brilliant yet pragmatic legal innovations. Recognizing that losing the diaspora means losing potential human capital, global networks, and massive capital flows, these countries have not chosen the extreme path of revising their constitutions but have instead created a middle-ground mechanism known as quasi-citizenship or hybrid citizenship (Knott, 2017). This is a clever legal technique: it provides a "sense" of belonging without granting full political "status."

Empirically, this mechanism works by dissecting the bundle of rights within citizenship (Baganha, 2009). Civil and economic rights such as the right to indefinite residency, the right to work, invest in property, and equal access to education are then granted to the diaspora. India, for example, through the Overseas Citizenship of India (OCI), allows an Indian-American doctor in New York to return to Mumbai, open a practice, and send his children to school without a visa, as if he had never left. Indonesia, through the Global Citizenship of Indonesia (GCI) or ITAP Diaspora facility, offers similar conveniences in terms of residency and mobility.

However, the demarcation line remains firmly drawn on political rights. This hybrid status grants economic and social freedoms but withholds the most sacred constitutional right: the right to vote and be elected. Thus, quasi-citizenship functions as a safety valve; it allows the state to reabsorb expertise, technology, and foreign exchange from the diaspora (a utilitarian function) without having to divide political loyalties or compromise national security (a sovereign function). This is evidence that citizenship law is no longer static, but rather adaptable to the realities of an increasingly borderless world (Shachar, 2020).

3.3. Comparative Policy Profiles

In an effort to respond to the challenges of globalization and maintain ties with the diaspora, Asian countries have formulated distinctive migration policies that fundamentally redefine the concept of "belonging." These different policy profiles, from Indonesia to South Korea, reflect not merely administrative differences, but a mosaic of national philosophies in embracing their human capital and emotional assets.

1) Global Citizenship of Indonesia (GCI): A policy of granting Permanent Residence Permits (ITAP) to former Indonesian citizens and their descendants, valid for 5 or 10 years and extendable, and providing ease of entry and exit from Indonesia (Widianto, 2025). The focus is on ease of residency. Global Citizenship of Indonesia (GCI) can be seen as a cautious but crucial first step in the evolution of the national lex migratoria. The policy's primary focus is ease of residency, realized through the granting of Permanent Stay Permits (ITAP)

to former Indonesian citizens and their descendants. The 5- or 10-year, renewable duration is a smart compromise; it frees the diaspora from the bureaucratic hassle of tedious annual visa renewals while fulfilling Indonesia's constitutional obligation to the principle of single citizenship. Empirically, the GCI's greatest value lies in its legal certainty of residence, a guarantee for diaspora to plan a long-term life in Indonesia without fear of deportation. However, the 5- or 10-year duration, when compared to the "lifetime" concept in other countries, suggests a hesitance and caution on the part of the Indonesian government in relinquishing full control over residency status, positioning the GCI as a strong, but not yet permanent, bridge.

2) Overseas Citizenship of India (OCI): A registration scheme for Persons of Indian Origin (PIO) that provides a "lifetime visa" and parity with Indian citizens in economic, educational and financial fields, except ownership of agricultural land (Ranjan, 2020). Overseas Citizenship of India (OCI) is the boldest and most integrated manifestation of this policy. It is based on the deep conviction that the Indian diaspora is a global asset that must be firmly secured. The OCI profile is characterized by substantive parity and a lifetime visa. The phrase "lifetime visa" has a profound psychological impact—eliminating the feeling of guest status and fostering a sense of permanent belonging. Empirically, this parity has direct economic consequences: an OCI holder can purchase residential property, open a business, and access higher education at the same rates as National Indian Citizens (NRIs), rather than at the much more expensive foreign rates. The single exception on agricultural land ownership demonstrates a wise protective boundary; India opens its doors wide to capital, finance, and professional expertise, yet firmly protects the agrarian foundations vital to local food security. The OCI is a successful case study of legal utilitarianism, where emotional ties translate into stable, reciprocal economic benefits.
3) Balikbayan Program (Philippines): A travel incentive program that provides one-year visa-free and duty-free shopping privileges for former Filipino citizens and their families to encourage return visits (Blanc, 1966). The Philippines' Balikbayan Program exhibits a unique emotional architecture. This policy emphasizes less on complex structural rights and instead focuses on travel and family incentives. It provides a one-year visa-free stay for former Filipino citizens and their immediate families. This policy profile is deeply rooted in Filipino hospitality and the tradition of balikbayan (returning home). Empirically, this one-year visa-free period provides ample time for the diaspora, mostly migrant workers, to rest, celebrate Christmas, and experience family reunions without the stress of immigration. Coupled with duty-free shopping privileges, this policy directly accommodates the tradition of pasalubong (bringing gifts), channeling remittances and consumption into the local economy with a deeply humane touch (Alonzo, 2022). Balikbayan is an instrument that celebrates the “return to the heart of the family,” making it the most effective soft policy in maintaining psychological bonds.
4) The F-4 Visa (South Korea) is a special residency visa for ethnic Koreans (including those who have renounced their citizenship) that grants broad economic freedom, but with certain restrictions on unskilled labor. South Korea's F-4 visa is an example of the most pragmatic and segmented diaspora policy (Chung, 2020). This special residency visa is intended exclusively for ethnic Koreans (jus sanguinis), but its use is geared towards addressing the demographic crisis and skilled labor shortage. The F-4 profile provides broad freedom of economic activity, meaning a Korean-American or Korean-Canadian diaspora could readily find work as an engineer or venture capitalist in Seoul. However, the restrictions on unskilled labor are a crucial filter. Empirically, these restrictions protect less skilled local Korean workers from competition. The F-4 is a highly targeted legal tool: Korea wants to leverage the human capital of its descendants to boost GDP, but remains cautious about creating social unrest at the lower end of the labor market (Sung, 2023). This policy is a legal manifestation of specific national needs, where ethnic factors are used as a means to achieve utilitarian goals.

4. Discussion

4.1. Comparison of Structure, Substance, and Legal Culture

The following is a comparative analysis of the four policies based on Friedman's framework:

Country	Lawrence M. Friedman's Legal System Theory		
	Legal Structure (Institutions & Procedures)	Legal Substance (Rules & Rights)	Legal Culture (Values & Attitudes)
Indonesia (Global Citizenship of Indonesia)	Directorate General of Immigration. Relying on a digital system (online submission). New procedures simplify the transfer of ITAS status to ITAP. Permanent Stay Permit (ITAP).	Long-term residency rights, limited work rights, limited property ownership (right of use). No political rights.	Ambivalent. The government is pro-diaspora, but the public still harbors strong protectionist/ nationalist sentiments. The issue of "foreign foreigners" remains politically sensitive.
India (Overseas Citizenship of India)	Ministry of Home Affairs (MHA) & Foreign Missions. A well-established and decentralized structure at Indian embassies worldwide.	Lifetime Visa. Economic rights almost equal to those of citizens, equal access to education as citizens. Restrictions on public office and agricultural land.	Very supportive. "Indian" identity transcends national borders. The diaspora is considered an economic hero. High sense of collective pride.
Filipina (Balikbayan Program)	Bureau of Immigration & Department of Tourism. Integrated directly at the airport arrival gate (very simple/automatic procedures).	Visa-Free for 1 Year. Long-term temporary stay rights, tax discounts, and certain land ownership rights for ex-WNF (separate law).	Family-centric. Culture honors those who migrate (Bagong Bayani/New Heroes). Very high social acceptance.
Korea Selatan (F-4 Visa)	Ministry of Justice. Tightly integrated with the national employment system and foreign resident registration.	Long-Term Residency. Extensive work permits (except for unskilled), access to national health insurance, and property rights.	Ethnocentric. Based on blood (strong Jus Sanguinis). Diaspora is accepted because of "one blood," but there is social friction with diaspora from developing countries.

Source: Author's data processing results

4.2. Anatomical Surgery of Global Citizenship of Indonesia (GCI) Through the Optics of Lawrence M. Friedman's Legal System

In assessing the effectiveness of the Global Citizenship of Indonesia (GCI) policy, a purely normative approach is inadequate. Law does not operate in a vacuum but rather within a complex social system (Mappasessu, 2025). Therefore, this study utilizes Lawrence M. Friedman's Legal System Theory as the primary analytical tool. Friedman postulates that a legal system is not simply a collection of written rules, but rather an organism consisting of three interrelated elements: Legal Structure, Legal Substance, and Legal Culture (Friedman L. M., 1969). The relevance of this theory in GCI studies lies in its ability to diagnose potential gaps between policy objectives (utilization of diaspora potential) and the reality of their implementation in the field.

1) Dimensions of Legal Structure: Institutions and Bureaucratic Modernization

Legal structure refers to the institutional framework that supports the operation of law, including how law enforcement agencies are organized, their jurisdiction, and the procedures they follow. In the context of the GCI, legal structure refers not only to the existence of the Directorate General of Immigration but also to the transformation of the public service mechanisms surrounding it. The GCI marks a shift in Indonesia's immigration structure from a conventional, bureaucratic and rigid model to a seamless, digital model.

The relevance of structural analysis is evident in the implementation of web-based application systems (such as Molina or e-Visa) designed to cut red tape. This new structure allows diaspora to apply for Permanent Stay Permits (ITAP) without having to go through the cumbersome face-to-face procedures that were previously a major obstacle. However, Friedman cautioned that a robust structure requires cross-sectoral coordination (Sumarna, 2022). The structural challenge of the GCI lies in the integration of Immigration with other ministries. The GCI's legal structure will be fragile if there is no clear procedural bridge between Immigration (which issues residence permits), the Ministry of Manpower (which regulates work permits), and the Ministry of Agrarian Affairs/BPN (which regulates land rights). Without this structural integration, the GCI will only succeed in granting entry permits but fail to facilitate the substantive activities of the diaspora within the country.

2) Legal Substance Dimension: Compromise of Sovereignty and Economic Needs

The second element, Legal Substance, relates to the actual rules, norms, and behavioral patterns outlined in legal products. In this study, the substance of the GCI reflects a "legal acrobatics" or clever compromise by the Indonesian government in dealing with the principle of single citizenship. The substance of the GCI, which grants ITAP for 5 or 10 years with the option of unlimited extensions, creates a hybrid status or quasi-citizenship. Theoretically, this substance provides the certainty of residency rights long desired by the diaspora. (Aguilar.Jr., 1999).

Friedman's analysis of this aspect highlights the quality of the regulation: is its substance sufficiently clear, fair, and enforceable? This is particularly relevant when comparing derivative rights. The current legal substance of GCI still leaves a gray area when compared to Overseas Citizenship of India (OCI). For example, the limitations on property ownership and employment rights for GCI holders have not been explicitly regulated and are not equal to those of Indonesian citizens in statutory regulations. This indicates that, in substance, Indonesian law remains half-hearted, opening the door as wide as possible while still limiting the scope of its activities. This legal substance reflects legislators' caution in safeguarding sovereignty, but on the other hand, it has the potential to reduce the policy's appeal to the target diaspora.

3) Dimensions of Legal Culture: Variables Determining Effectiveness

The third and most crucial element according to Friedman is Legal Culture, namely the attitudes, values, perceptions and habits of society and law enforcement officials towards the legal system (Friedman L. M., 1969). In the Indonesian context, legal culture is a determining factor in the success or failure of the GCI. The relevance of legal culture analysis in this study is profound because it touches on the sociological and psychological aspects of the nation.

There is a dualism in Indonesian legal culture regarding the diaspora. On the one hand, there is a culture of pragmatism at the elite level of government that views the diaspora as an economic asset (human capital). However, on the other hand, there is a culture of protectionism and traditional nationalism at the grassroots level and in some lower levels of the bureaucracy (Aji, 2024). Narratives of "foreigners" and "strangers" often trigger resistance. If the legal culture of society still views diaspora (especially those who have changed citizenship) as "outsiders" or even "traitors to nationalism," then the implementation of GCI will face social obstacles. Officials in the field may use their discretion to complicate the process, not because the rules prohibit it, but because of a lingering culture of suspicion.

This contrasts with India or the Philippines, where the culture of society celebrates the success of the diaspora as a source of national pride (Aikins, 2011), Indonesia is still in the process of building this trust. Substantively, India's OCI is the most comprehensive, approaching full citizenship status minus political rights. Indonesia's GCI is substantively strong in terms of residency, but still has gray areas regarding property ownership compared to Korea or India. Structurally, the Philippines has the simplest structure (automated access at airports), while Indonesia's GCI is moving towards digital modernization but still faces internal bureaucratic challenges. Therefore, Friedman teaches that legal reform (GCI) cannot stop at simply changing regulations (Substance) and creating online applications (Structure). Without social engineering to shift the Legal Culture from suspicion to acceptance, GCI policies risk sociological ineffectiveness.

Friedman's Legal System Theory provides a comprehensive diagnostic framework for GCI. This theory reveals that although Indonesia has successfully modernized its Structure (digitalization of immigration) and

liberalized its Substance (granting long-term ITAP), the greatest challenge lies in its Legal Culture. The gap between progressive regulations and conservative bureaucratic and societal mentalities is a key finding. Therefore, the success of GCI is not only measured by how many ITAPs are issued, but also by the extent to which these three components of the legal system can synergize to form a diaspora-friendly ecosystem.

4.3. Analysis of Effectiveness and Challenges Based on Friedman's Theory

A comparative analysis using Lawrence M. Friedman's Legal Systems Theory framework reveals the reality that the effectiveness of the current implementation of the Global Citizenship of Indonesia (GCI) policy is hampered by dissonance or inconsistency between the components of its legal system. Friedman teaches that law does not operate in a vacuum, it is a living organism that arises from the interaction between Structure, Substance, and Culture (Mappasessu, 2025). When compared with the empirical experiences of established diaspora countries like India, the Philippines, and South Korea, it becomes clear that Indonesia's challenges lie not merely in the formulation of regulatory texts, but rather in a legal ecosystem that is not yet fully ready to embrace the concept of quasi-citizenship.

First, and most crucially, is the challenge of legal culture, which is the main obstacle to the effectiveness of GCI. In Friedman's taxonomy, legal culture is the "fuel" that drives the legal engine (Friedman L. M., 1969). Herein lies the fundamental difference between Indonesia and its counterparts. India and the Philippines have successfully established legal cultures in which the diaspora is viewed as a "foreign exchange hero" or a strategic extension of the nation. The Bagong Bayani narrative in the Philippines, or the respect for Non-Resident Indians (NRIs) in India, has permeated from the political elite to the street level bureaucracy. In contrast, Indonesia still grapples with the legacy of colonial legal culture and highly territorial and protective post-independence nationalism.

Empirically, this phenomenon is evident in bureaucratic resistance on the ground. Although the legal substance of GCI through immigration regulations has provided a "red carpet" in the form of a Permanent Stay Permit (ITAP), the reality at the service counter is often different. A former Indonesian citizen holding a GCI who wishes to purchase property often faces a "wall" of negative discretion from National Land Agency (BPN) officials or local notaries. Local officials often still operate under a veiled xenophobic umbrella, viewing ex-Indonesians as "foreigners" who could potentially threaten agrarian sovereignty. This fear of foreign domination is a lingering residue of legal culture. As a result, progressive legal substance is blunted due to the lack of support from an inclusive bureaucratic culture. Without social engineering to shift the perception of "foreigners as threats" to "diaspora as partners," the GCI will be effective only on paper but hampered in implementation.

Second, there is an imbalance in the legal substance when comparing the GCI with South Korea's F-4 visa scheme. Friedman emphasized that legal substance must be clear and address the needs of the community (Febrian, 2020). South Korea designed the F-4 Visa with a highly pragmatic and utilitarian approach, they needed a workforce, so the diaspora was granted specific work rights. The substance is clear, regulating which sectors may and may not be entered, thus creating legal certainty.

In contrast, the substance of the GCI law in Indonesia still leaves a dangerous legal gray area, particularly regarding the right to work and business. The GCI currently focuses more on the immigration regime (residency rights) but has not been substantially harmonized with the employment regime. Empirically, this creates a legal trap for the diaspora. A former Indonesian professional holding a GCI ITAP may feel entitled to stay in Indonesia, but when they attempt to work or open a professional practice, they immediately run afoul of the Manpower Law, which is inherently restrictive towards Foreign Workers (TKA). Without a clear exception clause (lex specialis) in the legal substance of the GCI the diaspora only has the "right to observe" development in Indonesia, not the "right to participate" in it. This lack of specificity in substance reduces the investment value of GCI status because it does not offer real economic parity.

Third, the maturity of the legal structure is a significant differentiator between the GCI and Overseas Citizenship of India (OCI). The legal structure relates to institutions and consistency of enforcement (Friedman L. M., 1969). India has developed the OCI structure over decades, making it a well-established, decentralized institution with

strong institutional memory. The OCI card is widely recognized by various Indian institutions, from banks to universities, creating an integrated service ecosystem.

In contrast, the GCI legal structure in Indonesia is still in its embryonic stage. This policy relies heavily on executive decisions (Government Regulations or Ministerial Regulations) and lacks a solid structural framework across ministries. The classic problem of "sectoral ego" in Indonesia poses a structural threat to the GCI. Currently, there is no all-in-one system that truly integrates Immigration, Tax, Employment, and Banking data for GCI holders. As a result, a diaspora might be recognized as a resident by Immigration, but still considered a non-resident by the banking or tax systems. Furthermore, this structural vulnerability creates long-term uncertainty. Without a strengthened structure through a legal umbrella at the level of a law that binds all sectors, the GCI risks being perceived as a mere regime policy that can be revoked at any time. For diaspora seeking to move their assets back to Indonesia, this structural uncertainty is too costly a risk to take.

Friedman's theory demonstrates that the success of other countries is not a coincidence, but rather the result of the synergy of these three legal elements. Indonesia, through the GCI, has only succeeded in the stages of procedural modernization (part of the structure) and residence permit liberalization (part of the substance), but still lags far behind in building a supportive legal culture and harmonizing substance across sectors.

4.4. Diaspora Policy Mosaics: Tracing the Return in Four Asian Countries

In the modern globalization stage, national borders are becoming increasingly fluid, but the longing for the homeland remains an eternal constant (Adamson, 2006). This phenomenon is forcing countries to redefine their definition of "membership," seeking a compromise between rigid political sovereignty and the realities of citizen mobility. Through an empirical review, we can see how four Asian countries (Indonesia, India, the Philippines, and South Korea) have built different legal bridges to re-embrace their diaspora. These four policies, while sharing similar goals, exhibit unique "faces" and "souls," reflecting the national priorities and sociological characteristics of each nation.

As a newcomer to this arena, Global Citizenship of Indonesia (GCI) is a strategic response from the Indonesian government to address the concerns of former Indonesian citizens and their descendants. This policy's profile is strongly influenced by the nuances of "residency facilitation." Through the Permanent Stay Permit (ITAP) scheme, valid for five or ten years and renewable, the GCI offers legal certainty for those wishing to return to the archipelago.

Empirically, the GCI represents a significant administrative breakthrough. Previously, former Indonesian citizens had to contend with the tedious process of obtaining short-term visit visas or limited stay permits. With the GCI, the state seemingly rolls out the red carpet for the "right of residence", granting freedom to enter and exit Indonesia without repeated bureaucratic hurdles. However, upon closer examination, the GCI's primary focus remains on the living aspect. It is a modern immigration facility, a premium "entry ticket", but it has yet to fully address other substantial civil rights aspects in depth compared to more mature schemes like those in India.

Moving to South Asia, the Overseas Citizenship of India (OCI) presents a far more comprehensive policy profile, arguably the gold standard in global diaspora policy. The OCI is not simply a residence permit; it is a near-perfect quasi-citizenship status. India grants what is known as a "lifelong visa," a phrase that has had a profound psychological impact on the Indian diaspora. They no longer feel like guests in their own ancestral homeland.

The empirical strength of the OCI lies in the concept of "parity," or equality. OCI cardholders enjoy equal rights with National Indian Citizens (NRIs) in the economic, financial, and educational spheres. They can open local bank accounts, attend schools at domestic rates, and conduct business without the restrictions typically imposed on foreigners. The only interesting and very wise restriction is the ban on agricultural land ownership. This demonstrates India's pragmatism: opening the door to investment as wide as possible while still protecting the agrarian assets that are the lifeblood of its local farmers. The OCI is a testament to how a country can be so open yet protective of a vital sector. (Abdulloeva, 2023).

Meanwhile, the Philippines offers a very different approach through its Balikbayan Program. While India's OCI is about economic integration, Balikbayan is about "touching the heart" and family ties. The term Balikbayan itself, meaning "returning home," reflects the spirit of this policy. (Alonzo, 2022). This policy profile focuses not on complex investment instruments, but rather on travel incentives that facilitate family reunions.

The one-year visa-free facility for former Filipino citizens and their families is a highly humanitarian feature. It provides ample time for the diaspora to reconnect with their cultural roots without administrative pressure. Coupled with the privilege of duty-free shopping, this policy accommodates the tradition of Pasalubong (bringing souvenirs), an important cultural ritual in the Philippines. This policy recognizes that the strength of the Filipino diaspora lies in emotional ties and family remittances, so its legal instruments are designed to nurture these bonds.

Finally, we see South Korea's highly functional approach with the F-4 visa. This policy profile reflects the character of a developed country facing a demographic crisis (Sohoon Lee, 2017). The F-4 visa for overseas Koreans is a sophisticated labor market instrument. South Korea uses the principle of jus sanguinis (bloodline) to recall human resources.

Empirically, the F-4 visa provides extensive freedom of economic activity, allowing holders to work in a variety of professional sectors. However, there is a very specific limitation: a ban on working in unskilled labor. This is where South Korea's ingenuity and pragmatism lie. They want the diaspora to return to fill the skilled and professional labor gap, but limit access to blue-collar jobs to protect low-educated local workers from competition. The F-4 visa, therefore, is not simply a matter of ethnic identity, but a socio-economic engineering tool to maintain national labor market stability.

These four profiles represent a broad policy spectrum. Indonesia's GCI is currently at a fundamental stage, guaranteeing residency security. Meanwhile, India has made significant strides toward full economic integration, the Philippines is strengthening emotional-cultural ties, and South Korea is leveraging the diaspora as a measurable demographic solution. Each policy is a reflection of how the country views its “prodigal sons” whether as honored guests, close relatives, economic partners, or family returning home.

5. Conclusion

A comparative exploration of diaspora policies in four Asian countries through the lens of Lawrence M. Friedman's Legal Systems Theory leads us to a fundamental conclusion, that law does not operate in a vacuum, but rather lives and breathes within the dynamics of their societies. This study reveals significant variations in how India, the Philippines, South Korea, and Indonesia embrace their wandering descendants.

India and the Philippines stand out as perfect examples where legal systems work in near-perfect harmony. In both countries, well-established bureaucratic structures, affirmative legal substance, and inclusive societal cultures synergize to create a diaspora-friendly ecosystem. The communities there no longer view diaspora as people who "left" their homeland, but rather as strategic extensions of the nation on the global stage. Meanwhile, South Korea teaches us about the effectiveness of pragmatism; they designed a highly functional legal substance, prioritizing economic and labor market needs in formulating their visa policies.

What about Indonesia? The findings of this study indicate that Indonesia, through its Global Citizenship of Indonesia (GCI) policy, has indeed made a progressive leap worthy of appreciation. Structurally and substantively, the GCI demonstrates the government's courage in breaking the rigidity of the old immigration regime through digital modernization and the granting of Permanent Stay Permits (ITAP). However, this leap has landed on uneven ground. The most striking dissonance occurs in the aspect of Legal Culture. The GCI's effectiveness remains hampered by a thick wall of social doubt and a legacy of bureaucratic paradigms. In many areas of public service, the diaspora is still viewed with suspicion as "foreign citizens," rather than as "distant relatives" returning home with potential. The paradigm that "foreigners are a threat" remains deeply entrenched, hampering the good intentions embodied in the GCI regulations.

Therefore, to prevent the GCI from becoming merely a soulless administrative document, strategic steps are needed that go beyond simply revising articles. First, and most urgently, is Legal Culture Engineering. The government needs to undertake massive cultural work to change the nation's mindset. Socialization must not stop at the diaspora abroad, but rather target the heart of the domestic bureaucracy and the wider community. The narrative must shift, from fear of foreign domination to optimism about collaboration with the diaspora as a national asset. We need to build a collective awareness that embracing the diaspora is a patriotic act in the global era. Second, real Substantial Harmonization is needed. The GCI cannot stand alone as a mere immigration product. It must dialogue with other sectors. GCI regulations need to be aligned with the Employment and Agrarian Laws to provide certainty of economic rights. We need to emulate India's courage in providing clarity on rights, what is allowed and what is not allowed, so that the diaspora has a solid legal footing to contribute, not just empty promises. Finally, Structural Strengthening is absolutely necessary through service integration. Sectoral egos must be dismantled for the sake of humane services. GCI services must be able to unite various ministries under one integrated digital roof. Only in this way can bureaucratic friction be reduced, and the diaspora can feel the presence of a state that serves, not hinders.

Ultimately, the GCI is Indonesia's bet on securing its future amidst global competition. Its success will not be determined by how sophisticated its digital systems are, but by how open the nation is to welcoming back those who have left.

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