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Review of Dog Population Management Legislation in Sri Lanka: History, Circumstances, Role of Local Authorities and Present Scenario

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Abstract
Dogs are the most abundant carnivore animal on the planet. Therefore, population management strategies are practiced in many countries. In the past, dogs lived with natives of Sri Lanka in isolated villages and were later exposed out with the development of infrastructure specially roads for plantation activities during the British era. The enactment of legislation and exercising its provisions to manage the dog population was initiated by British rulers in Sri Lanka. First, the dog destruction ordinance was enacted in 1842. Subsequently, the dog taxation ordinance was enacted in 1848. However, dog taxation ordinance was repealed in 1849. Afterwards, dog taxation including dog seizing and destruction were incorporated to local authority ordinances in the latter part of 19th century after establishment of Municipal councils, local boards and local boards for health and existed until the enactment of dog registration ordinance, No. 25 of 1901. The updating of this ordinance was carried out from time to time according to requirements of the provisions to address the issues until 1961. Today, most of the provisions including penalties are not adequate to address the issues arising from dog owners and the public since it has not been revised for 60 years. Therefore, it is a vital and current need to revise the dog registration ordinance to strengthen the legal side of the dog population management activities.

Keywords: Dog Taxation, Dog Registration Ordinance, Dog Destruction Ordinance

1. Introduction

Dogs are the most abundant carnivore animal on the planet (Belo et al., 2017). Therefore, the dog population management is being practiced through different strategies in many parts of the world. Out of them, enacting of legislation and exercising provisions of the legislation is one of the strategies broadly applied in many countries. OIE (World organization for animal health) also states the importance of legislation for the purpose of humane dog population management (OIE, 2022). This article reviews the legislation enacted relating to dogs in the

past, the legislation being exercised presently and its practical relevance to the country and the reasons for enactment of such legislation in Sri Lanka in the past.

1.1. History - pre - colonial period

Under this review, the history is discussed under two phases: pre-colonial period and colonial period up to 1948. The information related to any taxes or legislation on dogs was very limited prior to British invasion in Sri Lanka. After native people of the country embraced Buddhist philosophy in 3rd century, animal killing and hunting was banned by adopting "Magatha rule". Mainly five kings namely king Amanda Gamini, Voharika Tissa, Sila- kala, Agha Bodhi iv and king kassapa III- king of Anuradhapura in 8th century were known to adopt the "Magatha rule" (Sean, 2016) . Therefore, it is hard to assume that a practice of massive destruction of animals including dogs used to control the population prior to colonial invasion.

1.2. History - Colonial era

Most of the documented incidences or nuisances relating to dogs were explained during the period of British era even colonial period commenced in 1505. One author had mentioned that Sri Lanka was a land of villages in 1797 (Mendis, 1952). These villages were usually in the places such as valleys where plenty of water could be obtained for the cultivation and the rest of the country was generally covered with jungles (Mendis, 1952, p. 31). Bennet (1836) had mentioned that presence of innumerable number of wild beasts like leopards, bears, sloth, elephants in the country. Hansard - UK parliament (1849, August 31, p. 724) mentioned that the natives of Ceylon were obliged to keep dogs to protect them from these wild beasts. Some authors named our local dog as "pariah" dog in their books (Bennet, 1843, p. 108) and described the nature of native villages and natives as "Native villages swarm with pariah dogs, Sinhalese will never destroy any of the progeny of these mongerals" (Bennet, 1843, p. 108). The dogs were described as good watchdogs (Hansard UK, 1849, p. 974) and scavengers (Cordiner, 1807, p.203). Author, Cordiner (1807, June 1, p. 182), also stated that the reluctance of natives to deprive life of any animal according to principals of the religion in this country. However, these dogs were considered as one of the greatest nuisances in the country (Bennet, 1843, p. 108; Hansard UK, 1849, p. 974) during the British era by the British rulers.

Figure 1: A picture of dogs at the execution place for prisoners in 17th centenary. Extracted from book (Nox, 1681, p. 39).

2. How dogs became nuisance

The social, economic, agricultural and administrative changes were initiated in later part of 18th century after ruling of the country went into the hands of the British rulers. The British had consolidated their position in Sri Lanka by 1830s and their interest was more on economic profitability and administration unification of the country (Britannica, n.d.). In order to achieve this the British had started experimenting with variety of commercial crops such as coffee. Therefore, the isolation of villages reduced and exposure of villages occurred due to construction of roads and rail way to fulfill the needs of coffee planters (Mendis, 1952, p.28). After development of infrastructure, the dogs who lived with villagers in isolated areas gradually exposed out as the construction of roads breaching the isolation of self- contained villages to certain extent (Mendis, 1952, p.28).

3. Establishment of legislation council and Local authorities

The ancient administration system prevailing in the country at the time of British invasion was the basic village-based administration known as "Village council" and it was abolished by British rulers in 1818 and reintroduced in 1856 ("Local Government in Sri," n.d.). There were lot of administrative reforms happened after establishment of legislative body of the country, legislative council in 1833 under the recommendations of Colebrooke-Cameron- Commission (Britannica, n.d.) The major changes were enactment of legislation such as Municipal council ordinance No.17 of 1865, village community's ordinance No. 26 of 1891, Sanitary boards ordinance No. 18 of 1892 and Local Boards ordinance No. 13 of 1898 (Mendis, 1952). The local government institutions were first established in major towns, Colombo and Kandy (Ministry of justice, n.d.) and Galle (Galle Municipal Council, n.d.) in 1865 and 1866 respectively. Subsequently, sanitary boards under the ordinance of No. 18 of 1892 and local boards of health and improvement under the ordinance of No. 13 of 1898 (Authority, 1898, August 12; "Local government in Sri Lanka," n.d.) were established and spread outwards to the rural areas for smaller towns and larger towns respectively (Jones, 2004, pp. 56-57). The local boards ordinance was a complete replication of public health act in UK (Jones, 2004, pp. 57), in terms of wording and phrases on many aspects. One major consequence of establishment of local institutions was transferring the responsibility of local administration to local residents ("Local Government in Sri Lanka," n.d.). The major purpose of establishing local authority institutions was providing public health services and other local services such as roads, water supply and, common amenities (Mendis, 1952).

4. Legislation relating to dogs - destruction

After establishment of local authorities, the legislation council had also enacted ordinances under different titles in order to carry on effective and efficient administration and also to abate the issues while providing services. The disease, Rabies due to dogs was seen as a major issue by the Governor, Vincent Torrinton during his term. In 1942 the Governor, Viscount Torrington ("Governors," n.d.) enacted first legislation relating to dogs known as No. 9 of 1842 "For the prevention of mischief by dogs" with the advice and consent of the legislative council (Ceylon, 1854, pp.134-135). According to this enactment, the governor had powers to order destruction of dogs who were not being led or carried in any part of the country within at least 24 hours' notice publishing in the Government gazette or by beat of tom-tom.

Further review of this enactment, the section 3 showed that any person who had right to kill any dog who ferociously fly, attack, not being securely tied up or confined and also reasonable ground to believe to be mad. The section 4 of this enactment revealed that if any complaint made regarding any dog being dangerous before district court, the district judge was the one issued order to the owner to prevent the risk of future danger (Ceylon, 1854, pp. 134-135). Nevertheless, if the same complaint regarding the same dog happened again, the District judge can order an officer of police for destruction of such dog in addition to a fine of one pound.

5. Legislation for taxation

In 1848 an ordinance known as "To require the owner of dog to take out license for the same" (No. 9 of 1848) was passed by the legislation council (Ceylon, 1853, p. 386) with the intention of keep down the number of dogs

in the island. According to this ordinance any person to have in his custody or possession or to keep or permit to be kept or to remain in his houses or premises any dog or dogs had to obtain a license. Therefore, any person who violated this rule became guilty of an offence and also conviction of fine not exceeding ten shillings. The dog license fee was one shilling on stamp and it was valid till 31st of December. During this period Sterling pound and shillings were the currency used for monetary transactions in the country ("Colombo -Pound sterling-1827," n.d.). The section two of this ordinance revealed that the Government agent or Assistant government agent of the province where the person who wish to obtain the license was the authorized person to issue the license. Another important fact pointed out in clause 5 of the ordinance was that any superintendent of police or any inspector of police authorized in writing by the superintendent of police or any constable or police officer authorized in writing by government agent or assistant government had the powers to check the residences for license. However, the specificity noted in clause six was that if any authorized officer failing to do his duty, he too subjected to guilty of an offence and conviction of fine not exceeding 5 pounds.

6. Repealing of legislation - No.9 of 1848

The natives were also burdened with the burden of contemporarily imposed different taxes except dog tax in 1848: Firearm tax, pole tax, boats and carriages tax, Palanquin and other carriages tax, retail traders tax, road tax etc. (Bandarage, 1982, p.15). The expected revenue from dog taxation was 2635s (Bandarage, 1982, p.15). Therefore, about 4000 people presented a petition against taxes on 6th July 1848 (Mendis, 1952, p. 87) and furthermore the Sinhalese peasantry revolted against these taxes on 26th July 1848. This revolt was known as "Mathale rebellion" ("Memorial of crushing the 1848 Matale rebellion", n.d). However, this ordinance was repealed in 1849 due to petitions and grievances from native people of the country ("Hansard's parliamentary debates", 1849, pp.997-998).

7. Dog taxation by Municipal councils, Sanitary boards and local boards of health and improvement

The ordinance, No. 13 of 1898 local boards of health and improvement was enacted by the governor with the advice and consent of the legislative council in 1898 (Authority, 1898, August 12) and it was operated from the 1st of September 1898. The salient feature of this ordinance was that the provisions of this ordinance were broadened by in-cooperating most of the provisions of unrepealed ordinances and repealed ordinances (Authority, 1898, August 12) for the purpose of strengthening and extending the system (Wright, 199). The chapter V of this ordinance was named as "Tax on dogs" and this section has described all the enacted provisions relating to the dog rearing by the owners. Accordingly, any dog raised within the limits of local board was liable for the payment of fifty cents before March 1 in each year and it was due on January 1 each year. Apart from that, the occupier of every house within the town should had to furnish the number of dogs within that house with the names of owners to the authorized officer by the board on or before February 15 in each year. On payment of tax, the board had to furnish a stamped collar by charging twenty-five cents to be worn by such dog (Authority, 1898, August 12). According to clause five of the chapter v, any dog without wearing a duly stamped collar could be seized and the claimant had to pay fifty cents together with six cents per diem for every day for the period under seizure. The destruction of unclaimed dogs had taken place after expiration of forty - eight hours from the time of seizure. In respect of any person failing to pay the tax within seven days of notification, the chairman of the board had powers to report to police courts to recover it as sum of fine imposed by the courts. The maximum levying for a dog under the section 129 of ordinance No. 07 of 1887 was Rs. 1.50 (Authority, January 25,1901).

8. Dog registration ordinance

After repealing of the ordinance, No. 9 of 1848 in 1849, the ordinance for registration of dogs was enacted again approximately after 53 years in 1901 (Authority, 1902). The provision of dog taxation in cooperated in other ordinances was repealed after enacting the ordinance for registration of dogs. This ordinance was also amended periodically several times up to 1961 such as No.20 of 1915, No. 3 of 1920, No. 21 of 1921, No. 26 of 1938, No. 61 of 1939, No. 12 of 1945, No. 23 of 1946, No. 29 of 1947 and No. 60 of 1961.

Table 1: The repealed sections of other ordinances after enactment of dog registration ordinance No. 25 of 1901.

No. and year	Ordinance	Extent of repealed
7 of 1887	Municipal Council ordinance	Section 129
19 of 1896	An ordinance to declare certain by-laws to be in forced within the Municipality of Kandy.	Chapter 9
20 of 1896	The Nuwara Eliya board of improvement ordinance 1896	Part 5 and schedule A related to dogs.
13 of 1898	The local boards ordinance 1898	Part vi and schedule D (ordinance 02 of 1901) Chapter ix related to dogs

Source: Extracted from No.25 of 1901 the dog registration ordinance published in Ceylon Government gazette No. 5,827. on 1902.01.10

9. Present scenario – Dog registration ordinance

Before the independence, penultimate update / amendment for dog registration ordinance was done in 1947 and this ordinance was updated on 8 occasions between 1901 and 1947. However, this ordinance was updated only once that was in 1961 (approximately 60 years back) during the period from 1947 to date. Therefore, lack of proper amendments in terms of meeting the current need of the country on management of free- roaming owned dogs are the major drawback in legislation of the country. Apart from that, the penalties also do not match with today's currency value. Taking steps to revise the penalties in order to be compatible with the current currency values is a crucial requirement in the process of stabilizing the law related to responsible dog ownership in the country. The dog destruction was stopped island wide in 2006 after "no kill" policy was imposed (Harischandra et al., 2016). Subsequently, surgical sterilization of dogs is the only strategy being practiced throughout the country. Nevertheless, the clauses of the dog registration ordinance is being not revised accordingly even more than 15 years has already passed from 2006.

The formation of by- laws under the provisions of section 5 of the dog registration ordinance, No. 60 of 1961 could address common public issues like dog abandonment on roads and public places, public nuisances due to dog owners' irresponsible practices on dog keeping etc. Nevertheless, such by-laws have been not formulated or enforced in the country and it is a major issue in the process of taking actions on public complaints against irresponsible dog owners.

OIE Terrestrial Code recommends dog population management as an integral part of rabies control programs (Ahamad et al., 2021; World Health organization, 2022) and also OIE's terrestrial code states that an importance of legislation in order to manage stray dog population. Therefore, some countries have formulated legislation in order to improve community safety, encourage responsible dog ownership and abate nuisance behaviour of dogs and dog owners ("Dog registration in the ACT," n.d.). In most of the countries, the local government institutions of the respective area is responsible for enforcing the Acts related to dogs. Some information revealed that the dog registration fee in other countries is categorized under several schemes: senior citizens, pensioners, lifetime registration, unsterilized dogs, sterilized dogs etc. ("Dog registration in the ACT," n.d.). However, such categorization is not included in the currently enforced ordinance No. 60 of 1961 in Sri Lanka.

The Ministry of provincial councils and local government planned to amend this dog registration ordinance (No. 60 of 1961) by adding more provisions and imposing fine not exceeding Rs. 10 000.00 for the people who fails to register their dogs in 2016 (Rotaractlawfaculty,2020). However, this amendment never saw light of the day (Rotaractlawfaculty,2020). The dog registration ordinance of Sri Lanka urgently needs to be revised in order to get the reciprocal effect of the dog sterilization programs conducted in the country.

Table 2: Comparison of dog registration fee and the relevant penalties in 1901 and today

Penalties	No. 25 of 1901	No. 60 of 1961 (Current values)
Annual dog Registration fee	Annual registration fee not exceeding Rs. 1.50 Including town Nuwara Eliya (outside town Fifty cents).	Within the limits of a town (Municipal council, urban council, town council) or village area brought under the operation of village council Rs. 5.00 for each dog . twenty five cents for each dog outside the such limits.
Penalties	Rs. 20 for not duly registered dog. Fifty cents for each dog if not obtain the license after such order. Not exceeding Rs. 20 for breaching of any by-law made under the provisions of section 5, Default of payment simple imprisonment not exceeding 2 weeks.	Rs. 20 for not duly registered dog. Fifty cents for each dog if not obtain the license after such order. Not exceeding Rs. 20.00 for breaching of any by-law made under the provisions of section 4. Default of payment simple imprisonment not exceeding 2 weeks.
Production of certificate	In case of refuse to produce – fine not exceeding Rs. 5.00	In case of refuse to produce – fine not exceeding Rs. 5.00

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Comparison of Chinese and Indonesian Legal Cultures in Contract Making

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Abstract
This article discusses the comparison of legal culture between the Chinese and Indonesian people in making contracts. A comparison of legal culture is carried out by comparing the legal culture of the Chinese and Indonesian people in complying with contract law based on the Chinese/Chinese Civil Code and Indonesian Civil Code as well as other related regulations in the field of contracting. Contract law in China is known as the Contract Law of the People's Republic of China, the people are called Chinese. However, on January 1, 2021, the Contract Law in China has been declared revoked and is no longer valid because a new law known as the Chinese Civil Code has been promulgated. Meanwhile, contract law in Indonesia is also known as the Civil Code, which was obtained from the colonial era government, and is still in force today. Meanwhile, in the Netherlands, only the Civil Code used previously has been updated. The problem raised is how to compare the legal culture of the Chinese and Indonesian people in making contracts. The method used is normative legal research with a comparative approach. The analytical knife used is the general theory of contract law in positive law. Through the analysis carried out, the comparison factors were obtained as the basis for the comparison of making contracts by the Chinese and Indonesian people. From the results of this comparison, the differences and similarities of contract law that apply in Indonesia and China are obtained.

Keywords: Legal Culture, Contract, Chinese, Indonesian

1. Introduction

Indonesia cannot ignore the influence of economic and business relations between countries that are mutually dependent and mutually influence the current contract law, the occurrence of patterns of social relations, and today's political economy can cause new problems in the contractual relationship between the parties (Kusmiati, 2017).

It is undeniable that the trade war between China and the United States has had a wide impact on the international community. One of the impacts is that Indonesia's trade performance with China experienced a deficit of US$. 48 billion in January – May 2019 period. This figure increased from the January – May 2018 deficit of US$. 8.11 billion. It was noted that the export value from January to May 2019 was only US$. 9.55 billion, even though exports for the same period in 2017, reached US$. 10.25 billion. This means that there is a decline in exports reaching US$. 700 million in 5 (five) months. Meanwhile, the decline in imports from China to Indonesia was lower, only around US$. 330 million US$. 18.36 billion to US$. 18.03 billion (Lubis, 2021). This paper does not discuss the relationship between China and Indonesia but only wants to describe why China is currently developing rapidly in its economy.

In the economy, of course, there is a relationship between one party and another. The point is that there is a symbiotic mutualism that brings mutual benefits. This mutually beneficial relationship is regulated in an agreement or contract. The law of agreement or contract in each country is certainly different. However, there are similarities, namely the principles of applicable law.

In Indonesia, there is no legal regulation that specifically regulates international trade contracts. The existing arrangements only refer to the agreement of the parties based on the legal rules in the Civil Code (KUH.Perdata), Herziene Indlansche Reglement (HIR) or Reglement Buitengewesten (R.Bg), Indonesian Trade Law, Law Consumer Protection, International Private Law and Unidroit Principles of International Commercial Contracts (UPICC) only (Soenardi, 2004: 35).

While in China, using: General Principles of China's Civil Law, China's Product Quality Act, China's Consumer Protection Act, China's Contract Law Act, China's Foreign Trade Law, Unlawful Act China, United Nations Vienna Convention on Contracts for the International Sale of Goods 1980 (CISG), Unification of Private Law (UNIDROIT), International Commercial Terms (INCOTERMS), and Uniform and Practice for Documentary Credits (UCP) (Indahwati, 2020: 14).

The definition of a contract or agreement according to the agreement law in Indonesia can be interpreted as an act between one or more parties who bind themselves to one or more other parties. Article 1313 of the Civil Code, states: "*an agreement is an act by which one or more people bind themselves to an act by which one or more people bind themselves to one or more other people*" (Article 1313 of the Civil Code). Meanwhile, the definition of a contract according to the existing civil law institutions in China a contract is defined as an agreement regarding the establishment, change, or termination of a civil relationship between another person, legal entity, or organization as a subject with the same status. Article 2 Contract Law of the People's Republic of China, states: "*For the purpose of this law, a contract means an agreement on the establishment, alteration or termination of the civil right-obligation relationship between natural persons, legal persons or other organization as the subject with equal status*" (Article 2 Contract Law of the People's Republic of China).

In making contracts in Indonesia, it is known that there are conditions for the validity of the agreement. The conditions for the validity of the agreement are regulated in Article 1320 of the Civil Code, consisting of an agreement between the parties; capable of action; a certain thing; and halal cause. Meanwhile, the conditions for the validity of the agreement are based on the Chinese Civil Code, namely: an agreement between civil subjects; binding on the parties; made in writing and orally (Civil Code of the People's Republic of China, Book III: Contracts, Part One General Provisions).

The analysis was carried out using the theory of legal certainty proposed by Gustav Radbruch, in his book "*Rechtsphilosophie*", who stated that: "*Nicht dargetan ist der unbedingte Vorrang der durch das positive Recht erfüllten Forderung der Rechtssicherheit vor den von ihm viellect unerfüllungkeunden glass Forderung der Rechtssicherheit*". Radbruch's view is generally interpreted that legal certainty does not always have to be given priority for its fulfillment in every positive legal system, as if legal certainty must exist first, then justice and benefit (Radbruch *in.* Susanto, 2014).

In the context of making contracts based on the perspective of the legal culture of the community, there are basic differences and similarities. Whether the differences and similarities in the context of contracting are examined from the perspective of legal culture. Starting from these legal issues, the object of the study is focused on how to compare the legal culture of the Chinese and Indonesian people in making contracts. The aim is to find out and analyze the comparative legal culture, where the differences and similarities lie.

2. Research methods

The research method used is normative legal research with descriptive analysis. A comparative approach is taken to understand contracting in China and Indonesia. A statutory approach is also carried out to examine the provisions governing the making of contracts from a civil law perspective. The statutory regulations used for comparison are the Chinese Civil Code which was only enacted on January 1, 2021, with the Indonesian Civil Code, a product of the colonial era.

3. Research Results and Discussion

3.1. China's Civil Code (China): Civil Code, Part III Contracts

China's legal system, developed according to its historical path, is “apart” from the development of the Anglo-Saxon (Anglo-American) legal system, as well as the civil law system (European Continental). Although at a certain point there appears to be an intersection between these legal systems, the Chinese legal system is built on a foundation of legal sources, principles, institutions, and institutions that are different from other legal systems in the world, so that it appears as a separate legal system (Wardiono, 2012).

There are more than 200 Chinese laws, and the main ones include the Constitution; Civil code; Criminal law; Company law; Securities Law; Trademark Law; Patent law; Copyright Law; Civil Procedure Law; Criminal Procedure Law; Administrative Procedure Law; Election Laws at the National People's Congress and Local People's Congress; Legislation Law. China's laws and regulations can be divided into four levels in terms of effectiveness in a decreasing hierarchy: 1) Constitution; 2) Law; 3) Administrative regulations, judicial interpretations, and military regulations; 4) Local laws and regulations, departmental regulations. In addition to the constitution and more than 200 laws, there are thousands of administrative regulations, judicial interpretations, military regulations, local by-laws, local by-laws, and departmental regulations (China Justice Observer (CJO), URL, 2022).

China announced its first civil code in May 2020, which includes 7 (seven) sections, namely: General Principles, True Rights, Contracts, Personality Rights, Marriage and Family, Succession, Liability for Torture, and Additional Provisions. The contract is the third part (China Justice Observer (CJO), URL, 2022). Previously, China had passed the Contract Act separately. After the entry into force of the Civil Code, the Contract Law will be abolished on January 1, 2021, when the Civil Code comes into force (China Justice Observer (CJO), URL, 2022).

“Part III Contract”, has a total of 29 chapters, which are divided into 3 (three) subsections: General Provisions, General Contracts, and Quasi Contracts. “General Terms”, provides conclusions, effectiveness, performance, changes, termination, and liability for breach of contract. “General Contracts”, provides 18 general contracts, such as sales contracts, lease contracts, technology contracts, and partnership contracts. “Quasi-contract”, provides for two conditions: negotiorum gestio and unfair enrichment (China Justice Observer (CJO), URL, 2022).

There are several important points contained in Part III of the Chinese Civil Code Contract, as follows:

1. “*Contracts and Applicable Laws*

   A contract is an agreement between a civil subject to establish, modify, and terminate a civil law relationship. Where the contract does not fall into one of the types provided for by the "Typical Contract" of the "Part III Contract", the "General Terms" may apply to the contract and the relevant provisions of the "Typical Contract" or similar contract-related provisions of other laws. can be referenced.

The parties may agree to the applicable contract law according to the law chosen. However, Chinese law will apply to contracts to be fulfilled on Chinese territory for Sino-Foreign equity joint ventures, Sino-foreign contract joint ventures, and Sino-Foreign cooperation in exploring and exploiting natural resources.

2. Conclusion and Contract Effectiveness

The parties may, when entering into a contract, use written, oral or other forms. "Written form", means any form that provides the information contained in a contract that can be reproduced in a tangible form, such as a written agreement, letter, telegram, telex, or facsimile. Any electronic data that can show, in tangible form, the specified content via electronic data exchange or email and which can be accessed for reference and use at any time will be considered as written form.
If the parties sign a contract in the form of a contract instrument, the contract is made when both parties put their signature, fingerprint, or seal. A legally formed contract will be effective at the time of its formation unless otherwise provided by law or agreed upon by the parties.

3. Termination of Contract

The parties may agree on the cause of termination of the contract by either party. If the cause occurs, the party who has the right to terminate the contract may terminate the contract. In addition, in any of the following circumstances, the contract may be unilaterally dissolved, even though the parties have not agreed to it, namely:

(1) It is impossible to achieve the objectives of the contract due to force majeure;
(2) Each party expressly declares, or demonstrates through its conduct, that it will not pay its principal debt before the end of the performance period;
(3) Any party that delays payment of its debts and fails to do the same within a reasonable time after being asked to do so;
(4) Each party delays the performance of its debts, or commits other violations, making it impossible to achieve the objectives of the contract;
(5) Other circumstances determined by law.

4. Legal and Agreed Obligations For Contract Breach

(1) Legal Liability for Breach of Contract

If any party fails to perform its contractual obligations or its performance is not in line with the agreement, that party will bear the responsibility for breach of contract such as continuing performance, taking corrective action, or compensating for losses.

(2) Agreed Damage Or Damage

In addition to legal obligations for breach of contract, the parties may also agree that when one party breaches the contract, that party must pay a certain amount of damages to the other party according to the seriousness of the breach, and may also agree. on the method of calculating the amount of loss caused by the breach of contract.
If the agreed amount of compensation is lower than the loss caused by the breach of contract, the court or arbitration institution may increase the amount of liquidated compensation at the request of the parties; if the agreed amount of compensation is excessively higher than the actual loss, the court or arbitration institution may reduce it at the request of the parties" (China Justice Observer (CJO), URL, 2022).

3.2. Chinese Legal Culture in Contract Making

The business relationships carried out by the Chinese people of Benteng Kampung Sewan are generally non-contractual. A non-contractual business relationship is a business relationship that is carried out without using an agreement in the sense of a modern business contract that uses the clauses in the contract explicitly and in detail. The business carried out by these small traders is based on agreement and mutual trust between the traders. These traders have been carrying out trading methods without contracts for generations (Wasitaatmadja, 2020: 164).

Non-contractual business relationships are important to study because this kind of trading system can perpetuate trade between traders. Respect for what is agreed upon in the form of taking goods that must be paid for is firmly held, but full of flexibility, in the sense that the payment for the goods may be delayed, as long as the debtor continues to pay. The sanction for the delay is only that he is no longer allowed to take the goods until the previous debt is paid off. Respect for other people's property rights, in the form of goods taken, is still recognized. This causes trade between traders to be lasting (Wasitaatmadja, 2020: 164).

The small traders consider that the records of the number of goods and their prices made by the traders are evidence of the trade relationship, like a modern contract that binds the parties. Non-compliance to pay the price of the goods taken may occur, but the settlement is always carried out by deliberation. If the obligation to pay is not fulfilled, then the trade relationship ends and the debtor will no longer be trusted. However, if the debtor pays later, the buying and selling relationship will resume. Buyer and seller relationships are generally based on mutual trust, because there is a family relationship or have known each other for a long time in trading or other relationships; and because they need each other (Wasitaatmadja, 2020: 164-165).

Based on this description, the legal culture of the Chinese community in making contracts to trade is more of a non-contractual relationship. It is based on the foundation of mutual trust in trading and is carried out from generation to generation. If there is a dispute, every Chinese person must make every effort to avoid dispute, because the dispute can damage the honor and disrupt public order. Thus, every member of the community must always strive for reconciliation and seek conciliatory solutions. If the reconciliation process does not produce anything, then the dispute is legally resolved, as the ultimate tool (Wardiono, 2012: 73).

3.3. Indonesian Civil Law Institution

The agreement signed by the parties is the source of the engagement and is binding on both parties or who signed it from the date the agreement was signed. The agreements discussed in this study are those intended in Book III of the Civil Code. In the Civil Code, the formulation of the engagement is written in Article 1233 of the Civil Code which states that: "*every engagement is born either by agreement or by law*". Based on the article, it can be said that the engagement occurs due to an agreement between the two parties or by several parties. "*The engagement can also occur not of its own volition but because it was born by law*" (Hutabarat, 2010: 24).

> The word "agreement" (*verbintenis*) has a broader meaning than "agreement". According to R. Subekti: "*Book III BW entitled Regarding Engagement, engagement (verbintenis) has a broader meaning than the word "agreement" because in book III it is also regulated regarding legal relationships that do not originate from an agreement or agreement, namely concerning engagements arising from unlawful acts (onrechtmatige daad) and concerning engagements arising from the management of other people's interests that are not based on consent (zaakwaarneming). But most of Book III is devoted to engagements arising from agreements or agreements. As for what is meant by an engagement in Book III BW, it is a legal relationship (regarding property assets) between two people who give rights. One person demands something from another, while the other person is obliged to comply with the demands. Book II regulates legal relations between people and people (individual rights), although the object may also be an object. Because the nature of the law contained in Book III is always in the form of a demand, the contents of Book III are also called debt law. The party entitled to sue is called the debtor or creditor, while the party obliged to fulfill the claim is called the debtor or debtor. As for the goods, something that can be sued is called an achievement, which according to the law can be in the form of 1) Submitting an item; 2) Doing an action; 3) Not doing an action. although perhaps the object is also an object. Because the nature of the law contained in Book III is always in the form of a demand, the contents of Book III are also called debt law. The party entitled to sue is called the debtor or creditor, while the party obliged to fulfill the claim is called the debtor or debtor. As for the goods, something that can be sued is called an achievement, which according to the law can be in the form of 1) Submitting an item; 2) Doing an action; 3) Not doing an action. although perhaps the object is also an object. Because the nature of the law contained in Book III is always in the form of a demand, the contents of Book III are also called debt law. The party entitled to sue is called the debtor or creditor, while the party obliged to fulfill the claim is called the debtor or debtor. As for the goods, something that can be sued is called an achievement, which*

> *according to the law can be in the form of 1) Submitting an item; 2) Doing an action; 3) Not doing an action. While the party who is obliged to fulfill the demands is called the debtor or debtor. As for the goods, something that can be sued is called an achievement, which according to the law can be in the form of 1) Submitting an item; 2) Doing an action; 3) Not doing an action. While the party who is obliged to fulfill the demands is called the debtor or debtor. As for the goods, something that can be sued is called an achievement, which according to the law can be in the form of 1) Submitting an item; 2) Doing an action; 3) Not doing an action*" (Subekti, 1992: 122-123).

Book III of the Civil Code does not define engagement. However, several legal experts define engagement. According to Mariam Darus Badrulzaman, "*an engagement is a relationship that occurs between two or more people located in the field of property law, where one party has the right to achievement and the other party is obliged to fulfill that achievement*" (Badrulzaman, 1993: 1). Meanwhile, J. Satrio stated:

> "*Regarding the term verbintenis, there is still no unified opinion on the translation into Indonesian. Some use the term "debt", there are those who use the term "commitment", there are those who use the two terms together, and some even propose the term "agreement" to replace verbintenis, even though it is given a broad meaning, including those that arise from law. Adat and other aspects are narrower than the verbintenis that have been known so far because they do not include those born from the law only (uit de wet allen) and those born from onrechtmatigedaad*" (Satrio, 1993: 1).

Based on these descriptions, the case of an agreement that has been made has given rise to an engagement for the parties who made it, and the rights and obligations automatically must be carried out by both parties.

According to Mariam Darus Badrulzaman, in contract law, there are several principles, including:

1. "*The Principle of Freedom to Make Agreements (Partij Autonomy). This principle is also known as the principle of freedom of contract. In Article 1320 paragraph (1) of the Civil Code, it is stated that "the parties agree to bind themselves". It can be seen that each party has a voluntary willingness to bind themselves to a mutually desired condition.*
2. *Principles of Consensualism. This principle is contained in Article 1320 of the Civil Code and Article 1338 of the Civil Code. It is stated in these articles that everyone has the same opportunity to express their wishes in an agreement.*
3. *The Principle of Trust (vertrouwensbeginsel). This principle states that by agreeing, each party will keep its promise, thus will grow or emerge trust between one party and another, so that each party will provide its achievements under what has been mutually agreed upon.*
4. *The Principle of Binding Strength. This principle states that an agreement contains the meaning of the principle of binding power, because each party who promises is bound to do what has been agreed, but is not solely limited to what has been agreed, but also to several other elements as long as this is desired by the agreement. customs and propriety and morals.*
5. *The Principle of Legal Equality. This principle states that each party has a position and equality without being distinguished from one another because of differences in skin color, nation, wealth, power, position, and others. Each respects this difference as God's creation.*
6. *Balance Principle. The implementation of the agreement is the will of both parties who promise. This principle is also a continuation of the principle of legal equality. A creditor has the power to demand performance and if necessary can demand expansion of performance through the debtor's wealth, but the creditor must also bear the burden of carrying out the agreement in good faith. The stronger position of creditors is balanced with the obligation to pay attention to good faith so that the position of creditors and debtors is balanced.*
7. *Principle of Legal Certainty. The agreement has binding power for both parties because the agreement becomes law for the parties who make it and therefore the agreement has legal certainty.*
8. *Moral Principles. This principle is seen in a reasonable engagement, where a voluntary act of a person does not give him the right to sue against the performance of the debtor. This is also seen in zaakwaarneming, where a person who commits an act voluntarily (morally) in question has a (legal) obligation to continue and complete his actions, also this principle is contained in Article 1339 of the Civil Code. The factors that motivate the person concerned to take legal action are based on decency (morality), as a call from his conscience.*

9. *Proper Principle. In Article 1339 of the Civil Code, this principle relates to the provisions made in the agreement. This is a measure of the relationship and sense of justice with one another.*
10. *Habit Principles. This principle is regulated in Article 1339 in conjunction with Article 1347 of the Civil Code which is seen as part of the agreement. An agreement is not only binding on what is expressly regulated, but also for things that are commonly followed in circumstances and habits*" (Badrulzaman, 1992: 108-115).

It is necessary to know the legal terms of the agreement in general as stated in Article 1320 of the Civil Code, including 1) "*The agreement of the parties to bind themselves (detoestemning); 2) The ability to make an engagement (de bekwaamheid); 3) A certain thing (een bepald onderwerp); and 4) A lawful cause (een geoorloofde oorzaak)*" (Susanti, 2008: 6).

In addition to the general conditions mentioned in Article 1320 of the Civil Code, Munir Fuady stated that in contract law or contract law there are general legal requirements outside of Article 1320 of the Civil Code and special legal requirements, as follows:

1. "*General legal requirements outside of Article 1320 of the Civil Code, consist of:*
   a. *Good faith conditions.*
   b. *Conditions according to custom.*
   c. *The conditions are appropriate.*
   d. *Terms following the public interest.*
2. *Specific legal requirements consist of:*
   a. *Written conditions for certain contracts.*
   b. *Notary deed requirements for certain contracts.*
   c. *Deed requirements of certain officials (who are not notaries) for certain contracts.*
   d. *requirements from the authorities*" (Fuady, 1999: 33-34).

The existence of an agreement in an agreement means that both parties must have free will. The parties must not be under pressure that will result in a defect in the realization of the will. The definition of agreed is described as the terms of the agreed will (*overeentemende wilsverklaring*) between the parties. The statement of the party who accepts the offer is called acceptance. Judging from the terms of the agreement, it can be distinguished parts of the agreement, among others, namely:

1. "*The core part (wanzenlijke naturalia oorde).*
2. *The core sub-section called essential is the part that is a trait that must exist in the agreement, the nature that determines or causes the agreement to be created (constructieve oordeel).*
3. *The non-core part, called naturalia, is the part that is an innate nature (natuur) of the agreement so that it is secretly attached to the agreement, such as guaranteeing that there are no defects in the object being sold (vrijwaring).*
4. *The accidental part is the part which is inherent in the agreement which is expressly agreed upon by the parties*" (Badrulzaman, *et.al.*, 2001: 57).

Article 1339 of the Civil Code also states that: "*Agreements are not only binding for things that are expressly stated in them, but also for everything which, according to the nature of the agreement, is required by propriety, custom or law*". Generally, the agreement is not bound to a certain form, it can be made orally or in writing. If it is made in writing, it can be in the form of a notarial deed or a private deed. A private deed can be in the form of a standard agreement (standard agreement) and it is used as evidence in the event of a dispute in the future.

According to Mariam Darus Badrulzaman, the conditions for a valid agreement as regulated in Article 1320 of the Civil Code can be distinguished between subjective terms and objective conditions. In this case, you must be able to distinguish between subjective and objective conditions. Subjective conditions are the first two conditions, while objective conditions are the last two conditions (Badrulzaman, 1992: 198). Subjective requirements relate to the makers, namely: agreement and skill. If these subjective conditions are not met, then the agreement can be canceled (voidable). Meanwhile, the objective requirements are related to the object of the agreement, namely: a certain

thing and a cause that is not prohibited. If the objective conditions are not met, it will result in the agreement being null and void (Saliman, *et.al*., 2004: 12-13).

Subjective terms are regarding the subject of the agreement, while objective conditions are regarding the object of the agreement. A valid agreement is recognized and given legal consequences, while an agreement that does not meet these requirements is not recognized by law. However, if the parties acknowledge and comply with the agreement they have made, do not meet the conditions stipulated by law but the agreement remains valid between them, but if one day there is a party who does not acknowledge so that a dispute arises, the judge will cancel or declare the agreement void.

The four conditions mentioned above are essential conditions of an agreement, meaning that these conditions must exist in an agreement, without this condition, the agreement is considered to have never existed or the agreement is invalid. However, with the entry into force of the agreement to agree, it means that both parties must have free will (Article 1338 paragraph (1) of the Civil Code). By agreement, an agreement was born.

The law distinguishes two types of mistakes, namely mistakes about people (personal error) and mistakes about goods that are the subject of the agreement (error insubstantial). Article 1323 of the Civil Code to Article 1327 of the Civil Code explains that coercion occurs when a person is not free to express his will. This coercion is in the form of physical violence or threats (to reveal secrets) that create fear in someone so that the person concerned agrees. Furthermore, Article 1328 of the Civil Code states that: "*fraud occurs when one party with a ruse succeeds in such a way that the other party is willing to agree and the agreement will not occur without the ruse*".

Julisman gives an example of an agreement that contains fraud if the debtor's act of submitting a check to be used as collateral for his debt to the creditor is an agreement that has no legal force. Such an engagement is given because of the element of fraud committed by the debtor to the creditor. This is under Article 1321 of the Civil Code, that: "*No agreement has the power if it is given by mistake, or obtained by coercion or fraud*". Thus, an engagement made with an element of error, coercion, or even fraud, results in the engagement no longer meeting the legal requirements of the agreement under Article 1320 of the Civil Code. The condition for the validity of the violated agreement is the fourth condition, namely "*a cause that is not forbidden*" (Julisman, 2017: 116-121).

Meanwhile, regarding the ability to carry out legal actions as regulated in Article 1329 of the Civil Code to Article 1331 of the Civil Code stipulates that every person is capable of entering into an engagement unless the law states that the person is incompetent. People who are not capable of making agreements are people who are not yet mature and everyone who is put under custody is in a state of bankruptcy. Concerning a certain matter, the law determines the objects that cannot be made the object of the agreement. These objects are used for the public interest. An agreement must have certain objects, at least it can be determined that these objects can be in the form of objects that currently exist and also objects that will exist in the future (Article 1332 to 1335 of the Civil Code).

3.4. Indonesian Legal Culture in Contract Making

As a society with an oral tradition, the Indonesian people do not appreciate the written tradition as a form of realization of existence. In Indonesian society, writing is only considered a means of documentation. Associated with the context of the agreement, the written contract is only considered a mere condition, the contract only fulfills its meaning textually but not contextually. In Indonesian society which has an oral tradition, usually, a new contract is read carefully when there is "*an urgent situation*", namely there is a dispute between the parties who signed the contract. The existence of a contract becomes useless when it is realized that the interests of the parties in the contract are not fully protected. This problem often occurs in the business community in Indonesia and consequently harms the business activity itself. As a nation that does not value writing, contracts are often seen as mere formalities and procedures. Therefore the contract does not need to be taken seriously except as a mere ceremonial ceremony. This kind of attitude causes the signing of the contract to be not preceded by the initiative to read or draft the contract carefully (Sugiastuti, 2015).

Huala Aldof in his research reveals the fact that the majority of Indonesian entrepreneurs (especially small and medium-sized entrepreneurs) do not care about contracts carefully. Generally, when signing a contract, these entrepreneurs are less concerned with the sound of the clauses in the contract. For entrepreneurs what is important is business transactions. In the mind of the entrepreneur, it is enough how to carry out the transaction. This kind of mindset also carried over when it turned out later that a dispute regarding the contract was born. These entrepreneurs are less concerned with what is in the contract clauses (Adolf, 2010).

Moreover, for a standard form of contract, people who have a written tradition are needed because to be able to choose whether they "take" or "leave" the agreement (which was made solely by the other party), they must first read the clauses. Given the legal fiction, that acceptance and signing of the agreement is a form of agreement/statement of agreement, then he must not only read but also understand the meaning of what is written in the agreement. For this reason, he must also have the character of a law-minded society because he must understand whether the contents of the agreement protect rights or at the same time understand the legal consequences of violating other people's rights or rights to himself.

If the understanding of the reality of the contract cannot be separated from the legal culture of the Indonesian people, then this character is not commensurate with the construction of contract law (more so in the construction of standard contracts). This description is the most relevant reflection material on ineffective and efficient contract formulation in an oral tradition society. It is not easy to format oral traditions in written form. Therefore, it is very natural that sometimes there is a discrepancy between the understanding of the agreement reached and the meaning of the contract made. Often the contract is only present as a mere documentation of an agreement that has been reached orally without comprehensively representing all the perceptions and aspirations that are to be represented in the agreement. Therefore, the contract only fulfills its meaning textually but not contextually. Whereas the contract should exist to protect the legal interests of the parties. Economically, contracts drawn up with an understanding of the content and meaning (contextual) will provide "*an essential check on opportunism non-simultaneous exchanges*", by guaranteeing that one party, in implementing the contract, does not face risks, thus reducing transaction costs (Trebilcock, 1997: 16).

3.5. Comparison of Chinese and Indonesian Legal Cultures in Contract Making

As for the comparison of the legal culture of the Chinese community and Indonesian society in terms of making contracts, there are similarities and differences. The similarity is that the Chinese and Indonesian people when trading prioritizes the principle of kinship, so placing trust in the transaction opponent is an absolute must for a trader.

The kinship principle of the Chinese community comes from Confucius's understanding based on the rules of life called "*Li*". The rules of life are not generally accepted provisions, Li has different substances following the form of relationship and the class of people who must apply them. Nevertheless, there is one provision that is generally accepted in the concept of "*Li*", namely the existence of a stipulation that humans basically do not have subjective rights, but only have obligations, both obligations to their superiors, and society (Wardiono, 2012: 73).

The principle of the kinship of the Indonesian people comes from the identity of the Indonesian nation (*volksgeist*) (Berkowitz, 2009: 115). which was explored by the Founding Fathers during the BPUPKI session to formulate the basis of the Indonesian state. The BPUPKI session is a session held to formulate the basis of the Indonesian state. The BPUPKI trial times were 29 May-1 June 1945 (first trial), 10-17 July 1945 (second trial), and 2 June-9 July (unofficial trial, which took place between the first and second official sessions). This family principle is a milestone in trade in Indonesia. Family relations in fostering business relationships are also instilled by the Chinese community who migrated from mainland China to Indonesia. There are similarities in the way of trading between the Chinese and Indonesian people, which are both applying the principle of trust with their transaction counterparts.

From a civil law perspective, the contracts made were based on verbal agreements only, by both the Chinese and Indonesian people. The positive legal arrangement has been regulated in the Civil Code of each State. In China it

is called the Chinese Civil Code, as well as in Indonesia it is called the Indonesian Civil Code. It's just that in China, the Civil Code was only promulgated on January 1, 2021, while in Indonesia, the Civil Code which applies as positive law in Indonesia is a relic of the Dutch colonial era. Even in the Netherlands, the Civil Code has been updated, called The Netherlands New Civil Code (Nieuw Burgerlijk Wetboek 1992) (Maharani, 2020; Nieuw Burgerlijk Wetboek 1992).

The similarities between the Chinese Civil Code and the Indonesian Civil Code as positive laws governing the making of contracts are that they are both based on agreement (*consensus*). The contract is valid from the moment it is signed if it is written or agreed if it is in oral form. Termination of the contract by mutually agreeing, or making contract termination clauses first. If the cause occurs, then the party who has the right to terminate the contract can terminate the contract unilaterally.

In trading, both the legal culture of the Chinese community and the Indonesian people have the habit of only using small notes. These records are indirectly a contract, the arrangement of which is further regulated based on trading habits. For example, payment on time, if the debt is legally customary, it is required to pay off the old debt, then a new debt is given.

4. Conclusions

In terms of making contracts, the comparison of the legal culture of the Chinese and Indonesian people in making contracts, there are similarities and differences. Making an agreement or contract based on the perspective of the legal culture of the Chinese and Indonesian people is dependent on the value of the trust (thrust) between one party and another. The higher the trust of one party with the counterparty of the transaction, the less contract is not made at all. Conversely, if the trust of the parties has been eroded due to something, then a contract will be made to bind each other. Based on the positive law that applies to each community, there have been arrangements regarding contracts, which are both regulated based on the Civil Code. It's just that in China it has been updated on January 1, 2021, while in Indonesia, the Civil Code is still a legacy of the Dutch. While in the Netherlands itself has been updated since 1992 called Nieuw Burgerlijk Wetboek.

The suggestions that can be recommended in this paper are that the executive and legislative institutions should immediately promulgate the new Civil Code. The formation of a national contract law needs to be carried out in the future so that the making of contracts is by the purpose of making it, has benefits and effectiveness as a legal document.

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Implementation of Investment Agreements in Force Majeure Conditions Outside Natural Disaster Based on Private Regulation Books

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Abstract
The definition of *force majeure* as a situation that occurs beyond the controlof the parties. However, there is a difference, namely in the first definition it is clearly stated that the failure to perform the agreement must cause a loss as a consequence of the failure to perform the agreement. The parties want to carry outthe performance according to the contents of the agreement, but there are certain circumstances that make an agreement potentially unenforceable. These circumstances are commonly referred to as *force majeure* or force *majeure*. Circumstances where the parties or one of the parties cannot fulfill the performance not because of personal fault, but because of the nature that arises asa barrier to the fulfillment of achievements that result in certain sectors, especiallythe economy. Achievement can be interpreted as a debt that is an obligation that must be fulfilled by the debtor. Where the debtor is the one who performs an achievement in an engagement. Based on that, it can be understood that achievement is an obligation that must be carried out by a debtor arising from an engagement. Achievement can also be related to the fulfillment of obligations due to the consequences of the contract (contractual obligations). Thus, achievement can be interpreted to include contractual obligations and the fulfillment of legal obligations in general in the context of binding law. Achievement also not only includes obligations born due to contractual but also obligations born due tolegislation. The interpretation of achievements like this is closely related to the legal system of ties that exist in the *Civil Law* legal system where ties are born andsourced from ties and legislation. The parties want to carry out the performance according to the contents of the agreement, but there are certain circumstancesthat make an agreement potentially unenforceable. These circumstances are commonly referred to as *force majeure* or force *majeure*. A situation where the parties or one of the parties cannot fulfill the performance not because of personal fault, but because of the nature that arises as a barrier to the fulfillment ofachievements that result in certain sectors, especially the economy. So that this situation raises a situation for both parties, both the state of not being able to carryout the achievement and the state of not accepting the obligation of achievement from the other party which can make a loss for the party who will accept the obligation of the achievement, as long as these things for obstacles to carrying out achievements are true also have a legal basis and can be proven in reality, then there are no things that can make someone held accountable, but after the situationis gone, the party who is obliged to excel must carry out his performance, because in fact the achievement is a debt that must be settled with the obligations agreed upon by the parties.

Keywords: Force Majeure, Private Regulations, Agreements

1. Introduction

The definition of force majeure in the Civil Code states that force majeure is "a situation where the debtor is prevented from giving something or doing something or doing something that is prohibited in the agreement". This understanding is then adapted to the terminology used, namely forced circumstances. Forced circumstances are defined as "events beyond the control of one party". According to Panggabean (2008) Effect where delaying or causing the implementation of a party's obligations in the agreement is impossible and after it arises, the party cannot avoid or overcome the incident.

Based on Article 1338 of the Civil Code, every agreement must comply with the principle of good faith in its implementation, because it is binding in nature as a law. Exceptions to this provision are found in the provisions governing force majeure, namely in Article 1244 and Article 1245 of the Civil Code. The Civil Code legal system does not introduce the principle of rebus sic stantibus in the realm of contract law but rather emphasizes the aspect of force majeure (Panggabean, 2008).

Even though the parties want to carry out the achievements by the contents of the agreement, certain circumstances make an agreement potentially impossible to carry out. These circumstances are commonly referred to as force majeure or coercive circumstances. Circumstances in which the parties or one of the parties are unable to fulfill their achievements are not due to personal mistakes, but because of the nature that arises as a barrier to the fulfillment of achievements which results in certain sectors, especially the economy (Rasuh and John, 2016).

According to Wulandari and Ajeng (2016), Force Majeure is a condition or event that occurs beyond human capabilities and cannot be avoided by the majority of the affected areas, so an activity or agreement that is carried out cannot run according to the contents of the agreement agreed upon by the parties. Force majeure usually refers to natural conditions, such as natural disasters, epidemics, wars, and so on.

Achievements must be achieved in the agreement according to this principle, but some circumstances make the agreement unenforceable. Therefore, it is necessary to have legal provisions that require that this matter be resolved based on the existing elements to reach a force majeure situation which results in the agreement not being carried out properly, because there are reasons that cannot be controlled by humans or beyond the capabilities of man. Determination of certain circumstances, such as the determination of national disasters, both natural and non-natural, can be used as a basis for determining force majeure in an agreement. The good faith of one of the parties is fundamental to the agreement. (Kaya and Aris, 2020) The impact of a force majeure determination will result in a new law for the parties, and cannot be said to be a default in the agreement previously agreed upon by the parties.

Various findings were generated from other research that discussed related issues such as Andi Risma's research, Zainuddin (2021) with the research title "Interpretation of the Covid-19 Pandemic as a Reason for Force Majeure which Resulted in the Cancellation of the Agreement" in this study it was explained that the Covid-19 Pandemic that occurred had has a very broad impact in various aspects such as social, political, economic, and so on. The economic impact that has occurred is felt by all groups of people ranging from large companies to micro, small, and medium enterprises (MSMEs). In this study, it was also said that the Covid-19 pandemic was designated as a non-natural national disaster as the basis for a Force Majeure which had implications for the cancellation of the agreement that occurred.

Furthermore, research from Bambang Eko Muljono (2020) entitled "The Legitimacy of Force Majeure in Agreements in the Era of the Covid-19 Pandemic" the findings of this study are that force majeure situation that occurs to debtors who are truly in a state of coercion, do not apply to all debtor. Where the impact that is visible from the existence of force majeure can be the reason for the release of the debtor's obligations. From what has been described above, of course, this is the background for the author to discuss further in his dissertation by choosing the title: "Implementation of Investment Agreements Under Conditions. **Force Majeure Outside of Natural Disasters Based on the Civil Code".**

2. Research Method

The research method used in this research is qualitative with a descriptive approach. According to Ari Kunto (2006), qualitative research has clear and detailed elements from the start, systematic research steps using samples whose research results are applied to the population, having hypotheses if needed, having a clear design with research steps and the expected results require the collection of data that can be represented and the existence of data analysis that is carried out after all the data has been collected.
Sources of data used in this research come from literature studies in the form of a number of facts obtained by studying books, articles, documents, laws and regulations, reports, etc., which are related to the problem under study.

3. Results and Discussion

3.1. How is the Implementation of Investment Agreements in Force Majeure Conditions Outside of Natural Disasters Based on the Civil Code

Based on Syafrinaldi, Talib, and Admiral (2014), In general, public awareness of the law is something that cannot be separated from the Government's efforts to uphold the law (law enforcement). To realize the growth and development of public awareness of the law, it is necessary to make positive and proactive efforts. The agreement that has been born between the parties requires the fulfillment of achievements by each party, the achievement is something that must be carried out with the obligatory category, this obligation can give something, and not do or carry out something.

If an agreement cannot or is not fulfilled by one of the parties due to the negligence of one of the parties, it obliges one of the parties to compensate for losses arising from the negligence that has been committed by one of the negligent parties. Wan achievement is a condition where the debtor does not fulfill his promise or does not fulfill it as he should and all of that can be blamed on him. Default is the implementation of obligations that are not timely or done improperly. So that it creates a necessity for the debtor to provide or pay compensation (schadevergoeding), or with a default by one party, the other party can demand cancellation of the agreement.

Force majeure is a situation that occurs after an agreement is made that prevents the debtor from fulfilling his performance. In this case, the debtor cannot be blamed and does not have to bear the risk, and cannot suspect the occurrence of something like that at the time the agreement was made. Force majeure due to these unexpected events can be due to the occurrence of something beyond the debtor's control, in which case this condition can be used as an excuse to be released from the obligation to pay compensation (Suadi, 2018).

There are also expert opinions regarding force majeure, including the following:

a. According to Subekti, force majeure is an excuse to be released from the obligation to pay compensation.
b. According to Abdulkadir Muhammad, force majeure is a condition where the debtor cannot fulfill his achievements due to an unexpected event that the debtor cannot predict will occur. when making speeches.
c. According to Setiawan, force majeure is a condition that occurs after an agreement is made which prevents the debtor from fulfilling his achievements, in which the debtor cannot be blamed and does not have to bear the risk, and cannot predict when the agreement is made. Because of all of that before the debtor was negligent to fulfill his achievements when these circumstances arise (Simanjuntak, 2017).

The existence of a force majeure does not necessarily serve as an excuse for the debtor to protect himself from reasons of force majeure because he just wants to run away from their responsibilities, then there must be several conditions so that this does not happen. Purwahid Patrik stated that there were 3 conditions for the situation to take effect *force majeure*, that is:

1) There must be obstacles to fulfilling its obligations;
2) This obstacle occurred not because of the debtor's fault;
3) Not caused by circumstances that are at risk to the debtor.

Meanwhile, according to R. Subekti, the conditions for a situation called force majeure are as follows:
1) The situation itself is beyond the control of the debtor and forces;
The situation must be a condition that cannot be known at the time the agreement is made, at least the risk is not borne by the debtor.

In the Civil Code, the term force majeure is not found, it does not even explain what is called a force majeure or unexpected event, but the term is withdrawn from the provisions in the Civil Code which regulate compensation, risks for unilateral contracts in forced circumstances or part of special contracts and of course drawn from the conclusions of legal theories regarding force majeure, doctrine and jurisprudence (Suadi, 2018).

Regarding the matters referred to by the experts above, the authors do not agree, because what the legal experts said above is only related to circumstances that make debtors escape from the trap of default, so debtors are not eligible to be held accountable in the legal realm through lawsuits against the debtor himself has committed an act of default.

These circumstances can be misused by a delinquent debtor who from the beginning has no good faith in him to carry out an agreement so that the delinquent debtor freely uses a related condition beyond his ability to impose on him in a condition force *majeure*.

Based on the matters above, the author has a very different opinion from the legal experts above, where the conditions are *majeure* inherent and can immediately protect the debtor from not being able to be held accountable for achievement and obligations to pay interest for non-performance as follows:
1. A force majeure situation attaches to the debtor in a real way (provable and legally enforceable)
2. Force majeure circumstances regarding the implementation of achievements by the debtor have legal certainty ending
3. Legal certainty for creditors to receive back performance obligations from actual debtors under force majeure conditions

The author's opinion above is to provide legal certainty for both parties who are bound in an agreement that raises the implementation of achievements as an obligation.

1. A force majeure situation attaches to the debtor in a real way (provable and legally enforceable)

In a state of force *Majeure-natural* disasters, debtors cannot carry out their achievements or there are obstacles beyond their ability to carry out performance obligations. These obstacles can be recognized by the public with the existence of regulations issued by the government in the presence of a pandemic that endangers the health of the wider community, with the existence of government regulations that have legal force and legal consequences, so that every community must comply with the conditions that have been enforced by pandemic conditions as a non-natural disaster category.
About this government decree, a pandemic situation shall apply as a non-natural disaster category, the legal consequences of the government's determination whether, indeed, a situation has automatically occurred force *majeure*for debtor parties who wish to carry out achievements hindered by this situation. Can this situation immediately be used as a justification or is there a follow-up legal effort to declare this situation force majeure for all debtors?

Why is this situation not immediately used by debtors as a justification for not carrying out achievements by debtors as a condition of force *majeure?* The debtors must prove clearly in advance and have legal force, that it is true that in a non-natural disaster force majeure condition, is it sufficient only for non-natural disaster events that are experienced and known by the wider community? Of course, this is very contrary to legal certainty and good faith if only immediately. The life of the nation in the Republic of Indonesia has firmly adopted and acknowledged its existence*trias politics where* it is well understood that there is a division of power and/or authority within the state in Indonesia. These powers are related to one another. Where the tritriallitics consists of three divisions of power, where there are executive powers, legislative powers, and judicial powers. The

judiciary has an important role in supervising the implementation of the Constitution, laws, and laws in force in the Republic of Indonesia, regarding all legal issues that place legal certainty and legal determination of a person and/or legal entity that is equated with an insider. The legal position is the authority of the judiciary.
There is a situation where a person and/or debtor is unable to carry out the performance as an obligation in an agreement under circumstances forcing *Majeure* to have legal certainty regarding the situation, it is mandatory for the person and/or the debtor to take legal steps to obtain legal certainty that has the permanent force and has the power of proof before the law by submitting an application that is true in a force majeure situation due to a non-natural disaster so that due to an application that gives birth to a legal product from a judicial institution in the form of a stipulation on the said application has legal certainty for the creditor.

This situation has dispelled doubts from creditors regarding the debtor's acknowledgment under the circumstances of forced *Majeure-natural* disaster. So that the creditor has been able to judge clearly by the existence of the determination of a debtor in a force majeure situation from the district court has had good faith in carrying out what was agreed upon, and does not necessarily declare himself in a force majeure situation without legal certainty.

So that with this stipulation the debtor has given legal certainty to the creditor not to take legal action against a default lawsuit which makes the creditor have to spend money to find the correct circumstances in an event and the legal situation of the debtor. So that it is proper and proper for the debtor to be said to have good faith in the existence of further legal remedies by the debtor for non-natural disaster situations. Then what about the application submitted by the debtor for a pandemic situation which is categorized as a non-natural disaster in the district court, in examining the evidence carried out by the judge on the application it is not proven that the debtor is not in a bad condition. *force majeure*non-natural disasters due to a pandemic, so that judicial products through district courts in the form of self-determination by the debtor cannot declare and give legal force over the circumstances declared to the creditor in a force majeure situation.

Against the rejection by the district court at the request of the debtor to determine his condition force *majeure*, and there is concern that in this condition the creditor will take advantage of efforts to sue for default so that the debtor's good name is tarnished, which so far has been a debtor in good faith, the legal steps that can be taken by the debtor are by filing legal remedies in the form of a request for postponement of debt payment obligations to the commercial court which is in state court. So that even if there are circumstances that make the debtor unable to carry out the performance as it should and on time to the creditor, the postponement of debt payment obligations that have been determined by the commercial court has provided legal certainty and legal force both to the creditor and to the debtor who is in a state of good faith in carrying out what contracted in an agreement.

2. Force majeure circumstances regarding the implementation of achievements by the debtor have legal certainty ending

The aim is to carry out further legal efforts for non-natural disaster situations by the government which is categories force *majeure*for debtors who are affected by this situation through a district court decision on a request from the debtor, it is legal certainty for creditors when a debtor is said to be still in a force majeure situation. Of course, the certainty of when the force majeure condition will end is attached to the debtor based on what has been determined by the judge through his decision.

So that the creditor does not wonder when the debtor can be held accountable for the implementation of an agreement, and when the creditor can receive achievements from the debtor what has been promised by the debtor in an agreement. Determination of conditions forces *Majeure from* the district court is the benchmark and benchmark for creditors until when they cannot take achievements and/or interest from the implementation of an agreement.

The determination that has been given by the district court to the debtor that it is true under the circumstances of force *majeure*very beneficial to the debtor, where the debtor has attached a condition as a debtor with good

intentions and avoids the debtor from paying interest that must be obtained by the creditor for his delay in carrying out achievements.

Likewise, if the debtor takes legal action to postpone the obligation to pay debts in a commercial court, and the debtor has determined that there is a legal delay in the eyes of the law and has legal force, the debtor cannot carry out the performance and delays it based on a decision from the commercial court which is a legal certainty for the debtor, he is not in a state of default.

This situation prevents the debtor from being sued through a district court by the creditor in a state of default, and this situation also states firmly to the creditor that he is a debtor with good intentions in a non-natural disaster.

3. Legal certainty for creditors to receive back performance obligations from actual debtors under force majeure conditions

Regarding the determination that the debtor has against himself based on the application of the determination of force majeure to the district court which has been determined by the judge through a decision that has permanent legal force, that he is stated in a force majeure condition provides legal certainty when the creditor can again accept the obligations of the debtor in carrying out the achievements based on what was agreed.

This is based on the determination that the debtor has, this determination proves that there is nothing else that is an obstacle to the debtor from carrying out achievements other than circumstances beyond his capabilities which become an obstacle in carrying out achievements based on an agreement, and this proves that the debtor has good intentions in carrying out achievements. And can properly complete what has been agreed in an agreement between the creditor and the debtor, so that what was promised by the debtor becomes an achievement for the debtor and is a possible thing to carry out.

3.2. What are the Legal Consequences of Implementing Investment Agreements in Force Majeure Conditions Outside of Natural Disasters Based on the Civil Code

Agreement in Article 1313 of the Indonesian Civil Code, an agreement is an act by which one or more people bind themselves to one or more other people. An agreement is 1. An act, 2. Between at least two people (so it can be more than two people), the act creates an agreement between the two parties who promise. The term agreement is a translation of the word overeenkomst (Dutch) or Contract (English). The findings from Salim's research (2013) Agreement is one of the sources of engagement, in which the agreement will be said to be valid if it fulfills the conditions as stipulated in Article 1320 of the Civil Code.

According to civil law science, the notion of an engagement is a relationship in the field of assets between two or more people where one party is entitled to something and the other party is obliged to something. So it can be concluded that the engagement is a legal relationship, a legal relationship arises because of a legal event which can be in the form of an act, event, or situation (Adonara, 2014).

Legally in Article 1321 of the Civil Code, it is determined that "There is no valid agreement if the agreement was given due to an oversight (dwelling), or obtained by coercion (dwang) or fraud (bedrog)". Article 1325 of the Civil Code, it is clearly stated that coercion results in the cancellation of an agreement. So, in addition to having an agreement as one of the terms of the agreement according to Article 1320 of the Civil Code, the reasons for the agreement must also be according to law. This is based on the thought that when agreeing, both parties to the agreement should have free will to bind themselves. The free will of the parties is usually reflected in the agreement. Usually, this statement is stated in the premise of the agreement which contains that each party mutually agrees on the articles written in the agreement (Adonara, 2014).

So a contract is an agreement between two or more people that creates an obligation to do certain things. A contract thus has the following elements: competent parties, subject matter agreed upon, and reciprocal obligations. According to Meliala (2011: 92), The main feature of the contract is that it is a writing that contains the agreement

of the parties, complete with terms and conditions, and functions as evidence regarding the existence of a set of obligations. The application of the principle of consensual according to Indonesian contract law confirms the existence of the principle of freedom of contract. Without the agreement of one of the parties agreeing, without agreeing, the agreement made can be canceled. People cannot be forced to agree. An agreement given by force is a contradiction in terminus. The existence of coercion indicates that there is no agreement that the other party may do is to give him a choice, namely to agree to be bound by the agreement in question,

Freedom of contract, until now, remains an important principle in various legal systems. The principle of freedom of contract in the system of civil *law and* common law was born and developed in line with the growth of philosophical schools which emphasize the spirit of individualism and free markets. In the nineteenth century, freedom of contract was highly valued by philosophers, economists, legal scholars, and courts. Freedom of contract dominates the theory of contract law (Khairandy, 2011).

The essence of contract law issues is more focused on the realization of freedom of contract. The court also prioritizes freedom of contract rather than the values of justice in its decisions. the natural nature of individuals and social beings aims to realize social justice, meaning that justice belongs to every individual in society. Social justice is comprehensive justice that applies to all Indonesian people. According to Thamrin, there is no discrimination or harm to one of the many parties involved. And it does not involve social status, religion, race, custom, skin color or the diversity that exists in Indonesia, which means black is still black and white is still white, right is still right, and wrong is still wrong. Arrangements through legislation also have a tendency towards freedom of contract which tends to be unlimited freedom of contract. The existence of the principle of freedom of contract cannot be separated from the influence of various schools of liberal philosophy, politics, and economics that developed in the nineteenth century. In the field of developing economies, the Laissez fair school pioneered by Adam Smith emphasizes the principle of non-intervention by the government in economic activities and the operation of markets (Khairandy, 2009: 234).

According to Adonara (2014: 4) Engagement is a legal relationship in the field of assets between two or more people where one party is entitled to something and the other party is obliged to something. The legal relationship in these assets is a legal consequence, a legal consequence of an agreement, or another legal event that gives rise to an agreement.

From this formulation, it can be seen that the engagement is in the field of the law of property, also in the field of family law, in the field of inheritance law, and the field of personal law. According to civil law science, the notion of an engagement is a relationship in the field of assets between two or more people where one party is entitled to something and the other party is obliged to something. So it can be concluded that the engagement is a legal relationship, a legal relationship arises because of a legal event which can be in the form of an act, event, or situation.

Law is a system of norms. Norms are statements that emphasize the "should" or das sollen aspects, by including some rules about what to do. Norms are deliberative human products and actions. Laws containing general rules serve as guidelines for individualls to behave in society, both in relationships with fellow individuals and in relations with society. These rules become limits for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules creates legal certainty (Marzuki, 2008).

Legal goals that are close to rearealitye legal and legal benefits. It can be stated that "summum ius, summa injuria, summa lex, summa crux" which means that harsh laws can injure unless justice can help them, thus even though justice is not the sole purpose of the law, the most substantive purpose of the law is justice. Certainty contains two meanings, namely, first, the existence of general rules makes individuals know what actions may or may not be carried out, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules individuals can know what is permissible. charged or carried out by the State against individuals (Syahrani, 1999).

Legal certainty is embodied by law with its nature which only makes a general rule of law. Quoting Ali (2002: 82-83) The general nature of legal rules proves that law does not aim to bring about justice or benefit, but solely for certainty. Certainty is a matter (state) that is certain, conditions or provisions (Kansil, Palandeng, et al, 2009: 385). The law must be certain and fair. Certainly, as a guideline for behavior and justice because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty the law can carry out its function. According to him, certainty and justice are not just moral demands but factually characterize law. A law that is uncertain and does not want to be just is not just a bad law but is not a law at all. Law without certainty value will lose meaning because it can no longer be used as a guideline for behavior for everyone. *Ibi jus incertum, ibi jus nullum*(where no legal certainty law is upheld by law enforcement agencies entrusted with the task of this must guarantee "legal certainty" for the sake of upholding order and justice in people's lives. legal uncertainty will cause chaos in people's lives and will do as they please and take the law into their own hands. Such circumstances make life in an atmosphere of social disorganization or social chaos (Harahap, 2002). The problem of legal certainty about the implementation of the law cannot be completely separated from human behavior.

Legal certainty does not follow the principle of "pushing a button" (automatic subsumption), but something quite complicated, which has a lot to do with factors outside the law itself. Certainty from the existence of the regulation itself or the certainty of the regulation (*Sicherheit des Rechts)*. A conception of social justice must be seen as the first instance, the standard by which the distributive aspects of the basic structure of society are judged. Such a conception must determine how to place rights and obligations within the basic institutions of society, and how to determine the appropriate distribution of the various benefits and burdens of social cooperation.

For this reason, it can be said emphatically that the parties have rights in an agreement made in a cooperation contract that requires each party to carry out achievements, this is bound in an agreement referred to in the agreement itself. against conditions force *majeure*determined by the government in conditions of non-natural disasters as referred to in the COVID-19 Pandemic. The Government of Indonesia has declared the Covid-19 pandemic a national disaster through Presidential Decree No. 12 of 2020 concerning the Stipulation of Non-natural Disasters of the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster.

In determining by the government that the non-natural disaster Covid-19 is a non-natural disaster this does not necessarily apply automatically to the parties bound in an agreement releasing their obligations in carrying out achievements, as a form of good faith the party that has the obligation to carry out achievement to the other party proves himself right in the situation*force majeure*by submitting an application to the District Court so that he is declared in a force majeure situation by providing evidence of his condition that he cannot carry out his performance obligations in the non-natural disaster condition Covid-19 with evidence that can support that the condition is true, that the government's determination through Presidential Decree No. 12 of 2020 concerning Stipulation of Non-natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster is not an excuse that can justify the debtor being able to relinquish his obligations in carrying out achievements, but only confirms that the debtor is currently in a non-disaster situation. -natural.

Whether this non-natural disaster makes the debtor unable to perform is what the debtor must prove through a request for conditions force *Majeure in* the District Court so that the panel of judges can assess the evidence submitted by the debtor regarding matters related to his obligations so that the District Court can issue a Force Majeure Stipulation on the debtor in a state of non-natural disaster conditions that have been determined by the government for the covid pandemic -19.

In addition, the debtor can also submit a Postponement of Debt Payment Obligations (PKPU), so the debtor can still manage his assets and continue his business to be able to make efforts to repay his creditors. (Sanjaya, 2014). Provisions regarding Suspension of Debt Payment Obligations (PKPU) are regulated in Chapter Three Article 222 to Article 294. These provisions explain that the existence of PKPU is an offer of debt payment for debtors to creditors to either pay part or all of their debts. Therefore PKPU has a different purpose than bankruptcy. Before being regulated in Law no. 37 of 2004, PKPU is called Deferred Payment.

This is as stipulated in title 2 Article 212 to Article 279 of the Bankruptcy Regulations (Faillissementsverondening Staatsblad of 1905 Number 217 junction Staatsblad. 1906 Number 348. Then a Government Regulation was issued instead of Law No. 1 of 1998 Concerning Amendments to the Bankruptcy Law, which was later stipulated to become Law No. 4 of 1998. The delay in payment is intended to enable a debtor to continue as a going concern of his company, even though there are payment difficulties, and to avoid bankruptcy (Sanjaya, 2014: 58).
By continuing the continuity of the company's business, the debtor can be expected to be able to continue his business so that he can pay off his obligations to creditors after some time. PKPU can also be interpreted as a relief given to debtors so they can delay payment of their debts. With the intention that the debtor can have the hope that in a relatively short time, he will earn and earn income to be able to pay off his debts. According to Kartini Mulyadi, the meaning of PKPU is allowing debtors to restructure their debts, which includes paying all debts or part of their debts to concurrent creditors.

If PKPU is implemented properly, the debtor will be able to continue his business and avoid bankruptcy. The payment plan (composition plan) can then be implemented, including in the event of a restructuring. So PKPU in question is a kind of moratorium. Providing opportunities for debtors to restructure their debts, which may include paying all or part of the debt to concurrent creditors. Giving this opportunity is a right that belongs to the debtor and his submission can be accompanied by a peace plan for paying off his debts. Regarding the implementation that has been carried out by the debtor, it is appropriate for the debtor to be said to have good faith in the force majeure conditions that occurred in the non-natural disaster conditions of the Covid-19 pandemic to carry out all his achievements to creditors.

4. Conclusion

Against force majeure conditions, both natural disasters and non-natural disasters in the agreement, it should be carried out in good faith, so that each party has legal certainty for what has been agreed in the agreement. Proof of good faith can be made by applying a force majeure determination through the District Court and/or an application for Suspension of Debt Payment Obligations through the Commercial Court.

1. One of the principles in carrying out the agreement is good faith, good faith is proven by the parties by following existing laws and regulations in proving the party that achieves to the other party as a form of good faith in the implementation of achievements in force majeure conditions due to non- nature by applying a force majeure determination by a party that is unable to carry out the achievement, or by submitting a Suspension of Debt Payment Obligations if the force majeure condition does not significantly affect the party obligated to carry out the performance, this is a must so that the parties have legal certainty in acting and/or an implementation that obliges one party to perform an achievement to another party, thus avoiding the parties who are obliged to carry out achievements with suspicion of bad faith in carrying out achievements by delaying and/or not carrying out achievements.
2. The legal consequences of implementing the performance obligations of the parties in good faith in an agreement with force majeure conditions provide legal certainty to both creditors and debtors, where this good faith proves that the party obliged to carry out the performance is correct in conditions that are unable to carry out achievements and/or conditions force majeure evidenced by the existence of a decision to determine force majeure from the application of the party obliged to carry out the performance to another party and/or the existence of a decision to postpone the obligation to pay debts which has permanent legal force, thereby proving that the party who is obliged to carry out the performance is correct in force majeure conditions.

5. Suggestion

1. Implementation of achievements in an agreement should be carried out in good faith, not based on the existence of an opportunity in a certain situation and/or in a force majeure situation that has been determined by the government in a statutory determination, this has violated the agreement agreed upon by the parties. The party who is obliged to carry out the achievement should not immediately and immediately declare himself that he is in a force majeure condition only based on a determination from

the government as a result of a non-natural disaster without the party who is obliged to be able to prove it legally and concretely.

2. The parties who declare themselves in a force majeure condition due to a non-natural disaster must prove by obtaining a decision from the court at their application that it is true that in a force majeure condition and/or through a decision to postpone debt payment obligations, this is very important to emphasize that the parties obliged to carry out achievements in conditions of non-natural disasters that have been determined by the government to be unable to carry out their achievements and provide legal certainty to the parties as to whether the party having the obligation for achievement is unable to carry out their achievements in non-natural disasters in good faith, as evidenced by a Court Decision which has permanent legal force.

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An Examination of the Nigerian Climate Change Laws and Policies: Stagnation or Progress?

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Abstract
Climate change is a global issue that affects every country, a pressing issue that requires global response. Nigeria is one of the countries that are most affected by climate change. The Nigerian government has recognized the impact of climate change on the country's economy, health, and environment, and has put in place laws and policies to address the issue. However, the question remains whether these laws and policies are effective in mitigating the impact of climate change or if they are simply symbolic gestures with no real impact on the ground. This paper examines the Nigerian climate change laws and policies to determine whether they are contributing to progress or stagnation. The paper provides an overview of the Nigerian climate change laws and policies, including the Climate Change Policy and Response Strategy (2012) and the National Climate Change Policy (2013). It1 also examines the legal framework for climate change in Nigeria, including the Constitution of the Federal Republic of Nigeria (1999) and the Environmental Impact Assessment Act (1992). The paper then analyses the effectiveness of Nigeria's climate change laws and policies, especially the 2021 Act. The analysis is based on a review of relevant literature, as well as interviews with key stakeholders in Nigeria's climate change sector. The analysis reveals that while Nigeria has made some progress in addressing climate change, there are still significant challenges to be overcome. These challenges include a lack of funding, limited public awareness and understanding of climate change, and weak institutional frameworks. It concludes by recommending measures that can be taken to improve Nigeria's climate change laws and policies. Overall, the paper suggests that while Nigeria has made some progress in addressing climate change, there is still much work to be done to ensure that the country is better prepared to tackle this critical issue.

Keywords: Examination, Nigerian Climate Change, Laws, Nigerian Climate Change Policies, Stagnation, Progress

1. Introduction

Climate change is one of the most significant environmental challenges facing the world today, one of the greatest challenges facing humanity, and Nigeria is not exempt from its impacts.

It has a profound impact on the earth's ecosystem, natural resources, and human livelihoods. As a developing Nation that depends mostly on oil, Nigeria is vulnerable to the negative impacts of climate change, including

increased frequency and intensity of natural disasters, declining agricultural yields, and environmental degradation.

In Nigeria, the effects of climate change have been felt across various sectors, including agriculture, water resources, energy, and health. To address these challenges, the Nigerian government has developed climate change policies and laws to guide the country's response to climate change. This paper examines the Nigerian climate change laws and policies to determine whether there has been stagnation or progress in addressing the challenges posed by climate change.

1.1 Climate

Climate is a word gotten from the Greek word 'Klima' meaning inclination; it is therefore defined as the weather conditions prevailing in an area in general or over a long period of time. It is the statistical average of the weather taken over a large period, typically 30 years.

Technically, the definition of climate and climate change has been contentious for years and there is still no generally accepted definition of climate change, as different definitions have been offered overtime.
However, the Intergovernmental Panel on Climate Change, (IPCC) defines climate in the following words:

> *"Climate in a narrow sense is usually defined as the average weather, or more rigorously, as the statistically description in terms of the mean and variability of relevant quantities over a period ranging from months to thousands or millions of years. The classical period is 30 years, as defined by the World Meteorological Organization (WMO). These quantities are most often surface variables such as temperature, precipitation, and wind. Climate in a wider sense is the state, including a statistical description, of the climate system."*

Climate system changes under the influence of internal variability and/or external forces such as volcanic eruption and anthropogenic activities. The major components of climate system are the atmosphere, the hydrosphere, the cryosphere, the lithosphere and the biosphere and the way these components interact. climatic conditions differ, depending on time and place. Another definition of climate is given as the 'actual conditions in the climate system."

Climate is a property of climate system though there is no consensus as to what the property really is. Human activities are considered as external influence of average weather conditions, or statistical distribution of those conditions over a long period of time. A call has been made by climate scientists that the normal period of climate change should be shorter than the 30-year standard period set by the World Meteorological Organization.Components of climate are highly dynamic and vary over a time. To properly define and forecast weather conditions, it is pertinent that radiation, air pressure, humidity, temperature, wind speed and direction, evapotranspiration, precipitation, condensation and cloud cover are measured

1.2What Is Climate Change?

A change in global or regional climate patterns, in particular a change apparent from the mid to late 20th century onwards and attributed largely to the increased levels of atmospheric carbon dioxide produced by the use of fossil fuels, where carbon dioxide is trapped in the atmosphere that it becomes as if the earth is wrapped by a blanket, thereby causing the earth to be warmer.

It is important to note that climate change is a natural phenomenon, without which the earth will be 60% colder which will be impossible to live in, however the effect of climate change has been radically increased through human activities which are the green house effects (GHGs).

Climate change therefore is a term used to refer to long-term shifts in temperatures and weather patterns. Climate change also refers to a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.Since the 1800s, human activities have been the main driver of climate change, primarily

due to burning fossil fuels like coal, oil and gas.These burning of fossil fuels generates greenhouse gas emissions that act like a blanket wrapped around the Earth, trapping the sun's heat and raising temperatures.

Examples of greenhouse gas emissions that are causing climate change include carbon dioxide and methane. These come from using gasoline for driving a car or coal for heating a building, for example. Clearing land and forests can also release carbon dioxide. Landfills for garbage are a major source of methane emissions. Energy, industry, transport, buildings, agriculture and land use are among the main emitters.After a thorough research, Michael Kerr, stated that, climate change is attributed to 'higher concentrations of green house gases in the earth's atmosphere leading to increased trapping of infrared radiations.

1.2.1. Is the climate indeed changing?

The United Nations indeed thinks that the climate is changing, and so do most scientists who study climate. And since there is an obvious effect of these weather conditions, it then means that the climate is indeed changing. In February 2007, The United Nations Inter-governmental Panel on Climate Change (IPCC) released a report that said global warming was very likely, meaning at least 90% certainty caused by human activity.The variations in the current of ocean and volcanic eruptions are examples of natural forces that contribute to the change of Earth's climate. The ocean current alters distribution of heat and precipitation. On the other hand, volcanic eruptions release heat and dust into the atmosphere. The concentration of these substances in the atmosphere is interfering with the

1.3 Overview of Climate Change in Nigeria

Nigeria is a country located in West Africa, one of the most populous countries with a population of approximately 206 million people. The country's economy is largely dependent on its natural resources, including oil, gas, and agricultural products; one of the largest oil-producing countries in the world, and the oil sector is a significant contributor to the country's economy. However, the activities in the oil sector have had adverse effects on the environment, leading to pollution and environmental degradation. Climate change has further exacerbated these problems, with increased temperatures, erratic rainfall patterns, and rising sea levels.
Nigeria is highly susceptible to the impacts of climate change, including flooding, drought, desertification, and rising sea levels.

The Intergovernmental Panel on Climate Change (IPCC) has predicted that West Africa, including Nigeria, will experience significant climate change impacts, including increasing temperatures, reduced rainfall, and more frequent and intense extreme weather events. These impacts are expected to have severe economic, social, and environmental consequences, including decreased crop yields, increased water scarcity, and the displacement of people.

The Nigerian government has acknowledged the need to address climate change and has taken steps towards developing policies and laws to guide the country's response. In 2013, the Nigerian government developed a national climate change policy aimed at promoting sustainable development, reducing greenhouse gas emissions, and building resilience to the impacts of climate change. The policy provides a framework for the implementation of climate change activities in the country and guides the development of sector-specific strategies to address climate change challenges.

In 2014, the Nigerian government enacted the Climate Change (Establishment, Etc.) Act, which provides for the establishment of the National Climate Change Council and the National Climate Change Fund. The Act also provides for the establishment of the Climate Change Department within the Federal Ministry of Environment to coordinate and implement climate change activities in the country. The Act provides a legal framework for the implementation of the national climate change policy and the development of sector-specific strategies.

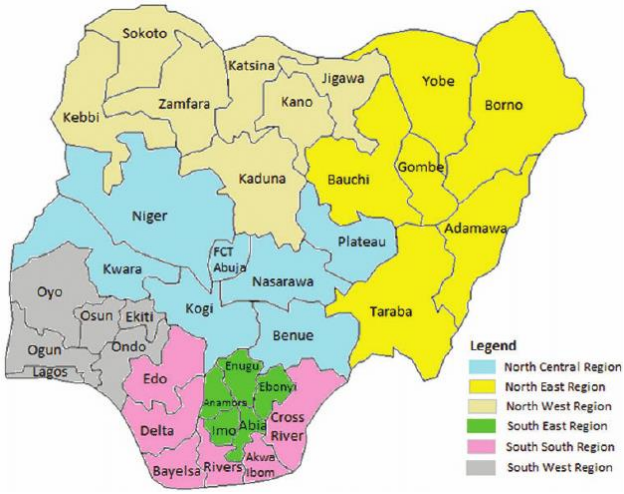

Figure 1: Map of Nigeria showing the 36 States and the Federal Capital

2. Nigeria's Climate Change Laws and Policies

Nigeria has been experiencing adverse effects of climate change in recent years, including flooding, desertification, and erosion. To address this challenge, the Nigerian government has enacted several climate change laws and policies aimed at mitigating and adapting to climate change impacts, recognizing that it is a global problem that requires a concerted effort by all.

2.1The significant climate change laws and policies in Nigeria

2.1.1. The National Climate Change Policy and Response Strategy (NCCPRS)
This is one of the major climate change policies in Nigeria, adopted in 2012, the policy aims to reduce greenhouse gas emissions and enhance the resilience of the country to climate change impacts. The policy also promotes the use of renewable energy, the adoption of energy-efficient technologies, and the implementation of climate-smart agriculture.

The Federal Executive Council adopted in 2012 the Nigeria Climate Change Policy Response and Strategy. To ensure an effective national response to the significant and multi-faceted impacts of climate change, the strategic goal of the Nigeria Climate Change Policy Response and Strategy is to foster low-carbon, high-growth economic development and build a climate-resilient society through the attainment of the following objectives:

i. Implement mitigation measures that will promote low carbon as well as sustainable and high economic growth;
ii. Enhance national capacity to adapt to climate change;
iii. Raise climate change-related science, technology and R&D to a new level that will enable the country to participate better in international scientific and technological cooperation on climate change;
iv. Significantly increase public awareness and involve private sector participation in addressing the challenges of climate change;
v. Strengthen national institutions and mechanisms (policy, legislative and economic) to establish a suitable and functional framework for climate change governance.

2.1.2 The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act,

This is an environmental agency of the Federal Government of Nigeria that was established by law in 2007 to "ensure a cleaner and healthier environment for Nigerians.

2.1.3. The Climate Change (Efficient Appliances and Equipment) Regulations

2.1.4. The Renewable Energy Master Plan

National Policy on Climate Change: In 2013, Nigeria adopted the National Policy on Climate Change (NPCC), which outlines the country's approach to mitigating and adapting to climate change. The policy provides a framework for integrating climate change into national planning and budgeting processes and promotes sustainable development.

National Adaptation Strategy and Plan of Action (NASPA): NASPA is a strategic framework that aims to reduce Nigeria's vulnerability to the impacts of climate change. It was developed in 2011 and identifies priority areas for adaptation, such as agriculture, water resources management, and health.

National Greenhouse Gas Inventory: Nigeria has developed a national greenhouse gas inventory to measure its emissions of greenhouse gases, such as carbon dioxide, methane, and nitrous oxide. The inventory helps the country to monitor its emissions and track progress toward meeting its emissions reduction targets.

Climate Change Department: The Climate Change Department was established in the Federal Ministry of Environment in 2012 to coordinate Nigeria's response to climate change. The department is responsible for implementing the National Policy on Climate Change and coordinating climate change-related activities across different sectors.

Renewable Energy Policy: In 2015, Nigeria developed a Renewable Energy Policy that aims to increase the share of renewable energy in the country's energy mix. The policy provides a framework for the development of renewable energy sources, such as solar, wind, and biomass.
Nationally Determined Contributions (NDCs): Nigeria submitted its NDCs to the United Nations Framework Convention on Climate Change (UNFCCC) in 2015. The NDCs outline the country's commitments to reducing greenhouse gas emissions and adapting to the impacts of climate change.

Overall, Nigeria has made significant progress in developing laws and policies to address climate change. However, the country still faces significant challenges in implementing these policies and achieving its climate goals, such as limited resources and capacity constraints.

Despite these efforts, progress in the implementation of these the Nigerian government has developed various laws and policies to mitigate and adapt to the impacts of climate change. These laws and policies include:

National Policy on Climate Change and Response Strategy (2012)
The National Policy on Climate Change and Response Strategy was developed in 2012 to provide a framework for addressing climate change in Nigeria. The policy focuses on five key areas: mitigation, adaptation, technology transfer, capacity building, and finance. The policy emphasizes the need for collaboration between the government, private sector, and civil society to address climate change.

National Adaptation Strategy and Plan of Action on Climate Change (NASPA-CCN) (2011)
The National Adaptation Strategy and Plan of Action on Climate Change (NASPA-CCN) was developed in 2011 to provide a framework for adapting to the impacts of climate change. The plan focuses on five key areas: water resources, agriculture, human health, biodiversity and forestry, and infrastructure. The plan emphasizes the need for climate change adaptation to be integrated into national and sectoral planning processes.

National REDD+ Strategy (2013)
The National REDD+ Strategy was developed in 2013 to reduce emissions from deforestation and forest degradation in Nigeria. The strategy focuses on five key areas: governance, carbon rights and tenure, participatory forest management, sustainable financing, and monitoring and evaluation.

Climate Change Department

The Climate Change Department was established in the Federal Ministry of Environment to oversee the implementation of climate change policies and programs in Nigeria. The department is responsible for coordinating the implementation of the National Policy on Climate Change and Response Strategy and the National Adaptation Strategy and Plan of Action on Climate Change.

Progress or Stagnation?

Despite the development of these laws and policies, Nigeria's progress in addressing the impacts of climate change is subject to debate. On the one hand, the development of these laws and policies demonstrates the government's commitment to addressing climate change. The policies provide a framework for addressing climate change, and the establishment of the Climate Change Department shows a commitment to implementing these policies.

On the other hand, the effectiveness of these policies in addressing the impacts of climate change is limited by several factors. These include:

Weak Institutional Capacity

One of the key challenges facing Nigeria's climate change laws and policies is weak institutional capacity. The government's ability to implement these policies effectively is limited by a lack

Background

Nigeria is one of the most populous countries in Africa, with a population of over 200 million people. The country is also one of the largest oil-producing countries in the world, and the oil sector is a significant contributor to the country's economy. However, the activities in the oil sector have had adverse effects on the environment, leading to pollution and environmental degradation. Climate change has further exacerbated these problems, with increased temperatures, erratic rainfall patterns, and rising sea levels.

The Nigerian government has acknowledged the need to address climate change and has taken steps towards developing policies and laws to guide the country's response. In 2013, the Nigerian government developed a national climate change policy aimed at promoting sustainable development, reducing greenhouse gas emissions, and building resilience to the impacts of climate change. The policy provides a framework for the implementation of climate change activities in the country and guides the development of sector-specific strategies to address climate change challenges.

In 2014, the Nigerian government enacted the Climate Change (Establishment, Etc.) Act, which provides for the establishment of the National Climate Change Council and the National Climate Change Fund. The Act also provides for the establishment of the Climate Change Department within the Federal Ministry of Environment to coordinate and implement climate change activities in the country. The Act provides a legal framework for the implementation of the national climate change policy and the development of sector-specific strategies.

Mitigation

Mitigation refers to actions taken to reduce greenhouse gas emissions, the primary cause of climate change. Nigeria has made some progress in implementing mitigation measures, particularly in the energy sector. The country has set a target of generating 30% of its electricity from renewable sources by 2030. To achieve this target, the Nigerian government has launched several initiatives, including the Solar Power Naija programme, which aims to provide 5 million households with solar power by 2023. The government has also initiated a plan to replace petrol-powered cars with electric vehicles (EVs) by 2030.

However, progress in other sectors, such as agriculture and waste management, has been slow. Agriculture is a significant contributor to greenhouse gas emissions in Nigeria, accounting for 36% of the country's emissions. The country has developed a National Agricultural Resilience Framework to promote sustainable agriculture and reduce emissions. However, implementation of the framework has been slow due to limited funding and inadequate technical capacity.

Similarly, waste management is a significant challenge in Nigeria, with inadequate infrastructure and poor waste disposal practices contributing to greenhouse gas emissions. The country has developed a National Waste Management Strategy to address these challenges, but implementation has been slow due to a lack of funding and limited technical capacity.

Adaptation

Adaptation refers to actions taken to reduce the vulnerability of human and natural systems to the impacts of climate change. Nigeria has made some progress in implementing adaptation measures, particularly in the water resources and health sectors. The country has developed a National Water Resources Master Plan to address water scarcity.

3.1 Analysis of Climate Change Law 2021

The Nigeria Climate Change Policy Response and Strategy (NCCPRS) was the first climate change policy by the Nigeria government which was in 2012.Then in 2021, the government in order to reposition the issue of climate change and its law, brought out the Climate Change Act 2021 and with various policies to lubricate it. This policy was to last between 2021 up to and including 2023.

The Act makes for reaching stands and among which are;

i. that the newly established NCCC in concert with the Ministries of Environment, Budget and National Planning is to handle issues dealing with Climate Change Action Plan. This action plan needs to cover details about Nigeria's carbon budget, meaning approved quantity of emission, acceptable within a period of time, incentives for both public and private sections compliance, reduction targets, compliance with international standard notification.

ii. there is the Carbon Tax: Carbon taxes are those environmental taxies levied on precise units of carbon by government to reduce carbon emissions through fossil-fuel-based energy, which actually happened due to production or consumption of goods and services. This apart from reduction of emissions created revenue sources of energy by conversion (technological innovations).

iii. Emission Trading: This is an incentives technique where the government sets a cap limit on maximum level of emissions that is permissible and gives out a licence for each unit of emission, these units of emission can be traded by individuals or companies. The idea behind this is that individuals must choose between cutting down their GHS emissions or to participate in buying or selling the permits or allowances issued by government or other companies. This is trading like normal trading. It is however difficult because it involves (i) monitoring (ii) reporting (iii) verification. There are the issues also of ductions, market set up and other issues.

There was the establishment of National Council on climate change. They shall have powers to make Policies and decisions concerning matters on climate change in Nigeria. The Act also makes provision that there shall be collaboration between NCCC and FIRS in order to put in place carbon tax in Nigeria. The money realized from the carbon tax and emission trading and any other funds from the climate change penalty will serve as funds for the climate change Trust Fund. From what has been seen above, the law is a welcome development as it positioned the country into a serious nation tackling climate change frontally.

The carbon tax and emissions trading as seen above is superb and will go a long way to carbon climate change problems but the stakeholders participation with FIRS and NCC is not well spelled out. This is because the fundamental issues such as; (i) tax base, (ii) tax rate (iii) tax coverage (iv) method of calculation, (v) peculiarity of consideration for emissions trading, will affect the realisation of the ideal climate change. The money realised should be used to take care of the health of citizens and communities because as it is no specific use of the Trust Fund as it concerns the community is mentioned. The Act did not also provide for sensitization of stakeholders who are likely to be penalized. Both the usefulness and disadvantages needs to have been reflected in the Act as climate change issues have become a global concern.

The Act provide for keeping the average increase in global temperature within 2^{o}C and moving towards limiting temperature to 15^{o}C above pre-industrial levels. There is the provision in the Act that every 5years there will be National Climate Change Action Plan. There exist legislative oversight functions by partnering with civil society,

climate change education, annual report to National Assembly and evaluation of performance both of public and private sectors. Furthermore, there must be Desk-Officers in Ministries, Departments and Agencies in order to ensure compliance. The council NCCC has power to impose additional obligations in order to ensure compliance with the climate change action plan.

The actions to fight for the implementation of this Act can be filed at the Federal High Court and can come under the followings;

i. Section 33 of the constitution especially right to clean and healthy environment, Section 24 of African charter.
ii. Protection of environment against harm by the state section 20 principles of equality of rights, obligations and opportunities, before the law.
iii. Access to court section 17(2)(a)(ii).

4. Summary

The study was able to trace the issue of climate change in Nigeria especially coming from global recognition, it looks at the definition of climate change, overview of climate change in Nigeria. Furthermore, the analysis of Nigeria's climate change laws and policies, was discussed including National Environmental Standards and Regulations Enforcement Agency Act, National Policy on climate change among others. The Nigerian Climate Change Act, 2012 and that of the Present Act, 2021. A serious analysis of Climate Change Law 2021 especially its far reaching changes, advantages and disadvantages associated to the said Act.

5. Conclusion

The issue of Climate change in Nigeria and its policies vis-à-vis the laws have made meaningful progress and not stagnated. However, the progress so far made is not reasonable enough as expected. Accordingly, there are necessities for lots of improvements in order to meet up or get nearer to the desired global expectations.

6. Recommendations

In line with making Nigerian Climate Change Laws and Policies to make more meaningful progress, the following recommendations are hereby made;

i. The Nigerian Climate Change Act 2021 should be amended further to provide for sensitization of stakeholders who are likely to be penalized for being in breach of the Act.
ii. The Nigerian Climate Change Act which provided for Carbon Tax and Emissions trading should provide for the participation of FIRS and NCC in a clearer manner as same has not been properly spelt out as at now.
iii. The money realized as penalties should be used to take care of the health of citizens and communities because as it is not in the present Act, how the Trust Fund should be used for community development.
iv. The NGOs should participate more in the monitoring of the compliance with United Nations standard as it concerns Climate Change in Nigeria. The National Assembly should not be allowed to participate only in over-sight function as they make compromise their reports on this issue.
v. The Climate Change Policies in Nigeria should be continued in a singled-booklet which can be distributed to most stakeholders and updated from time to time.
vi. There should be more seminars, talk-shows, and conferences yearly on climate change. This will improve the level of Climate change in Nigeria. The experts should be encouraged to participate more on this in order to enjoy their expertise.
vii. There should be "climate change course" for all the tertiary institution in Nigeria. This should be a compulsory course in order to have more persons in Nigeria who would have more ideas in climate change.

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The Concept of Sukuk and its Applications in Contemporary Islamic Financial System

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Abstract
Sukuk is the Arabic term for financial certificates, which are also commonly referred to as Shariah-compliant bonds. Sukuk was developed as an alternative to conventional bonds, which are considered by many Muslims to be impermissible because they involve elements which are prohibited or discouraged such as usury (*riba*), uncertainty (*gharar*) and gambling (*maisir*). The paper adopts qualitative research methodology which relies on secondary data in form of textbooks, journals, newspapers, related websites etc. After discussing the concept of Sukuk that covered topics such as overview of sukuk; classifications of sukuk; types of sukuk; Shariah issues in Sukuk etc. it is found that sukuk securities are structured to be Shariah compliant by distributing profits and not interest, and generally include a tangible asset in the investment. For example, sukuk securities may be partial ownership of a property built by the investment company (and held in a special purpose vehicle) so that the sukuk holders can collect the property's profits as rent (which is permissible under Islamic law). However, there are still various Shariah issues in the different types of sukuk in the market.

Keywords: Sukuk, Islamic Bond, Islamic Finance

1. Introduction

Sukuk is the Arabic term for financial certificates, which are also commonly referred to as "Shariah-compliant" bonds. Sukuk is defined by the AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions) as "securities of equal denomination representing individual ownership interests in a portfolio of permissible existing or future assets.

Sukuk were developed as an alternative to conventional bonds, which are considered by many Muslims to be impermissible because they pay interest (which is prohibited or discouraged as riba or usury) and may also finance companies involved in activities that are not permitted under Shariah (gambling, alcohol, pork, etc.).

Sukuk securities are structured to be Shariah compliant by distributing profits and not interest, and generally include a tangible asset in the investment. For example, sukuk securities may be partial ownership of a property built by the investment company (and held in a special purpose vehicle) so that the sukuk holders can collect the property's profits as rent (which is permissible under Islamic law). Because they represent ownership of real assets and (at least in theory) do not guarantee repayment of the original investment, Sukuk is similar to equity instruments, but as with a bond (and unlike equity) the regular payments end when they expire. Most Sukuk, however, are "asset-based" rather than "asset-backed" - their assets are not actually owned by the SPV, and their holders have recourse to the originator in the event of default. Different types of sukuk are based on different structures of Islamic contracts.

This paper looks into the concept of Sukuk. The first part of this paper provides an overview of Sukuk; the second part discuss Sukuk Classifications into Asset-based and Equity-based; the third part deals with Types of Sukuk and Their Basic Principles; and the last part deals with Shariah Issues in Sukuk.

2. Overview of Sukuk

Sukuk are commonly known as ‘Islamic bonds.’ However, this may mislead people to assume that sukuk and bonds are the same, which is not the case, as they completely differ in their nature (Dusuki & Mokhtar, 2010). In actual fact, instruments in sukuk market are being issued by using assets and various Shariah contracts. Thus, sukuk holders get their shares in revenues generated by sukuk assets and may also get shares if proceeds are realized from the sukuk assets (Mohamad Mokhtar, Rahman, Kamal, & Thomas, 2009).

The definition of sukuk comes from the singular of the word sakk, but it can also be defined from different perspectives, such as linguistic, Islamic jurisprudence, and Islamic finance. From a linguistic perspective, the term sakk is said to be of Persian origin and means two things colliding with great force. In Arabic literature, sakk means "to strike a seal on a document" The term sakk generally applies to all written documents. A narration cited by Imam Malik in Al-Muwatta refers to sukuk as a document that gives its holders the right to some products of the market (Sairally, B.S & et al., 2017).

From the perspective of Islamic jurisprudence, scholars use the term sakk to refer to a written document that confirms a transaction and specifies the rights and conditions of the parties to the contract. For example, a waqf, a sale, or a lease. From the perspective of Islamic finance, on the other hand, the term sukuk in its simplest form refers to 'investment certificates' that entitle the holder to have a share in the property in proportion to the underlying assets or property transactions of the sukuk, along with pro rata profits or losses related to the property, business ventures, or investment activity. Unlike conventional bonds, structuring sukuk requires Shariah-compliant underlying assets (Sairally, B.S & et al., 2017).

Literally, sukuk simply means 'certificates." Technically, sukuk are papers or certificates that represent financial obligations due to trade and other commercial activities (Kamil, 2008). The Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI) defines investment sukuk (sukuk al-istithmar) in its Shariah Standard 17 (2) as "certificates of equal value representing undivided interests in ownership of tangible assets, beneficial interests and services, assets of specific projects or specific investment activities" (AAOIFI, 2008). The Islamic Financial Services Board (IFSB), another regulatory body for Islamic financial institutions, provides a similar definition. In its Capital Adequacy Standard (IFSB 2), Sukuk is defined as "certificates representing the holder's proportionate ownership of an undivided portion of an underlying asset, with the holder assuming all rights and obligations with respect to that asset" (IFSB, 2005).

Based on the above definition, although the term sukuk is usually translated as Islamic bond, a more accurate description of sukuk should be an investment certificate representing ownership of an asset or a company. In contrast, bonds are typically issued to evidence debt. Unlike Sukuk, bonds do not represent ownership by the

bondholders of the commercial or industrial enterprises for which the bonds were issued. Rather, they document the interest-bearing debt owed by the issuer, who is actually the owner of the enterprise, to the bondholders (Usmani, 2007).

The Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) defines sukuk as: "certificates of equal value representing undivided interests in the ownership of tangible assets, beneficial interests, and services, or (in the ownership of) the assets of specific projects or specific investment activities." (AAOIFI Shari'ah Standard (17) on investment Sukuk).

There are three requirements for a sukuk to be considered sharia compliant (Godlewski, 2013). First, the certificates must represent ownership of tangible assets, usufruct, or services from entities that generate revenue. Second, payments to the investor must come from after-tax profits, and third, the value repaid at maturity should be the current market price of the underlying asset, not the original amount invested. Sukuk comes in many different forms, as financiers are not forced to develop their own variations (Visser, 2009). Generally, however, the parties to a Sukuk issue are the company (the debtor or originator), the special purpose vehicle (SPV), and the acquirers who purchase the Sukuk. The SPV is a separate entity from the originator that is insolvency remote and issues Sukuk certificates (Pegah, 2017).

Persian Gulf Countries (GCC) and Southeast Asia (SEA) are the major players in the global sukuk market. Among the GCC countries, UAE, Saudi Arabia, Bahrain, Qatar, and Kuwait are important countries in issuing sukuk. Meanwhile, Malaysia plays an important role in the region SEA. In addition to Malaysia, Indonesia and Singapore also contribute to the global Sukuk market in this region. Today, the market is no longer limited to this region. It is also developing in other countries such as Pakistan, Japan, and other parts of Asia, as well as the US, UK, Germany, Turkey, Egypt, and Gambia, which also contribute to the market. According to a 2016 report by the International Islamic Finance Market (IIFM), a positive development in the sukuk market is the attractiveness of sukuk as an alternative source of financing from new countries in Europe, Asia, CIS, and Africa, as well as early signs of possible direct market entry from North America. It should be noted that in 2000, the total volume of Sukuk was only US$1,172 million and there were no government Sukuk in the market. According to the IIFM report, the total volume of Sukuk has exceeded US$68,742 million in the next 16 years ((Pegah, 2017).

3. Sukuk Classifications into Asset-based and Equity-based

The Islamic Financial Services Board (IFSB), in its Guidelines No. 2 (IFSB 2) issued in 2005, distinguishes two broad categories of Sukuk, namely asset-based Sukuk and equity-based Sukuk. The former is defined as "Sukuk where the underlying assets provide fairly predictable returns to Sukūk holders, as in the case of Salam, Istisnā, and Ijārah." Equity-based sukuk, on the other hand, are defined asthose where returns are based on profit and loss sharing in the underlying asset that does not offer reasonably predictable returns (e.g., Mushārakah or Mudārabah for trading purposes)" (IFSB, 2005). This guidance clearly recognizes that Sukuk represent ownership of the underlying asset and that Sukuk holders assume all rights and obligations associated with the asset.

In reality, however, not all sukuk meet the criteria set forth in IFSB 2. In fact, most Sukuk structures in the market do not reflect the true ownership of the Sukuk holders in the underlying asset. Therefore, an additional standard, IFSB 7 - Capital Adequacy Requirements for Sukuk, Securitizations and Real Estate Investments, was issued in 2009. This standard addresses, among other things, the capital adequacy requirements for sukuk structures that are not backed by assets (ABS) and provides clear guidance on the criteria for derecognition of assets for a ABS (Mohamad Mokhtar, True Sale and Bankruptcy Remoteness in Sukuk, 2008).

IFSB 7 distinguishes three types of sukuk structures - one asset-backed structure (ABS) and two non ABS structures (pay-through and pass-through structures). According to IFSB 7, asset-backed sukuk (ABS) are

"structures that meet the requirements for an asset-backed structure as rated by a recognized external credit rating institution (i.e., credit rating agencies) (Dusuki & Mokhtar, 2010).

On the other hand, the IFSB distinguishes two types of asset-based Sukuk: first, Sukuk that use a purchase commitment from the originator (also called pay-through Sukuk), and second, Sukuk with a guarantee from the issuer in case the originator defaults (also called pass-through Sukuk). Based on the IFSB definition above, it became clear that asset-backed Sukuk implies that Sukuk holders have recourse to either the originator (via the purchase obligation) or the issuer (via the guarantee). In other words, Asset-Backed Sukuk involves full transfer of legal ownership of the underlying asset, while Asset-Based Sukuk involves recourse to the originator or the issuer (but not the asset) (Dusuki & Mokhtar, 2010).

Obviously, the IFSB definition of asset-backed sukuk is very much influenced by the rating agencies' definition. For example, Moody, one of the most internationally recognised rating agencies, also makes a clear distinction between asset-backed and asset-based Sukuk. According to Moody's definition, asset-backed Sukuk is those whose "investors benefit from asset-backing; they benefit from some form of security or lien over the assets and are therefore in a preferred position over other, unsecured creditors. In other words, should the issuer default or become insolvent, bondholders can recoup their risk by taking control of the assets and ultimately realising the value of those assets. In addition, the elements of securitization must be present-true sale, bankruptcy remoteness, and enforceability of the collateral" (Lotter, Philipp; Howladar, Khalid, 2007).

On the other hand, asset-based Sukuk are those in which "the originator agrees to repurchase the assets from the issuer at maturity of the Sukuk or at a predefined early termination event for an amount equal to the principal repayment. In such a repurchase obligation, the actual market value of the underlying asset (or portfolio of assets) is irrelevant to the holders of the Sukuk note, as the amount is defined to be equal to the notes. In this case, the noteholders have no special rights to the asset(s) and rely entirely on the creditworthiness of the originator, either from internal sources or from its ability to refinance, for repayment. Therefore, if the originator is unable to meet its obligation to repurchase the asset(s), the bondholders are not in a preferred position relative to other creditors, nor are they in a weaker position relative to other unsecured creditors, underscoring the importance of the purchase obligation ranking equally with all other senior unsecured obligations of the originator." (Lotter, Philipp; Howladar, Khalid, 2007).

In addition to Moody, Rating Agency Malaysia (RAM) has a similar definition of asset-backed and asset-based sukuk. According to RAM, asset-backed Sukuk are "characteristically non-recourse Sukuk in which the underlying assets are the sole source of profit and principal payments" (Mohd Noor, 2008). They also highlight the credit risk characteristic of asset-backed Sukuk, which is determined solely by the performance and credit quality of the underlying asset, i.e., the cash flow of the asset and, in certain situations, the expected value at maturity, taking into account various stresses and scenarios. In addition, RAM affirms the independence of Sukuk k investors from the originator by clearly stating that Sukuk investors "do not have access to the owner of the asset (i.e., the originator), likewise they are protected from its financial difficulties, which is ensured by the structural and legal design of the transaction" (Mohd Noor, 2008). RAM also shares a similar concern to Moody regarding the securitization element requirement that the credit risk profile of the sukuk is effectively decoupled from that of the asset originator and instead be determined solely by the performance of the underlying asset.

According to the Securities Commission Malaysia (SCM), the classification of Sukuk into Asset Based and Asset Backed is based on the technical and commercial characteristics of the Sukuk. In the first category, the underlying asset used to structure the issue remains on the originator's balance sheet after the Sukuk is issued. In this category, the originator transfers only the beneficial ownership of the asset to the Sukuk-holders but continues to retain its legal ownership. In other words, from a legal perspective, there is no true sale in an asset-based structure because the Sukuk holders have no ownership interest in the underlying asset. Consequently, the Sukuk holders cannot sell the asset to a third party. This also means that the Sukuk holders can only have recourse against the originator/debtor. On the other hand, an asset-backed Sukuk can be defined as an Islamic security issued as part of a securitization transaction (Herzi, 2016).

4. Types of Sukuk and Their Basic Principles

Sukuk are designed in accordance with Islamic law in terms of the use of funds and the method of financing. They are developed based on basic Islamic financing principles such as mudaraba, musharaka, ijara, etc. The Accounting and Auditing Organization for Islamic Institutions has identified fourteen permissible types of sukuk (AAOIFI, 2003-2004), of which seven are the most commonly issued worldwide:

4.1 Mudaraba Sukuk

The Organization for Accounting and Auditing of Islamic Institutions defines Mudaraba Sukuk as follows: 'Mudaraba Sukuk are investment Sukuk that represent ownership of equal shares in the equity of the Mudaraba. The Sukuk holders provide the capital for Shariah-compliant investment activities, which are carried out by the investment agency. The investment agent receives an agreed fee from the profits it earns from the business activity' (AIMS, 2010, pp.1-4). According to the Luxembourg tax authorities, mudaraba is defined as "a type of specialized investment in which the depositor and the beneficiary of the deposit share the profits. If the investment project fails, there is a risk of loss of equity, but if the investment is profitable, the depositor is entitled to a fee for services rendered. If the investment is not profitable, the contributor is not entitled to a fee" (Rabia & Dascotte, 2010, p.13).

4.1.1. Basic Principles of Mudaraba

- It is an investment partnership agreement for certain halal business purposes (acceptable in Shariah) where one party named Rabbul-mal (fund provider/owner/investor) invests, and the management and operation of the business is the sole responsibility of the other party named Mudraib (operator/manager).
- The Rabbul-mal has no right to participate in the management of the business. He or she has no executive power whatsoever.
- The Any profits from the business shall be shared between the parties according to the established ratio.
- The Losses arising from the business activity shall be borne in full by the rabbul-mal (investor) only. The mudraib (entrepreneur/manager) has lost his expected profits and his management work, skills and efforts invested in the business activity. The condition attached to this principle is that the mudraib (entrepreneur/manager) shall manage the business with due diligence and without any negligence. The liability of the Rabbul-mal (financier/owner/investor) is limited to his investment in the business unless he has authorised the mudraib (entrepreneur/manager/manager) to incur debts on his behalf.
- The Ownership of the business assets rests exclusively with the rabbul-mal. Therefore, when there is an increase in the value of the assets, they belong only to him. The mudraib (entrepreneur/manager) only has the right to share in the profits generated by the normal operation of the business (Al Zubi & Maghyereh, 2006, pp. 235-249).

4.1.2. Practical Aspects of Mudaraba Sukuk Structure in the Current Capital Market

This type of sukuk structure is currently used to promote public partnership in capital-intensive projects, such as airport development, seaports, dams, and power generation facilities. For this purpose, an SPV is established to issue Mudaraba Sukuk to raise the funds (Mudaraba capital) needed to develop the project. The SPV manages the development of the project on behalf of the Sukuk holders. Any revenues or fees, including proceeds from liquidation or sale, are paid to the Sukuk holders according to the agreed distribution (final capital proceeds). In 2006, Bahrain-based Shamil Bank issued $51 million worth of Mudaraba Sukuk to invest the proceeds in the real estate sector in China (Shamil Bank, 2009).

4.2 Musharaka Sukuk

The Organization for Accounting and Auditing of Islamic Financial Institutions defines Musharaka Sukuk as follows: "Musharaka Sukuk are investment Sukuk that represent ownership of Musharaka equity. The musharaka agreement is a type of joint venture agreement between the issuer and (usually) the originator to carry out a

Shariah-compliant investment activity in accordance with a business plan attached to the musharaka agreement. Any profits from musharaka agreements are shared between the issuer and the originator as agreed' (Academy for International Modern Study, 2010, pp. 1-4).

According to the Luxembourg tax authorities, musharaka is defined as "investment through a participation in which the share of the profit is fixed in advance and the losses attributable to each investor are limited to the amount invested. Payments made in installments represent part of the repayment of the capital and part of the distribution of profits" (Rabia & Dascotte, 2010, p.13).

4.2.1. Basic Principles of Musharaka

- It is an investment contract to carry out a halal business (in accordance with Sharia law), in which all parties contribute capital in a certain ratio.
- The partners have the right to actively participate in the management of the business and have executive powers but are not obliged to do so. The partners can agree on one partner who can manage the business on behalf of the other.
- Profits are shared in accordance with the pre-established ratio. However, in the case of a sleeping partner, the share should not be greater than the ratio of the capital invested by this sleeping partner.
- Loss should be borne by each partner in accordance with the ratio of the invested capital and not in accordance with the predetermined profit-sharing ratio.
- The liability of partners is unlimited. However, it can be limited to partners who do not authorise others to incur debts during business operations.
- All the partners own the business assets, so any increase in the value of the assets is also shared among them according to the predetermined ratio (Al Zubi & Maghyereh, 2006, pp. 235-249).

4.2.2. Practical Aspects of Musharaka Sukuk Structure in the Current Capital Market

This type of sukuk structure is currently used by companies to develop new projects or expand existing projects. It is also used to finance other business activities on a musharaka basis. For this purpose, a special purpose vehicle (SPV) is established to provide funds (musharaka capital) to the company through the issuance of musharaka sukuk to operate the business. The company also contributes capital, usually in the form of land, and uses that capital to complete or operate a specific business or project on behalf of the SPV. The Company agrees to purchase shares of the SPV at an agreed-upon price and for a specified period of time until the SPV no longer has an interest in the business or project. All proceeds from the project or business will be distributed to the Sukuk holder in accordance with the specified share. Emirates, Dubai's national airline, issued a $550 million Musharaka Sukuk 2005. The proceeds will be used to finance the Emirates Engineering Centre and build its headquarters in Dubai. The term of the Sukuk was seven years and it was listed on the Luxembourg Stock Exchange (Haider & Azhar, 2010).

4.3 Ijara Sukuk

The Accounting and Auditing Organization for Islamic Institutions defines Musharaka Sukuk as follows. these are Sukuk that represent ownership of equal shares in a rented property or usufruct of the property. These sukuk give their holders the right to own the property, receive the rent, and dispose of their sukuk in a manner that does not interfere with the tenant's right, i.e., they are negotiable. The owners of such sukuk bear all costs of maintenance and damages to the property." (AIMS, 2009, p.1-4) Ijara is a structure in which the owner transfers the right to use or benefit from a particular property or other asset/service to another person in exchange for a consideration, such as rent. It is an alternative to traditional leasing. (Usmani, 1998, p.2).

Luxembourg tax authorities define Ijarah as a "leasing contract in which the capital provider (usually the bank) buys a property on behalf of its client and then makes it available to its client in exchange for a rent over an agreed period of time" (Rabia & Dascotte, 2010, p.13). The specific terms of the contract distinguish the ijara

from the traditional lease, which should be designed with the Islamic principles of ijara in mind (Haider & Azhar, 2010).

4.3.1. Basic Principles of Ijara

- The Leasing (Ijara) should be entered into for an agreed period of time, an agreed consideration, and for an identifiable asset with clear terms. The asset to be leased should have a valuable benefit in accordance with Islamic laws, otherwise it cannot be considered Ijara.
- Ownership of the 'right to use or drive" remains with the lessor, only its 'right' is transferred. Therefore, what is consumed during use cannot be leased, e.g., fuel, food, money, etc. Otherwise, it is treated as a loan and any consideration received is considered as interest (riba), which is prohibited.
- Lessor is responsible for all liabilities associated with the leased asset, except for liabilities arising from the use of the assets. For example, the lessor is obligated to pay the property tax and insurance under takaful (Islamic type of insurance), while the normal depreciation, utility bills and taxes should be borne by the lessee only.
- The leased property should be used only for the purpose specified in the contract, otherwise the lessor's consent is required.
- All The risk associated with the leased asset remains with the lessor during the lease term. However, the lessee is responsible for the losses caused by his negligence and misuse of the leased object.
- Rental amount should be determined at the time of concluding the contract and cannot be changed without the consent of all parties to the contract.
- The lease payment is calculated from the date of actual delivery of the leased object and not from the date of the price paid or purchased by the lessor, as in the case of traditional leasing. When the lessee acquires the asset on behalf of the lessor, a principal-agent relationship arises, and after delivery, the lessor-lessee relationship arises. The difference between the two is very important in the case of ijara (lease).
- In the event of default, the lessee/owner should not seek liquidated damages. Other steps can be taken to collect the rent, including asking the lessee to vacate the property (Usmani, 1998, p.1-14).

4.3.2. Practical Aspects of Ijara Sukuk Structure in the Current Capital Market

Currently, the Ijara structure is involved in sale and leaseback transactions. It uses real estate/buildings as assets to obtain money from investors. For this purpose, a special purpose vehicle (SPV) is established to take over the building from the owner at the agreed price. Then the SPV issues Ijara Sukuk to raise funds (Ijara capital) equal to this price and make payments to the owner. Now the SPV leases the building/asset back to the owner for an agreed monthly rent or fee. This fee or rental income is paid to the investors, the ijara sukuk holders. The value of the building at the end of the rental period is also paid to the Sukuk holder and is equal to the outstanding amount, which is usually the face value of the Sukuk certificates (Standard & Poor's, 2005.pag.1). The Pakistan Water and Power Development Authority (WAPDA) issued an 8-billion-rupee Ijara Sukuk to finance the Mangala Dame project. It is secured by an irrevocable first demand guarantee from the Pakistani Ministry of Finance (Daily Times, 2005, p. 6).

4.4 Murabaha Sukuk

According to the Luxembourg tax authorities, Murabaha is a "transaction that allows the client (the investor) to purchase a property without having to take out an interest-bearing loan?" The provider of capital (e.g., a bank), the financier, buys the property and then sells it to the investor with a deferral. It is a financing model that can be used for any type of Shariah-compliant asset, but mainly for real estate (or stocks, commodities, or the like)" (Rabia & Dascotte, 2010, p.13). The Murabaha Sukuk holder or capital user purchases the specific asset/commodity from a third party and then sells it to the buyer or capital user on a cost-plus profit basis (Pollard & Samers, 2007, pp.315-316). The capital users then pay the price of the asset/good in instalments as agreed between them (Usmani, 1998, pp.1-14).

4.4.1. Basic Principles of Murabaha

- Murabaha is a sale rather than a form of financing in Islamic Sharia law and should therefore meet all the applicable conditions of a valid contract of sale.
- Finance is used only for the purchase of a specific commodity, e.g., wheat for a mill, but not for other overhead costs, e.g., utility bills, salaries, etc. It also cannot be used for assets/goods already purchased.
- The Cost of purchased goods and associated profit should be disclosed to the buyer at the time of sale.
- The seller should be the owner and possessor of the goods and bear its risk first and then sell it to the buyer. As in an agency relationship, the buyer may purchase the goods from a third party on behalf of the seller and then purchase them from the seller.
- When the price is set on either a cash or credit basis, it cannot be increased for late payment or decreased for early payment. Security of payment is achieved by accepting a promissory bill or bill of exchange (Usmani, 1998, pp. 1-14).

4.4.2. Practical aspects of Murabaha Sukuk Structure in the Current Capital Market

The murabaha structure of sukuk is used to finance a specific commodity or asset for the purpose of resale to the borrower. For example, textile factories need cotton to meet their raw material needs and can acquire it through Murabaha structures. An SPV (special purpose vehicle) is established for this purpose. The company, e.g. the textile mill, makes a commitment to the SPV to buy a specific raw material such as cotton at a pre-agreed price. Then the SPV issues murabaha sukuk to raise the funds (murabaha capital) needed to purchase that raw material from the supplier and sells it to the borrower at cost plus profit. Sukuk holders are entitled to the sale price (cost plus profit) of the commodity, usually paid in instalments over a period of time (Haider & Azhar, 2010).

4.5 Salam Sukuk

Salam Sukuk is issued to raise Salam capital. The holder of a Salam Sukuk is the buyer of the commodity from the issuer of the Sukuk, the seller, at an agreed price paid on spot in return for the commodity, the delivery of which is at an agreed date in the future (Usmani, 1998, p.1-14). Salam is a way to replace the traditional futures/forward contracts considering the Islamic laws and basic principles (Haider & Azhar, 2010).

4.5.1. Basic principles to consider while developing Salam Sukuk

- The price of the commodity/item is paid in full by the buyer to the seller at the time of delivery, but delivery is made at a specific time in the future.
- The Goods should be standardized. Quality and quantity are easily determinable, and it is readily available in the market.
- The future delivery date and place should be clearly stated in the contract. (Usmani, 1998, p.1-14).

4.5.2. Practical Aspects of Salam Sukuk Structure in the Current Capital Market

The salam structure is used to enter into a commodity futures contract with the purpose of obtaining funds against the commodity to be delivered on a specific date in the future. For this purpose, a special purpose entity is established to issue Salam Sukuk to raise funds (Salam capital) to purchase the specified commodity at a specified price and future delivery date. The company or seller receives the full selling price upfront, and usually this selling price is lower than the future spot price. The SPV takes delivery and sells the commodity at a market price that is higher than the purchase price. The difference is the profit that is distributed among the Salam Sukuk holders (Haider & Azhar, 2010).

4.6 Istisna Sukuk

Luxemburg Tax Authorities defined Istisna as "Consists of the financing of the production of property via an advance of payment for future delivery or a future payment for a future delivery" (Rabia & Dascotte, 2010, p.13). Istisna Sukuk certificated issued to raise capital for the production of a specific asset. Holders are the owners of that asset which is to be produced or manufactured at future date. The Sukuk holders are entitled to the sale proceeds from the certificate or the asset manufactured (Haider & Azhar, 2010).

4.6.1. Basic Principles to Consider while Developing Istisna Sukuk

- Funds are used only for the production of a specific product or asset that must be delivered at a later date.
- The selling price may or may not be paid in full in advance, as in the case of the Salam structure.
- The specifics of the intended manufactured asset should be clearly agreed between the manufacturer and the fund provider. The contract can be terminated by either party prior to the start of the manufacture of the asset or product, but not after the start of manufacture or production. (Usmani, 1998, pp. 2-14).

4.6.2. Practical Aspects of Istisna Sukuk Structure in the Current Capital Market

This sukuk structure is used to finance large and complex capital-intensive products or assets. For example, the manufacture of aircraft, ships, and the development of large infrastructure projects. It can be used under BOT (buy, operate and transfer) agreements. For this purpose, a special purpose vehicle (SPV) is established to raise the funds (Istisna capital) required to pay the sale price. These funds should be used for the production or development of the respective project or asset. Upon delivery, ownership is transferred to the special purpose entity, which can either sell it or lease it to the end user at a profit. All proceeds and profits should be distributed to the owners of the Istisna Sukuk (Haider & Azhar, 2010).

4.7 Hybrid Sukuk

This type of sukuk is structured to combine the principle of several sukuk structures such as ijara, mudaraba, and istisna, which consist of a pool of assets. A diversified pool of assets composed of different sukuk structures provides more attractiveness to investors in the market (Haider & Azhar, 2010).

4.7.1. Basic Principles to Consider while Developing Hybrid Sukuk

As mentioned earlier, the principles of any sukuk that is part of the hybrid sukuk should be considered when developing the type of hybrid sukuk. The principles of a particular sukuk that is part of the hybrid structure should be implemented in hybrid sukuk structures (Haider & Azhar, 2010).

4.7.2. Practical aspects of Hybrid Sukuk Structure in the Current Capital Market

This type of sukuk structure is designed to accommodate the different needs of different financial users. It includes more than one feature of the various sukuk structures available in the market. The special purpose vehicle (SPV) takes the assets and Murabaha contact from the borrower and then issues the hybrid Sukuk to raise funds (hybrid capital) for the assets taken by the buyer. All proceeds and profits are distributed to the holder of the Sukuk. The first hybrid Sukuk was issued by the Islamic Development Bank (IDB) in the amount of $ 400 million. This structure consists of an asset pool of 65.5% Sukuk Ijara, 3% Sukuk al-Istisna, and 31.5% Murabaha (Haider & Azhar, 2010).

5. Shariah Issues in Sukuk

The critical scholars argue that the current practice of Islamic finance aims to replicate the practices of conventional finance, and in doing so, the current Islamic financial products are Shariah-compliant in form but not in substance and spirit. They criticize that the practice of sukuk simply mimics the practice of conventional bonds in the market. In addition, Sukuk practice lacks transparency in terms of documentation and the rights and obligations of the various parties in the sukuk market (Bashir, 2008). Economic value added and Shariah compliance is the focus of product development in the Sukuk market. Therefore, a process of Shariah approval is needed (Nor Fadilah Bahari, Nurul Wajhi Ahmad, Wan Shahdila Shah Shahar, Norfaizah Othman, (2016).
The following are details of some Shariah issues in Sukuk based on the Islamic commercial contracts used in the issuance of Sukuk:

5.1. Musharakah & Mudharabah Sukuk

5.1.1. Purchase Undertaking in Musharakah and Mudharabah Sukuk Structures

a) Introduction on Purchase Undertaking

Sukuk Musharakah and Mudharabah are typically structured with purchase commitments to ensure that 100% of the invested capital is returned to investors. They can also be referred to as repurchase promises, put or call options, which serve the same purpose. In addition, it is often associated with profit tanazul by investors. Under this concept, a party guarantees investors that the company will be profitable, and in case of losses, it acquires investors' ownership of the company in exchange for repayment at par (i.e., investors' initial capital) or a pre-agreed formula (covering investors' initial capital and expected profit for six months). In return, investors receive a " tanazul" or 'discount' on profits for the first six months of the project's life by capping their return at a conventional benchmark interest rate plus spread or other agreed-upon benchmark. If their share of profits exceeds the benchmark, the excess profit goes to the other party as an incentive fee (Lahsasna, 2012).

In November 2007, Sheikh Taqi Usmani stated that most sukuk (about 85%) in the market (which use a musharakah or mudharabah structure) do not comply with Shariah principles because the purchase commitments, which involve a promise to repay the principal, violate the principles of risk and profit sharing on which such sukuk should be based (Lahsasna, 2012).

b) Current Practice and Shariah Issues

Most musharakah and mudharabah sukuk in the Gulf region were structured and sold with a purchase obligation that mirrored the fixed-rate yield of a conventional bond. As a result of the controversy generated by Sheikh Taqi Usmani's statement, the AAOIFI Shariah Board convened a series of meetings in Bahrain on February 13 and 14, 2008, after which a statement on sukuk was drafted to provide some guidance on sukuk structures. This statement had an impact on the global issuance of Sukuk, particularly Sukuk Musharakah (Lahsasna, 2012).
Sheikh Taqi Usmani's criticism is mainly based on two critical points of the Shari'ah analysis. First, the usual redemption features are always intended to ensure that the investor recovers 100% of the principal and the associated return, and second, the redemption price and return are always fixed in advance, without regard to losses or risks that may arise in the normal course of business. Therefore, the redemption features run counter to the nature of traditional Musharakah and Mudharabah principles, making them invalid in perspective or creating a situation where the redemption feature is unenforceable in some courts. Generally, in most musharakah and mudharabah sukuk, the provider of the purchase obligation is also the investment agent (Lahsasna, 2012).

c) View of Scholars on the Shariah Issues

Jurists agree that in the context of a mudharabah structure, the mudarib is a trustee with respect to the capital that comes into his hands. The role of the mudarib is ultimately to use his best efforts to generate a profit for the

sukuk holders (i.e., rabbul mal), for which the investment representative is entitled to an agreed-upon share of the profit. It is not the Mudarib's role to guarantee the return of capital from the Sukuk in the form of a purchase commitment or otherwise. Similarly, the mudarib cannot bear any losses from the business unless there is a mistake or negligence on his part (Lahsasna, 2012).

According to the Malikis and Shafiis, the Mudarib is not responsible to guarantee the losses related to the capital, and any condition to do so invalidates the Mudharabah contract. The Hanafis and Hanbalis hold that the contract is valid but the condition is considered invalid. However, it is permissible for a third party who is not a Mudarib to voluntarily undertake to compensate for Mudharabah losses, provided that this guarantee is in no way connected with the Mudharabah contract (INCEIF, 2010).

The AAOIFI Shariah standards and the resolutions issued by the International Fiqh Academy, as well as the SAC of the SC, generally allow a third party to guarantee the capital of the mudharabah and the musharakah. However, there is no mention of the repayment price for the capital. The AAOIFI, representing the consensus of leading scholars, prefers that these repayment features be executed at a market price. In theory, buying at market price removes the certainty of a guaranteed return of principal at a profit. There is considerable debate about how to determine the market price based on three factors: Cost, Regulation, and Willingness to Execute (Lahsasna, 2012). Below are details of their opinions:

i) AAOIFI's Shariah Standards 2008 - Guarantees in a Sharika Contract (3/1/4)

All partners in a sharika contract hold the sharika's assets in trust. Therefore, no one is liable unless there is misconduct, negligence, or breach of contract. It is not permissible to agree that one partner of a sharika contract guarantees the capital of another partner. (3/1/4/1). It is permissible for one partner in a Sharika contract to agree that another party will provide a personal guarantee or pledge in the event of misconduct, negligence or breach of contract. (3/1/4/2) (Lahsasna, 2012).

ii) International Fiqh Academy's Resolution No. 30 (5/4) - Muqaradha Bonds and Investment Certificates

The Council of the International Fiqh Academy has decided that neither the prospectus nor the muqaradha documents may contain a guarantee by the fund manager of the capital or a fixed profit based on the percentage of the capital. If such a clause is implicitly or explicitly included, the guarantee condition is void and the mudharib is entitled to a profit equal to that of a similar mudharabah (Lahsasna, 2012).

iii) Resolutions by the SAC of SC

Sukuk issuers are allowed to apply a third-party guarantee for the invested capital according to the principles of Mudharabah (35th session on November 7, 2001) and Musyarakah. It was agreed that a fee (ujrah) may be paid to the guarantor on the condition that the guarantee is not on a recourse basis, which means that investors cannot claim against the issuers in the event of a business failure, since the guarantee is provided by the guarantor. Investors may also demand collateral from the issuers in the event of possible gross negligence on their part (Lahsasna, 2012).

5.2. Ijara Sukuk

5.2.1. Current Practice and Shariah Issues

Most recent sukuk structures are sukuk ijara, in which the party seeking financing, i.e., the originator, transfers certain of its assets to a special purpose entity. When the Sukuk matures or in the event of a default, the originator is typically required to repurchase the assets so that the SPV can redeem the outstanding certificates and repay the Sukuk holders. In this context, the rights of Sukuk holders in the event of default vary depending

on whether the Sukuk structure is asset-backed or asset-based. It has already been noted that in an asset-backed sukuk, legal ownership of the underlying assets is usually transferred from the originator to the SPV by way of a true sale, so that the sukuk holders are able to exercise certain ownership and control rights over these assets without having to resort to the originator, and therefore the credit risk performance is determined solely by the underlying asset (Lahsasna, 2012).

This has led many Sukuk issuers to resort to issuing the next type of Sukuk, the Sukuk al-ijaraha. The Islamic Development Bank (IDB) issued the first hybrid Sukuk, composed of 65.8% Sukuk ijarah, 30.73% Murabahah, and 3.4% Istisna', with the latter two debt instruments allowed to represent only 34.13% of the underlying assets. Moreover, the Sukuk were guaranteed in the same manner as conventional bonds to give them international acceptance. Not surprisingly, some scholars have criticised the issuance of such Sukuk and the added guarantee, and it is also not surprising that proponents of strict legal ownership are equally critical of such issuance (Benaicha et al., 2019; Razak et al., 2019).

a) *Ownership issues in ijarah sukuk*

Ghani (2017) defines property in Islamic law as four basic elements:

1. Legal and exclusive ownership between the individual and the asset
2. Intent of exclusivity, which gives the right to either use or dispose of the owned assets
3. The ability to use or dispose of the owned asset without hindrance
4. This ability can be ibtida'i or taba'i (without reason or by contractual obligation, respectively).

The problem with the currently prevailing ijarah model for sukuk structuring is that while sukuk structures claim to confer legal ownership of the underlying asset, the actual practice involves only the transfer of beneficial ownership for purposes of issuing the sukuk and not full ownership. This is contrary to the implications of ownership of the original sale contract (Ghani, 2018) and indeed has been judged to mean that the sukuk holder has no interest in the leased asset (Dusuki and Mokhtar, 2010). However, Kamali (2007) argues that the point is that ijarah sukuk ultimately represent undivided ownership of the leased asset, which makes them equities, perhaps because ijarah assets are insolvency remote.

Another issue is the promise to repurchase, specifically the original sale and agreement to repurchase (upon repayment); such an agreement contradicts the maxim of exclusivity of sale, which states that two simultaneous contracts such as a sale and a purchase may not apply to the same property (which is binding and therefore indicates a sale) - tawarud 'aqdayn fi ainin wahidah. Safari et al. (2014) criticize this as being similar to traditional bond practice. Kamali (2007) also points out that this is one of the main pitfalls of sukuk according to Shariah scholars.

b) Purchase undertaking, PLS issues and loss of contact with the real economy

The next important issue discussed is PU, which is widely used in sukuk issuance. While Safari et al. (2014) acknowledges that sukuk securities should be based on something that has real economic value, such as stocks or real assets, to avoid dealing with riba (interest), the fact is that most returns on sukuk bear no relation to the performance of the underlying asset or its economic value. According to Lahsasna and Idris (2008), AAOIFI has allowed assets redeemed by the originator to be redeemed at par, which raises questions regarding compliance with the Prophet's (Muhammad, pbuh) commandment that profits (from returns in the case of Sukuk) be earned by bearing the risk of loss. It is necessary to review the Prophet's commandment in light of the objectives of the Shariah and determine whether such a commandment is itself all-encompassing or whether it was intended merely as a means to an end, i.e., to achieve an equitable distribution of profits and risks in financial transactions. In the case of Sukuk on a sale basis, market risk is mitigated in repayment. The counter arguments are that the binding promise has been allowed by some scholars, but this is based on a single opinion attributed to a Maliki jurist (Ibn Shubrumah) according to El-Gamal (2006); the other argument is the original and general permissibility of contracts in various forms by the Shariah (al-ask fi al-mu'amala alibahah).

5.3. Murabaha Sukuk

5.3.1. Current Practice and Shariah Issues

Murabahah is the workhorse of Islamic finance, and applications of murabahah vary widely between Malaysia and the GCC states. From a Malaysian perspective, the Bai al Dayn represents an Islamic promissory bill, which is a tradable instrument to confirm debt. The promissory bill is tradable, and when traded, it is considered to carry the underlying contract and can be sold at either a discount or a premium to par. Therefore, secondary market trading of Malaysian sukuk is conducted on the basis of Bai al Dayn (Lahsasna, 2012).

In contrast, the majority of opinions elsewhere hold that a tradable instrument must be linked to ownership of real assets based on an underlying contract permissible under Sharia law. Therefore, sukuk issued on a murabahah basis are tradable only prior to the sale of the goods to the ultimate purchaser or if the receivables (if there is an inventory) are less than 50%; after the sale of the goods and without an inventory greater than 50%, they are tradable only at par with recourse. Thus, the difference in the Shari'ah analysis lies in the view of what may be traded. When receivables are bundled with other tangible assets, they can be securitized and sold at a certain ratio. The ratio may differ from one Shariah body to another (Lahsasna, 2012).

5.3.2. View of Scholars on the Shariah Issues

a) Resolution of the Islamic Fiqh Academy

Two resolutions on debt were passed. The first states that it is impermissible to sell a deferred debt to a person other than the debtor in exchange for a cash payment in the same or another [currency], as this may result in riba. Moreover, it makes no difference whether the debt is from a loan or from a deferred payment sale (Lahsasna, 2012).

b) AAOIFI’s Shariah Standards

Shariah Standard No. (17) on the issue of investment sukuk confirmed this ruling by stating that trading in Murabahah sukuk is unlawful. Shariah Standard No. (21) on the issue of financial securities (stocks and bonds) states the following regarding the regulation of trading in debt instruments mixed with other things such as tangible assets, sources of income in the form of leased or pledged property, cash, and rights:

5.4. Istisna Sukuk

'Istisna' sukuk also represent debt obligations, where the product being manufactured is the debt obligation to which the sukuk holders are entitled. Istisna' is far less controversial as a structure because project developers require start-up financing for the construction of buildings/equipment and therefore, as in the classical legal period, istisna' debt payment is accepted only on the basis of such need. As a result, the Shari'ah objectives of establishing ownership rather than property claims (insha' al-milkiyyah or al-asl adam tashghil al-zhimam) are not properly fulfilled; such certificates also do not embody the objective of gratuitous loan (qardh hasan), which should be strictly kept away from commercial ventures (Laldin and Furqani, 2013), but rather they transform loans into commercial, profit-making vehicles. Moreover, because these instruments are purely debt instruments, scholars have almost unanimously banned trading in them, so there is no secondary market for these instruments, further complicating their use (Resolution/Decision No. 178, 19th Session, April 30, 2009, UAE) (Benaicha et al., 2019; Razak et al., 2019).

Such arguments are made by critics of the practice, while its proponents argue that the original sale took place, which, as will become clear, constitutes a transfer of ownership. They also invoke the legal maxim that the structure of contracts takes precedence over their content, and in this case it is a permitted sale, which makes it permissible. Either way, as discussed, the arguments of both sides exhibit reductionist tendencies in that their

stance is based on two or three pieces of evidence that have not been tested against the Shariah texts and their complex and dynamic web of objectives (Benaicha et al., 2019; Razak et al., 2019).

5.5. Hybrid Sukuk

5.5.1. The hybrid sukuk model as an alternative to pure debt sukuk

These sukuk were introduced to improve the mobilization of funds and to enable Sharia-compliant financing. Although scholars disagree on the permissibility of such sukuk and their tradability, IIFA (Resolution/Rule No. 178, 19th Session, April 30, 2009, UAE; the actual resolution refers to general securities whose underlying assets are a mixture of cash, assets, and debt) has permitted them on the basis that the majority of the underlying assets are actually assets and not debt (Benaicha et al., 2019; Razak et al., 2019).

The dispute mainly revolves around the prophetic narrative mudda ajwah, in which a number of prominent jurists have allowed the exchange of a ribawi (usurious) commodity for another, non-ribawi commodity mixed or combined with a ribawi element (such as gold for a gold-decorated plate or a sword as an example cited by the jurists). The same logic was applied to hybrid sukuk, where assets were mixed with debts and bought and sold with money. Therefore, the concession of a number of prominent scholars such as Ibn Taymiyyah and a large number of Hanafites has been used to justify these sukuk when examining the ultimate impact of such a practice. This has opened the door for profit-oriented 'Islamic' institutions to deal in sukuk that represent only 10% of assets. This may be due to the 'paradoxical nature of majority rule," as El-Gamal (2006) puts it, in which the asset portion of the hybrid bond is withdrawn and repurchased at the market price and then bundled with other debt instruments so that the 51:49 ratio of tangible assets to receivables is maintained. Thus, the original goal of enabling capital mobilization has simply led to a bias toward trading purely debt-based securities (Benaicha et al., 2019; Razak et al., 2019).

Opponents of such practices believe that the substance of such contracts is that they are securitized debt instruments and that trading in debt instruments is impermissible due to the presence of riba, as cash-say dollars-is traded in the form of securities for other cash at different values, which constitutes a usurious transaction. However, in the case of hybrid sukuk, this is less applicable because, first, the purpose is to facilitate the tradability of shares in real assets/projects, and second, a prohibition would hinder the goal of liquidity of capital, which scholars have identified as an important objective and which is confirmed in a number of Shariah texts (El-Mesawi and Ahmed, 2016).

6. Conclusion

Sukuk were developed as an alternative to conventional bonds, which are considered by many Muslims to be impermissible because they pay interest (which is forbidden or rejected as riba or usury) and can also finance companies involved in activities that are not permitted under Shariah.

Sukuk securities are structured to comply with Shariah by distributing profits, not interest, and generally include a tangible asset in the investment. For example, sukuk securities may represent partial ownership of a property built by the investment company (and held in a special purpose vehicle), allowing the sukuk holders to collect the profits of the property as rent (which is permissible under Islamic law). Because they represent ownership of real assets and (at least in theory) do not guarantee repayment of the original investment, Sukuk are similar to equity instruments, but like a bond (and unlike stocks), the regular payments end when they expire. However, most Sukuk are "asset-based" rather than "asset-backed" - their assets are not owned by the SPV, and their holders have recourse against the originator in the event of default.

The different types of Sukuk are based on different structures of Islamic contracts, e.g., Murabaha, Ijara, Istisna, Musharaka, Mudharabah, etc., depending on the project that is financed with the Sukuk. In addition, there are various Shariah issues related to the issuance of Sukuk based on these Islamic contracts as mentioned above.

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Introducing the Relationship of Mental Disorder and Terrorism in Indonesia: A Study Case from Mentally Disorder Former Terrorist

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Abstract
Religion-motivated terrorism still substantially affected Indonesia in recent years. Whole-of-government and whole-of-society had attempted counter-terrorism efforts to combat radical-terrorism from all possible aspects. Nevertheless, analyses and studies regarding mental disorders are still neglected in Indonesian counter-terrorism policies. The current law for dealing with perpetrators of terrorism does not consider their mental disorders. The writing reviews the experiences of two former terrorism convicts in Indonesia who experience mental disorders from law and psychological perspectives. The research uses a qualitative approach with a case study model through in-depth interviews and document studies. As a result, the research prioritizes the development of studies on the issue of mental disorders in terrorism prevention policies in Indonesia while building social awareness. This paper is an initial finding in providing an overview of the correlation between countering terrorism and mental disorders. It also encourages psychological intervention as a basic need and the government, professionals, and academics to collaborate in conducting further research as a foundation for formulating mental health-based counter-terrorism policies in Indonesia.

Keywords: Counter-Terrorism Law, Mental Disorder, Former Terrorists, Psychological Interventions, Social Awareness

1. Introduction

The issue of mental disorders and mental health has not apparently been a concern in the criminal justice system implementation in Indonesia (Bukhori, 2012). The criminal justice system starts with arrest, detention, prosecution, and the trial court processes, then ends with the execution of crimes in correctional institutions (Yesmil Anwar & Adang, 2009). The New Indonesian Criminal Code (2023) has also explained mental

disorders and mental health. According to Article 38 of the new Indonesian Criminal Code, people with a mental disorder and/or intellectual disability committing a crime can get a prison sentence remitted and/or be subject to action. Then in Article 39, it is explained that every person whose a mental disorder at the time of committing a crime that is in a state of acute relapse and is accompanied by psychotic features and/or a moderate or severe degree of intellectual disability cannot be criminally charged, but can be the subject to action.

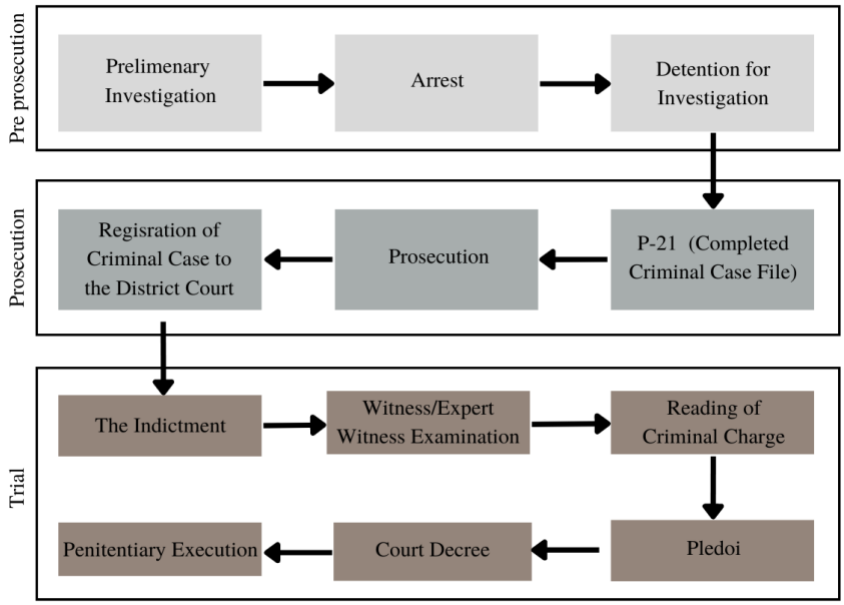

Figure 1: Indonesia's Criminal Justice System

Source: Processed by the author

In this criminal justice process, identifying mental disorders is often ruled out. In each of these stages, there are no mechanisms or expertise involved in recognizing psychotic disorders. Unfortunately, the concern had not been taken seriously in implementation. An example occurred in the case of a prisoner who experienced mental disorders yet still served his sentence in the Class IIA Prison in Pekanbaru and was convicted by the court of committing the crime of premeditated murder. The perpetrator had shown signs of a mental disorder for about two years in Prison (Manik, 2019). In addition, there were two convicts at Kedung Pane Semarang Class I Prison with the initials FE, 31 years old who had been in prison for 8 years and BSN aged 24 who had been in prison for 5 years were diagnosed with schizophrenia (Muwahidah & Sugiasih, 2019). It is different with several cases of defendants who already have mental disorders before the justice process, such as the case of religious blasphemy by SM in Bogor in 2020 (Cibinong District Court Verdict, 2019) and torture that caused injuries in North Sumatra in 2020 (Sibolga District Court Verdict, 2020), as well as the murder and mutilation committed by PB, a policeman in Melawi, West Kalimantan in 2016 (West Kalimantan High Court Verdict, 2017). Based on the court's decision and *Visum et Revertum Psychiaticum*, the three defendants experienced mental disorders with the type of acute schizophrenia disorder. On this basis, the three cases should not be accounted for and the three defendants were released from all lawsuits because they were proven to have mental disorders.

Based on WHO data in 2022, there are eleven million convicts globally experiencing mental health. Those who are in Correctional Institutions have two to sixteen times more experiencing psychosis disorder and two to six times more experiencing depression than common people. Women convicts also have two times more experience of mental disorders than common people (WHO Europe, 2022). Convicts in prisons have more mental health disorders prevalence than common people (Butler et al., 2006). There are some cases of convicts that have mental health problems before they commit the crime, but it usually appears to convicts when they are in the prison.

Not least in the case of terrorism, the neglect of the issue of mental disorders and mental health also occurs. As a crime classified as *lex specialis*, it turns out that awareness and concern for psychological aspects are still marginalized. The context of this research discusses two informants whose legal proceedings were carried out

before the new Law on Counter-Terrorism was enacted. Even though there have been changes to the criminal justice process according to the mandate of Law Number 5 of 2018 on Eradication of Criminal Acts that the identification process has been carried out since the perpetrator has the status of a suspect, nevertheless, the awareness of law enforcers is still minimal. Therefore, it is an empirical fact that the process of investigating and coaching convicts is still negligent regarding this mental impairment.

Touching on the term of imprisonment in Correctional Institutions, terrorism convicts in the period 2003 - 2018 (before the New Terror Law) were also familiar with the deradicalization process. Since the National Counter-Terrorism Agency was inaugurated in 2010, deradicalization has become the central core of counter-terrorism policies after completing the criminal justice process. The National Counter-Terrorism Agency in general has the task of formulating policies, strategies, and national programs in countering terrorism, coordinating relevant government agencies in implementing and implementing policies in the field of counter-terrorism (Article 2 paragraph 1, President Regulation Number 46 of 2010). Furthermore, Paragraph 2 of Article 2 in the President Regulation also explains one of the areas of countering terrorism namely deradicalization.

Golose (2010) defines a deradicalization program as all efforts to neutralize radical ideas through an interdisciplinary approach, such as psychology, law, religion, and socio-culture for those who are influenced or exposed to radical terrorism. In this case, they include prisoners, ex-convicts, radical militant individuals, who have been involved, their families, sympathizers, and society. However, even in this process, the two informants were not detected as having psychotic disorders during the criminal justice process or afterward. Several months after his release, the family accompanying him realized that the two informants were different and consulted professionals. Ironically, none of the information is provided to the family by the law enforcers and prisons regarding the mental health disorder experienced by the two informants during the criminal justice process.

The correlation between mental disorders and terrorism has been debated among researchers, observers, academics, and professionals. After more than 40 years, the research has also ranged from initially positioning mental disorders as the main cause of terrorist behavior to the opposite, namely terrorists are rational actors and mental health problems are not an important factor (Copeland & Marsden, 2020). In the Indonesian context, a study on mental disorders and terror convicts in the 1st Bali Bombing case in 2002 was conducted by Sarwono (2012). In this study, the potential and tendencies of mental disorders, personality disorders, and typical sadistic people were seen. Behavioral analysis was carried out through 14 videotapes of Imam Samudra, Amrozi, Gufron, and Ali Imron. The results of the study stated that the perpetrators of the Bali Bombing 1 terror did not experience mental disorders (Sarwono, 2012).

The latest development, the involvement of psychiatrists in many cases of terrorism also focuses on group aggression which affects individual psychology to the emergence of motivation. Lankford (2014, in Ho, et al., 2019) in his research stated that most terrorists who were recruited to become members of terror operation groups did not have psychopathology. Their behavior is actually more motivated by groups, group psychology, and external factors (Stoddard, 2011 in Ho, 2019). Research by Corner and Gill (2015) otherwise states that 43% of lone actors have a history of mental disorders. The three disorders with the highest prevalence were found in this group, including schizophrenia[1], delusions[2], and autism spectrum disorder (ASD)[3] (American Psychiatric Association, 2013).

The earlier studies, although limited, show that terrorism has a clear relationship with mental states. These relationships certainly increase the urgency of the importance of psychological approach to understanding the phenomenon of terrorism. Unfortunately, research with a psychological or mental health focus in relation to terrorism in Indonesia is still limited. In fact, Indonesia is a country with a very dynamic development of terrorism, ranking 24th on the list of countries most affected by terrorism, which recorded a score of 5.5 points

[1] Schizophrenia is a chronic brain disorder with symptoms can include delusions, hallucinations, disorganized speech (alogia), trouble with thinking and lack of motivation (avolition). (DSM V)
[2] Delusions are fixed false beliefs held despite clear or reasonable evidence that they are not true. The use of disorganized language and speech that is chaotic and difficult to understand. (DSM V)
[3] Autism Spectrum Disorder (ASD) is a pervasive developmental disorder with characteristics of delays and deviations in the development of social, language and communication skills, and behavior including in a reciprocal relationship. (DSM V)

(Global Terrorism Index, 2022). For this reason, this article will focus on discussing terrorism from a mental health perspective through in-depth interviews conducted with terrorism convicts and the families of terrorism convicts in Indonesia who are suspected of having mental disorders, namely AI and AJ. AI had the intention to be bride suicide bomber and was spreading radical content when she was still a female worker in Hong Kong. AI was also aware of making explosives in his rented house which would be used to carry out terrorist acts in 2017 (DKI Jakarta High Court Verdict, 2018). Meanwhile, AJ was assembling bombs and was involved in planning to bomb attacks on a number of police posts and churches in Central Java in 2010. This discussion will examine the possibility of further correlations between the perpetrator's mental health and acts of terrorism.

From the limited previous studies and the weak time dimension, further studies are needed along with the dynamics of the latest developments in terrorism. This article seeks to argue that ignoring mental health issues will only add to the chaos of counter-terrorism policies in Indonesia. The need to build social awareness of the correlation of these two issues will be a long step and this needs to start in the form of scientific studies and narrating empirical facts in the field. In line with this, the development of scientific studies and policies needs to be continuously elaborated so that they can become a reference in detecting and preventing early as well as applying the right treatment.

2. Methods

This research uses a qualitative approach with a case study model through literature studies and interviews. Case studies are used to explore a particular case in more depth by involving the collection of various sources of information (Raco, 2010). The strength of a case study is that it can use a variety of sources of information that enrich data and analysis within a framework of a specific investigation (Descombe, 2007), which in this context digs deeper into a relationship between mental disorders and terrorism perpetrators of terrorism. Creswell (2015) also defines a study case as an approach by exploring a bounded system or case.

The primary data in this study is an in-depth interview with a key person (Bungin, 2012). The sample selection in this study uses a purposive technique with the aim of exploring the main problems, namely subjects who have mental disorders and have undergone treatment, also assistance from family and professionals. This study also prioritizes research ethics such as using informed consent and conveying the overall research objectives so that they can be understood by the informant's family (Noaks & Wincup, 2004). The interviews were conducted in a semi-structured interview, even though they already had interview guidelines but during the interaction, the process did not rule out the possibility of improvising answers or follow-up questions (Herdiansyah, 2014). For AI informants, interviews were conducted with the mother and 2 (two) siblings. Meanwhile, for AJ an interview was conducted with AJ's wife.

To support the primary data, this study also uses secondary data such as investigation reports, court rulings from two terrorist convicts, and limited reports owned by BNPT (Noaks & Wincup, 2004). Maxfield and Babbie (2009) describe at least 3 categories of institutional data, which are published statistical data, reports, and unpublished data that collect routinely for internal uses and new data collected by institution staff for research purposes. Furthermore, this study uses written data and audio records to enter the interpretation, categorization, and verification stages (Denscombe, 2007). In a conclusion, this study uses narratives (life histories) from both families to reveal the reality of the mental disorder that occurred.

3. Result And Discussion

3.1. AI: A Female Suicide Bomber

AI is a female from Klaten, Central Java who was suspected of radical propaganda content while she was a migrant worker in Hong Kong in 2016. AI is known to be close to her father. However, her relationship with her father was not long enough due to her father dying when she was seven. AI went to Madrasah Tsanawiyah (MTs) and graduated in 2009, then she studied Islamic doctrine and jurisprudence books at the Islamic Boarding

School of Al-Husna Tangerang for two months. Nevertheless, AI decided to drop out from school for she disagreed with the school's teaching as AI stated in her police investigation report, as the following:

> "I can explain in detail as follows, Education: SDN 1 Bareng Tengah Klaten Graduated in 2006, Madrasah Tsanawiyah at MTS 1 Klaten (graduated in 2009), Islamic Boarding School of Al-Husna Tangerang (dropped out from Islamic Boarding School) only 2 months studying Islamic doctrine and jurisprudence books, then left because they didn't understand."
> (BAP Densus 88 AT Polri, 2017)

When she got older, AI decided to be an Indonesian migrant worker in Yemen and he moved to work in Hong Kong in 2016. While working in Hong Kong, AI followed various ISIS content till the decision to pledge allegiance to the terrorist groups by posting a video pledge to the caliph of ISIS, Abu Bakar Al Baghdadi, at Yuen Garden, Hong Kong on her Facebook account. Also, AI initiated for collecting personnel for physical training or I'dad, consequently, AI was deported from Hong Kong in 2017 because of terrorism content on social media (DKI Jakarta High Court Verdict, 2018).

In March 2017, AI did a police examination at Mako Brimob Kelapa Dua and attended the rehabilitation program in BRSAMPK Handayani by the Ministry of Social Affairs of the Republic of Indonesia for 28 days before returning to Klaten. Afterward in May 2017, AI married RAL, a fellow sympathizer who is known through social media. After marriage, AI and her husband rented a house in Bandung with somebody who was known through the telegram group, Young Farmer, which she once created. The introductions of AI and her husband developed into a meeting discussing a planned attack on the "bride" of suicide bombers. AI did not know the target and time to attack because she and her husband were caught on August 15, 2017 (DKI Jakarta High Court Verdict, 2018). In addition, based on information to the BAP, AI also knew about the bomb-making in its rented house which would be used to carry out for terrorist act in 2017 as follows:

> "I find out the bomb-making plans in my rented house which is located at Jalan Mekarsari, Babakan Sari Village, Kiaracondong District, Bandung City (rented house since July, 28 2017) carried out by Young Farmer, R, S, R and AU, We will use a bomb-made later for *amaliah* purposes meanwhile have not determined the location or target." (BAP Densus 88 AT Polri, 2017)

During a police investigation process, AI had been suspected that she had abnormal behavior. It was beginning from AI's daily conversations with investigators, including during research interviews (Putra, 2020), here are some quotes from the interview:

> "Yes, Allah said I am your Saint, since young I have been given a glimpse of the future, I don't understand, then about dead people, none of us knows about the unseen except Allah. After that, you are given a glimpse of the person who is going to die, for example, before a grandmother is going to die, I already get a sight, so for one sight there are nine accidents, a bleeding dog, then there are puppies, it's the God's *takwil* which is teaching it slowly, isn't it. Isabella who died after giving birth, let Isabella die after giving birth. Next, the illustration of the vision is of the Dasya goddess, the information of Isabella who died after giving birth was read by the Dasya goddess, it is what she is taught. Allah teaches about *takwil"*
> "Sometimes, during sleeping after the midnight prayer, we are taken while we do the midnight prayer, suddenly the room's atmosphere changes to be like being brought to the future, the room situation is also changed. So Jibril wants to convey this, Jibril carries flowers."
> "I am Al-Mahdi, the end of the day will not occur before men turn into women and before women turn into men. Thus, people are deceived, most of them are waiting for Muhammad bin Abdullah."
> (AI Interview, Jakarta, 2020)

Another accident that happened when she was in prison, she often hurt herself by banging her head against a brick wall and beating herself, rampaging, and had kicked her younger sibling once when her mother and youngest sibling would take AI's child from prison. AI received a doctor's prescription to treat schizophrenia, bipolar disorder, and behavior disorders, as well as Lorazepam to treat anxiety disorders in prison (AI's Family Interview, Klaten, 8 June 2022). Her family notes AI's abnormal behavior after three years in prison. According to the AI family, that:

> *"*AI's behavior is normal at Mako, related to talk, AI's abnormal behavior appeared since he was released from prison, all the prayer readings were confused, reading holy Quran was also confusing. It's really different after being caught" (AI's Family Interview, Klaten, 8 Juni 2022)

After she was released from prison and returned home, her psychotic disorder still continued. AI was always raving about getting proposed to by an Arabic Prince or Indonesian celebrity who was waiting for her in Jakarta. In addition, when experiencing this psychotic disorder, AI did not show her sense for raising her child, AI and her child's relationship became like brother and sister. Also, AI misses movements and memorization of prayer as delivered by the family:

> ″Anyhow, AI looked confused with her prayers' spell and movement, reading holy Quran too since released from prison. Any of that, there is brainwashing or something, how do I not know? The main point is she looks different after being detained. For instance, after praying two *rakat* of praying, back again. She consumed the medicine, tranquilizers in the prison.″ (AI's Family Interview, Klaten, 8 Juni 2022).

Moreover, AI is reluctant to wear the hijab because she wants to preach at church. In daily family conversations, AI has shown deep hatred for Densus 88 AT Polri. She once went rampage and was unwilling to meet Densus 88 AT personnel when they came to her house, as well she often told bad things about Densus 88 AT to his younger siblings (AI's Family Interview, Klaten, June 8th 2022). The family does not give her cell phones and limits media exposure, such as television shows to prevent AI trapped again in terrorist acts. Even so, AI has secretly used a cellphone to watch ISIS videos of beheading executions.

According to family supervision, her daily activities after being released are helping with housework or taking morning exercises with her mother. In addition, AI goes to the Klaten Psychiatric Hospital every month routinely because she still has behaviors that are considered by those around her to be abnormal. In addition, she was recorded attempting to run away from the house several times. First, AI once fled on foot and got hit by a car when crossing the road, she was taken to the General Hospital by the police, afterward, she was directed to the Psychiatric Hospital. Second, AI escaped on foot and was found at the Yogyakarta Giwangan Terminal for going to Jakarta. Lastly, AI escaped on August 16, 2021, and she has yet to be found so far. Two months before escaping, AI had shown maternal behavior, such as bathing and feeding her child. The family insisted that her mental condition improved. However, after AI escaped, the family believed that AI had to get professional care consistently.

3.2. AJ: An Engineer of Bomb

Besides AI, there was a former terrorism convict, AJ from Klaten, Central Java, who was arrested for terror acts in Klaten and Solo from 2010 to 2011. AJ understood *tawhid* and *jihad qital* since he was seated on SMK. AJ participated in various religious-based student organizations as well as various studies held outside of school. Studying outside of school had made AJ to the radical terrorism meeting point. AJ attended limited studies actively, thereby he and his six friends were recruited by Abdul Ghofar to join the Ightiyalat group (AJ's wife Interview, Klaten, 9 June 2022).

Previously, AJ had worked on a palm oil plantation in Kalimantan. However, AJ did not work seriously. Around September 2010, AJ returned from Kalimantan and participated in activities actively with the Ightiyalat group. In 2010, AJ was involved in a series of terrorism acts in Solo and Klaten with the Ightiyalat group. In this group, AJ specialized in bomb-making, which had tasks for selecting materials, producing detonators, and manufacturing Molotov cocktails (AJ's wife Interview, Klaten, 9 June 2022).

In 2011, AJ had shown some behaviors under investigation, such as saying gibberish with a stiff body and having meals in larger portions than usual. AJ's condition was unstable several times, thus it is impossible for him to work in the reconstruction field. However, the legal process continued until AJ pleaded guilty and obtained a court ruling on December 8, 2011, with a 5-year prison sentence (West Jakarta District Court Verdict, 2011). While under arrest for 5 years, AJ's abnormal behavior symptoms were repeated again. AJ lost his father

when he was in prison. Also, his mother died while AJ just got out of prison (AJ's wife Interview, Klaten, 9 June 2022).

After release, AJ married a widowed terrorist member in Ambon. AJ worked on a plantation in Kalimantan to pay for his stepson's school fees but not for long. AJ returned from the plantation because his symptoms returned. The family stated that AJ would become excessively active when the disease relapsed, Also he experienced dizziness often, not being able to sleep, and being more active at night (AJ's wife Interview, Klaten, 9 June 2022). In his daily life, AJ was difficulty surviving with his job. Various colleagues and the government's support and opportunity for him were no longer. In his social life, AJ rarely told his problems to anyone and kept them to himself. Even when he was stimulated to speak, AJ answered in a language that his family could not understand. Furthermore, AJ believed himself to be Imam Mahdi (AJ's wife Interview, Klaten, 9 June 2022). Meanwhile, there were times when AJ behaved normally, even when he had become a speaker at his alma mater school regarding the dangers of radical terrorism seminar. In time, AJ was able to communicate and interact quite well with other people.

Every month, AJ receives treatment at the Klaten Psychiatric Hospital and is prescribed medications to help him deal with his mental health issues. At the Klaten Hospital, AJ has undergone multiple hospital stays. AJ is aware enough to go to a doctor on his own. His wife claims that AJ occasionally prefers living in the Klaten Hospital to his home. The family had a suspicion that AJ had a lot of friends and activities when he was in the RSJ, which made him feel more at ease. According to AJ's wife:

> *"*I also don't know, maybe in Klaten Hospital, AJ has lots of friends and is freer. If he is at home, he is just alone, sometimes he does not go out, so he ends up staying at home all the time*"*
> (AJ's wife Interview, Klaten, 9 June 2022)

According to his wife, it is unknown exactly when these psychotic symptoms first appeared. AJ's experience in assembling bombs has a tendency to make AJ shut himself off, and it is difficult to confront his issues. As was given by AJ's wife that:

> *"*Everyday discussion is normal, sometimes it just digresses, if his symptoms return due to fatigue and occasionally a lot of ideas that cannot be controlled, he cannot tell it, and keeps it to himself.*"*(AJ's wife Interview, Klaten, 9 June 2022)

Even the wife is unsure if this is caused by psychotic or non-psychotic disorder factors like trauma, life pressures, the impact of former terrorist network groups, the influence of life in prison, or possibly both. However, AJ's memories of making explosives pose a possible threat that must be taken into account because they cannot just be forgotten. Because AJ plays a significant role in his group, this could be problematic, so psychologists and psychiatrists should be consulted frequently. The origins of AJ's mental disorders still require extensive research because of the complicated history of his membership in the terrorist network and the mental health condition he is experiencing.

3.3. Mental Disorders and Law-Enforcement

Through the Indonesian Criminal Code, Indonesia's legal system defines specific circumstances or causes that, more often known as reasons for criminal elimination, might lead to an act's perpetrators being immune from prosecution. Memorie van Toelichting (MvT) splits the justifications for abolishing crimes into two categories: those linked to the criminal conduct or objective (*rechtsvaardigingsgronden*) and those attached to the offender (*schulduitsluitingsgronden*) (Schaffmeister, 2007). When people with mental disorders commit crimes alongside those who are in normal health, the legal repercussions will be different. As a result, individuals with mental problems are categorized as having a condition that prevents them from being deemed to be legally competent (Chazawi, 2002).

Article 44 of the Indonesian Criminal Code explains the obligations of criminal offenders with mental disorders. According to Lamintang and Samosir (1983), the Indonesian Criminal Code makes provisions for circumstances

or things that make an act irresponsible (*ontoerekenbaarheid*), specifically under Article 44 of the Indonesian Criminal Code, which reads as follows:

1) "Whoever commits an act for which he cannot be held liable because his soul is deformed or impaired due to illness, shall not be punished."
2) "If it turns out that the perpetrator cannot be held responsible for the act because his mental development is disabled or disturbed due to illness, the judge can order that person to be put in a mental hospital, for a maximum of one year as a probationary period."
3) "The provisions in paragraph 2 only apply to the Supreme Court, High Court and District Court."

In this regard, R. Soesilo (1996) explained that in practice if the police encounter cases with perpetrators suffering from mental disorders, the police are still required to investigate the case and to create a verbal process. The judge, as the holder of the attorney's power who is going to later decide whether or not the defendant can be held responsible for his actions, is also allowed to ask for advice from a Psychiatrist. Pompe (in Jonkers, 1987) said that the psyche is deformed in growth and is disturbed by illness because of mental disorders, not from a medical point of view, but from a legal sense. In this case, it is not solely related to the state of the perpetrator's psyche but also related to the relationship between the perpetrator's psyche and the actions committed. Therefore, it is the authority of the judge to determine whether the perpetrator can be held responsible for the actions that have been committed.

Arrangements regarding the treatment of people with mental problems (ODMK) and people with mental disorders (ODGJ) who commit criminal acts are also regulated in Indonesian Law Number 18 of 2014 concerning Mental Health. Article 71 paragraph (1) states that "*For the sake of law enforcement, a person suspected of being a person with mental disorders (ODGJ) who commits a crime must get a mental health examination*". In addition, there are technical regulations, namely Health Ministerial Regulation Number 77 of 2015 concerning Guidelines for Mental Health Examinations for Law Enforcement Interests which discusses mental health examinations for criminal offenders. The examination is carried out to ensure a person's mental capacity in criminal law in which a person who commits a violation of the law understands the character and consequences of his actions.

The regulation of the Health Minister Number 77 of 2015 explains operational concepts concerning mental disorders by taking into account disability, namely:

1) Inability to aim at a conscious goal (intentional disability). Unconscious goals are goals based on delusions and/or hallucinations;
2) Inability to direct/or to control one's will and/or action goals (volitional disability); and
3) Inability to understand the value and risks of one's actions. Mental health checks for offenders can be proven through *Visum et Repertum Psychiatry* (VeR) as legal evidence in accordance with Article 184 of the Indonesian Criminal Code to explain a person's mental status.

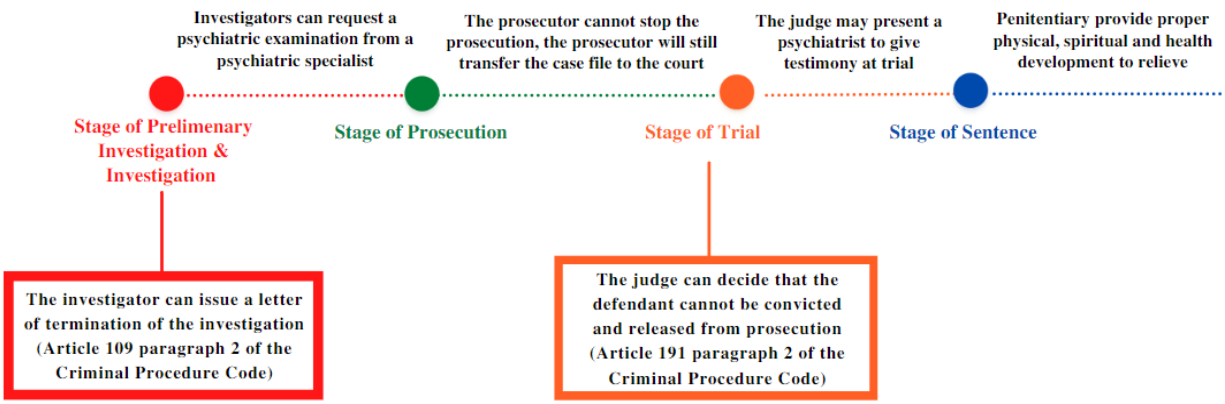

Figure 2: Stages of Recognizing Actors with Mental Disorders in the Criminal Justice System

Source: Processed by the author

In the criminal justice system, a mental disorders examination of a perpetrator of a crime can be identified from the investigation process as stipulated in Article 6 Paragraph (1) of the Indonesian Criminal Code Procedure. Furthermore, the investigator or the police can carry out screening related to the psychology of the perpetrator. If during the examination process irregularities are found in the perpetrator's behavior, the investigator may request a mental disorders examination from a Psychiatrist. When it is known that the perpetrator or suspect has a mental disorder, based on Article 109 paragraph (2) of the Indonesian Criminal Code Procedure, the investigator can issue a letter of termination of investigation (SP3) using the form specified in the Attorney General's Decree.

However, if it turns out that the mental disorder experienced by the defendant is only realized at the prosecution stage, then the prosecutor cannot terminate the prosecution (Article 140 paragraph (2) of the Indonesian Criminal Code Procedure). This is because the Judge has the authority to determine a person's mental status if he has entered the prosecution process. Furthermore, at the trial stage, the judge must order the Prosecutor to present a psychiatrist to give a statement about whether or not the defendant has a mental disorder. If a mental disorder is found in evidence in court, the judge will give the decision to release the defendant because he cannot be considered a legal subject who can be held criminally responsible. If sufficient evidence is not found to state that the defendant has a mental disorder, the defendant will be sentenced and undergo punishment according to the judge's verdict.

Meanwhile, in the stages of sentences, the prison has an important role to fulfill the rights of convicts including healthcare services for physical, spiritual, and psychological development. However, sentencing facilities are still a long way off. Thus, life imprisonment has significantly caused deep trauma and depression apart from the crimes committed by the perpetrators. Instead of regretting their criminal acts, in fact, they are driven to have mental disorders, both small to severe in scale as a result of life in prison, such as difficulties in self-control, hallucinations, delusions, changes in emotions and behavior, including perspectives that have the potential to harm themselves and/or people around them (psychosocial stressor).

In conclusion, social awareness of criminal justice in Indonesia in terms of mental disorder issues has existed. However, the implementation of human resources, equipment, facility, and technical regulation such as standard operating procedures is still neglected. This is the main focus of the findings in this study, the academic gap on these issues is still underestimated, including on legal aspects.

3.4. Terrorism Policy Perspectives: AI & AJ

Referring to the vacant role in the AI and AJ cases, Dunn (2003) explains that to analyze a policy, one must first have sensitivity to policy issues. Ultimately, counter-terrorism policies must have a mental health-based policy framework, not only because of mental disorders that can lead to terrorism, but punishment due to terrorism can also cause mental dysfunction. Policy analysis is needed in formulating problems, evaluating a policy, and reformulating it. The counter-terrorism strategy must be dynamic and open in accepting counsel based on scientific findings.

In this regard, AI and AJ experienced increasingly severe psychotic symptoms until they were serving their sentence. From the start, law enforcers should be able to recognize this in order to get treatment from professionals, such as a psychiatrist or at least a psychologist. Based on the Health Minister’s Regulation of the Republic of Indonesia Number 77 of 2015, Indonesian National Police investigators are one of the agencies that can provide official requests for mental health examinations to government-owned mental hospitals for the purpose of enforcing criminal law. However, negligence occurred and the case continued until the judge's verdict was decided.

Despite their status as convicts whose freedom and independence are restricted, AI and AJ have their right to live properly, both physically and mentally without discrimination. One example of their rights is getting treatment. With the limited facilities, the new prison provides an opportunity for psychiatrists to examine AI's condition and provides drugs to treat schizophrenia, bipolar disorder, behavior disorders, and anxiety disorders, while AJ, unfortunately, does not get this because there are no clear regulations.

From the perspective of policymakers, it is also important to take into account the fact that AI pretended to be well in order to receive a lesser dosage of medication while receiving treatment in prison. It has been a crucial experience for law enforcement and guidance in prison aspects regarding sensitive situations of terrorism and the potential for mental disorders that might threaten and injure not only the convict himself but also others. Medical professionals who are not specialists are unable to spot behavioral changes, and it is obviously hard to do so. Therefore, it is necessary to periodically train technical prison officers or terrorist convicts.

There are a number of reasons why AI and AJ might not have gotten special treatment during the investigation. First, as was already mentioned, there are no regulations or professional training for executives, such as Standard Operating Procedures (SOPs) for the initial mental examination of terrorist convicts. Second, not all researchers are knowledgeable about and skilled in recognizing behavioral early symptoms of patients with psychiatric disorders. Finally, there is a chance that AI and AJ will still be able to act in self-defense and conduct inquiries in a helpful and cooperative manner, allowing the inquiry to continue until punishment is imposed.

In the two cases above, both AI and AJ, when they committed the act of terrorism, they were conscious so they could be held responsible. In AI's case, there is a legal framework accommodating the guidelines of mental health handling for convicts at the prison, although this is still limited. In addition, in practice, prison and jail officers must also receive socialization and training to implement applicable regulations in order to minimize the mental disorders experienced by AI in prison, and relapse when he is released.

As for AJ, the emergence of abnormal behavior during the investigation process can be anticipated with a request to conduct a mental disorders examination. In this case, it is the authority of the investigator to request the aid of a Psychiatrist at the local Mental Hospital, to carry out a mental examination (observation) of the convicts. It is also possible that the lack of investigator's awareness about mental disorders causes the handling of cases less than optimal. The absence of a standard operating procedure (SOP) for handling cases against convicts with mental disorders at the investigation stage is also one of the reasons which must be addressed immediately. The SOP can be used as guidelines in ensuring all decisions and actions taken by investigators run effectively, consistently, standardly, and systematically (Tambunan, 2008). There is a need for training to the law enforcers, for creating Psychiatrists or at least psychologists in the Correctional Institutions, and for making integrated regulations regarding the handling of mental disorders cases which can be carried out as a solution against the problems that occur in AI and AJ.

The formal model of the policy formulation process is basically compiling policy ideas, formalizing and legalizing policies, implementing, implementing performance, and then evaluating policy performance (Nugroho, 2009). There are two choices of steps in implementing public policy, namely through a form of a program or a derivative of the public policy. Therefore, mental health-based counter-terrorism policies need to be prioritized through regulations and technical regulations to control the potential threat of terrorism in the future.

3.5. Psychology Intervention as the Fundamental Needs

The definition of Law Number 5 of 2018 states that terrorism is a serious crime with a global scope. However, prejudice in the treatment of mental disorders remains a source of concern. Overall, mental disorders and anomalies do not significantly contribute to terrorist behavior. According to Gazi and Lutfi (2011), studies by psychologists' researchers revealed that a sample of arrested terrorists had very little or less mental disorder than the general population. However, the study's conclusions must be challenged in the Indonesian context because the two incidents discussed above show an increasing trend.

Many studies of terrorism are colored by analyzing the motivations of offenders and group connections, the process of radicalization that changes a person's worldview and behavior regarding terror operations and violent tactics (Borum, 2003; Moghadam, 2005; Kruglanski, 2017). The three studies go into the conceptualization processes and phases of people joining radical and terrorist organizations. However, this study does not particularly address the analysis of informant behavior, but the experiences of informants (AI and AJ) can

suggest the need for a psychological approach from the beginning of the terrorism criminal justice process until the terrorism sentences process is ended. The state and government are supposed to be in charge of ensuring people's physical and emotional wellbeing even while they are incarcerated. Unfortunately, factual data truly demonstrate that the state is unaware of and unconcerned about the health of the offender/convict in every circumstance.

Based on Magliano (2004), mental disorders make it impossible to predict someone's behavior, which leads to unpredictable behavior. The lack of training and socialization in mental health treatment may be the root of law enforcement's inability to detect the typical behavior of an individual with a mental disorder. According to Copeland and Marsden (2020), diagnosing mental health problems can be challenging for a variety of reasons, even after seeing a specialist. It is challenging to assess terrorists since few of them interact with medical professionals or the healthcare system for support or treatment, making it challenging to collect precise diagnostic data.

Since the investigative process, there have been signs of mental disorders in AI's case. When AI was in prison, the symptoms which included abnormal behavior and self-harm became more obvious. By kicking her younger sibling, who will pick up AI's children from prison, AI has occasionally caused harm to other people (AI's Family Interview, Klaten, 8 June 2022). Compared to adult male convicts, female and younger prisoners have a higher frequency of mental disorders (Gussak, 2009). Personality disorders, mood disorders, eating disorders, and Obsessive Compulsive Disorder *(*OCD) are more frequently diagnosed in female convicts. However, a regulation that addressed officers' demands to facilitate mental disorders treatments already existed the year that AI was subject to the criminal process. As a result, it is thought that AI is more effective than AJ at addressing mental disorders concerns. As aforementioned, AI had the opportunity to go through treatment and obtain a number of prescription medications for her mental disorder.

Since we are aware that mental disorders cannot be considered, A variety of social and environmental factors, including family dysfunction, relationships with radicalized friends, an unstable geopolitical environment, the socioeconomic conditions which is polarized, and neurobiology (the function and structure of the brain's nerves) are all thought to play a role in the development of mental disorders and connected to terrorist activity (Ho, et.al, 2019). Family dysfunction (Al-Ubaidi, 2017) is evident in AI's life story as well. Considering she has not had a father figure in his life since he was a youngster, AI lacks an adult male role model who can fill this void. In particular, AI is particularly responsible for supporting the household finances of her three siblings. AI is willing to leave school for her younger siblings to get a higher education than herself. Her mother works hard to support her four children alone, so she rarely gives attention to her children. It is suspected that AI's emotional needs as a child were unprovided.

Following her release, AI regularly attended outpatient therapy sessions at the Klaten Mental Hospital (RSJ) each month. Nevertheless, according to family information (AI Family Interview, Klaten, June 8, 2022), AI has a propensity to frequently act healthy thus that the medication dose is decreased. Additionally, AI has behaved in a motherly manner with her child, giving the impression to the family that AI is beginning to take parental responsibility for raising her and manipulating her mental state to appear to be getting better. Psychologically, Freud (1987) noted that when a person is under stress or has another psychological disorder, he or she tries to make an effort (coping) to get away from those issues.

In comparison to AI, AJ shows additional symptoms, including those that are indicative of mental disorders, such as delirium, eating disorders (overeating), and irregularities in sleep patterns. (Interview with AJ's wife, Klaten, 9 June 2022). Under some circumstances, AJ is abnormally more active at night than during the day. Referring to a study conducted by The Lancet Psychiatry (2020), it has been found that people who experience rhythm disorders more commonly as being more active at night than during the day or not being active of any kind demonstrate major depressive or bipolar disorder symptoms on a regular basis (Kondola et al, 2020).

According to the findings of the interviews and analysis based on self-defense mechanisms (Freud, 1987), AJ shows signs that it is difficult for him to stick with one job and that he is less focused on completing his task.

The consequences of pressure and personal life events, as well as terrorism cases like going through judicial proceedings at a young age, losing both parents, and serving as the family's financial support after the conviction is done, can be a trigger for perpetrators to escape responsibility. According to Orsillo and Batten (2005), people who have experienced trauma, believed that avoiding particular actions will keep them safe physically and psychologically. It is also mentioned that the best and only coping mechanism accessible to them is avoidance. The common thread in this situation may be stated to be the correlation between task dedication and avoidance. According to Kiesler, Roth, and Pallak (1974), delaying work has behavioral effects for people who struggle with their beliefs and seek liberation from reality. AJ frequently visits psychiatric hospitals and prefers to stay there for an extended period of time. This could be an indication of AJ's behavior, such as self-defense, coping, or denial, in other words, presumably defending himself alone while chasing liberation.

Indicators of mental problems for the two informants AI and AJ appeared while facing legal proceedings for terrorist crimes, according to their experiences and the statements of their family members. Because of the considerable environmental change, it is actually feasible for prisoners or ex-convicts to have mental disorders. If the pressure builds up, anxiety disorders, stress, sadness, and other mental problems may result. Humans, especially convicts, might get tense or stressed out due to environmental changes. Anxiety disorders and stress are defined by the ability to adjust to changes that occur physiologically, psychologically, and socially (Tyrer & Baldwin, 2006). According to Carson (in Taufik, 2004), a person's level of stress is a measure of how well they can manage with various pressures without suffering serious implications. Stress tolerance is described as the amount of stress that an individual can tolerate without becoming illogical, or as the point at which inefficient behavior and irrational thinking arise.

The strategy that is often used to deal with anxiety disorders or stress experienced is a coping strategy. Leszko, et al. (2020) assert that coping mechanisms enable more focused and successful psychological interventions, which in turn improve stress-resilience. The selection of effective coping mechanisms can increase resistance, increase vulnerability, and have a detrimental impact on the mental disorders (Diehl, Hay, & Chui, 2012).

According to Beaudry et al. (2021), effective psychological interventions are urgently needed in prisons. Prisoners with mental disorders need follow-up treatment after release and psychological intervention programs while they are in prison. In contrast to medical treatments, which generally focus more on symptom relief, psychological interventions place a greater emphasis on strengthening the individual (Harvey & Gumport, 2015). According to Wolf and Hopko (2008), psychological therapies using psychotherapy, medication, and other collaborative treatment models are effective for treating depression.

The two cases of AI and AJ show that there are mental health conditions that can impact behavior, mental functioning, and social interaction and that terrorism does not only come from ideology, religious, or economic issues. Whether it is a mental disorder, internet radicalization, or root factors that emphasize socio-demographic aspects, the stages of radicalization and the decision to carry out suicide bombings are complicated behaviors that cannot be addressed by a single component (Corner & Gill, 2017). In order to encourage the development of the criminal justice system's multidisciplinary components, particularly psychology as a constant and fundamental requirement in the field of terrorism.

Despite the small statistical numbers, the empirical results of this research should not be underestimated. The relevance of mental diseases and terrorists as hidden diseases by the mental disorder may arise from the failure to read symptoms (visible deviations caused by mental disorders). There is still a chance that many terrorist suspects, defendants, convicts, or ex-convicts in some circumstances need a Psychiatrist or consistent psychological assistance, but this is not documented and identified due to lack of education and socialization of executors, willful neglect, or self-defense mechanisms from behavior. It is important to keep an eye out for this ongoing requirement rather than just glorifying the application of unsustainable regulatory frameworks.

4. Conclusion

In Indonesia, cases of terrorist crimes committed by people who suffer from mental disorders have not caused the government, society, or even professionals and academics themselves to become particularly concerned. As a result, it is impossible to determine the precise number of terrorist crimes committed by people who have mental health issues. Because of the unpredictable nature of behavior and the complexity of the problem of terrorism, it is unlikely that mental disorders will be detected by mental health professionals, both psychologists and psychiatrists, so it is very likely that what is discovered in this research is like an iceberg phenomenon.

On the extensive list of terrorist crimes committed in Indonesia, AI and AJ are only a small part of the list. The likelihood of more occurrences like these in the future is very high. Given that there are about 500 Indonesian residents living in the Syrian conflict zone (BNPT, 2022) and it is inevitable that they will be repatriated, it goes without saying that law enforcement officers and other government officials need to be able to identify and analyze this issue. The likelihood of terrorism and environmental hazards will likely increase if we continue to disregard it. Therefore, a variety of initiatives are required to prevent and handle terrorism in Indonesia in a more thorough manner. It starts with cooperation between the government, experts, and academics in ongoing research on terrorists who commit crimes who have mental disorders. The findings of the study can be used as a base for drafting the relevant policies and programs.

Accordingly, technical regulations need to be drafted, regulations need to be harmonized, outreach has to be performed, and technical training must be carried out immediately. The National Police, which serves as the first line of defense in the criminal justice system, in particular the Special Anti-Terror Detachment 88 of the National Police, can implement policy measures, particularly in the early stages of the legal process when it comes to psychological evaluation and consultation with a psychiatrist. Early recognition of mental disorders may serve as a basis for further legal action. After the sentencing process is over, there is a requirement for training prison authorities, obtaining Psychiatrists to be employed in prisons, and developing integrated procedures for treating cases of Mental Disorder People (ODGJs) engaged in terrorist crimes. Meanwhile, academics and professionals must conduct future studies on methodological enrichment related to these two issues, whether through the compilation of academic articles, longitudinal research, or other research instruments. Several stakeholders must actively participate in order to implement this research proposal. It is obviously difficult and time-consuming. However, it is envisaged that by offering the mental health paradigm priority in the future, it would lead to a comprehensive policy on prevention and counter-terrorism by prioritizing the mental health paradigm in the future.

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Using Bibliometrics to Analyze Literature Overview on Innovation in Vietnam's Small and Medium Tourism Enterprises

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Abstract
This research uses the bibliometrics method to analyze the literature overview on innovation in SMTE in Vietnam. The goal of this study is to give the future gap and overlook for the researcher about the innovation of SMTE Vietnam. This study visualized the co-occurrence of keywords in 215 selected articles. With 90 selected keywords, the software has sketched five distinct clusters and shows the relationship level between words, the larger the nodes, the more keywords appear, and the larger the curves, the higher the strength of the association. Using the bibliometrics method with 20 keywords, the author recognizes innovation as the trend and the fastest way to maintain and grow their business. And the innovation of SMTE will develop in the future more deeply in Europe countries and the researcher will give the solutions to improve the innovations at SMTE.

Keywords: Bibliometrics, Small and Medium Tourism Enterprise, Vietnam

1. Introduction

Schumpeter (1911) was the first researcher to use the concept of innovation in a book titled: The Theory of Economic Development. The author has defined innovation as "a process of sudden change, constantly revolutionizing the economic structure from within, constantly destroying the old and constantly creating the new". And innovation can be considered and classified into 5 categories including (1) development and introduction of a new good (product innovation); (2) introduction of a new production method (process innovation); (3) opening up a new market (marketing innovation); (4) new sources of raw materials or new production (input innovation) and (5) creation of new forms of organizations or industries (organizational innovation). Following Schumpeter's research on the definition of innovation, there have been many studies from authors and organizations to improve comprehensively the definition and classification of typical innovation such as the following studies:

The European Commission (1995) defines innovation as (1) new products/services; (2) new markets; (3) new production methods (including new supply and distribution capabilities); and (4) management changes (including changes in organization and working conditions).

Gopalakrishnan and Damanpour (1997) found that researchers from different fields understand innovation differently. They classified these researchers as economists, technologists (context and organization), and sociologists (variance and process) and elucidated differences in their innovation concepts. A wide range of articles in the field of innovation has evolved in recent years and continues to grow, capable of responding to the changing nature of the environment, the company, and the creativity of its employees.

Tang (1998) discussed the factors influencing innovation in organizations and identified six innovation structures: information and communication, knowledge and skills, behavior and integration, Project enhancement and implementation, guidance and support, and external environment. Finally, the author emphasizes that innovation is a complex concept.

In the third edition of the OECD Oslo Manual (2005), innovation is defined as "the realization of new or significantly improved products including goods and services, or processes or methods. new marketing or new organizational methods in business practices, workplace reorganization or external relations". Thereby, four types of innovation have also been identified including (1) product innovation (a new product/service or a product that is significantly improved in terms of characteristics or intended use); (2) process innovation (new method or significant improvement in production or distribution, including technical, equipment and software changes); (3) marketing innovation/marketing innovation (new methods and changes in design, packaging, location, promotion or pricing; i. e); and (4) organizational innovation (new business practices or methods at work or in external relations). However, the above definitions are only being applied to the manufacturing industry.

Crossan & Apaydin (2010) raised a point of view in the classification of innovation, in which the author pointed out that two research approaches to innovation are, (1) consider innovation as a process and (2) consider innovation as a result. Innovation as a process considers where the innovation process takes place, the internal and external drivers for innovation (e.g. availability of resources and knowledge, market opportunities, adherence to a standard new standard), and resources for innovation (internal and external). Meanwhile, innovation as a result focuses on types of innovation (product, process, organization and marketing), innovation level (intensification or enhancement), and audience (company, market, industry). industry) used to assess novelty.

2. Methodology

2.1. Implementation process

When implementing a systematic evaluation method, research can be difficult to synthesize and analyze data sets due to the large amount of literature that needs to be reviewed and aggregated. Therefore, this study conforms to the integrated systems assessment method Hauser et al (2006) developed. Thereby providing a standard for the system evaluation process based on three main steps including:

- Establish criteria for a selected study
- Conduct identification and selection of potential studies
- Sort selected articles

This method is considered suitable for carrying out the purpose of this study which is to focus on integration and convergence for the assessment of innovation across domains. The specific process described in Figure 1 includes the following steps: Data collection, data filtering, analysis, synthesis, and discussion, and finally showing the inheritance values that can be applied to the research. this study and the gap for future research.

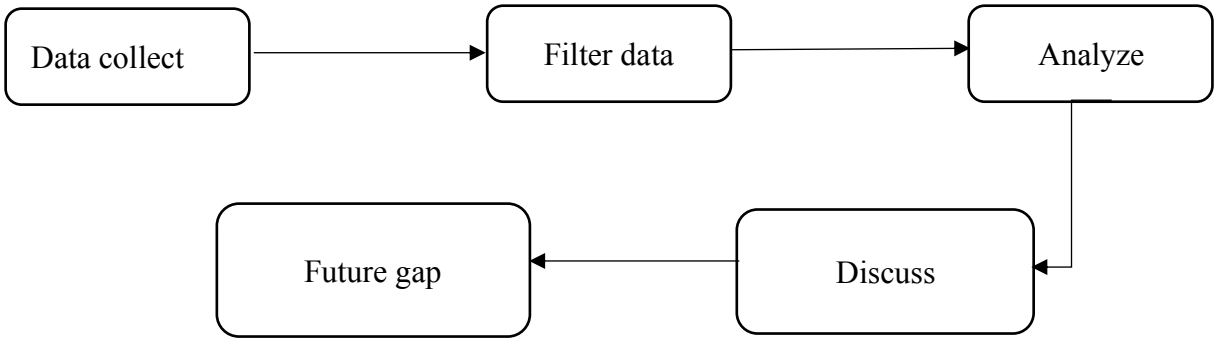

Figure 1: Research process
Source: Process developed by Hauser et al (2006)

2.2. Data collection

The systematic review approach selected keywords for search including “innovations” – Innovation, “Tourism” – Tourism and SME on Web of Science data source. With this method, the subjectivity of the researchers in data collection was eliminated. The method proposed by Becheikh et al. (2006) only reviewed empirical articles that have been published and published in academic journals; For this reason, non-empirical studies (books, internet sources...) were excluded from the review.

The first result for the document search process for 2 keywords "innovations", and "tourism" in the topic (title, summary, and keywords), the selected language is English, excluding books, papers in the conference, produced 374 results. The next step is to identify the article conditions that are appropriate for the study (for example, it is not enough to just use keywords for the article search, because without examining the entire text there will be may return many articles that do not cover the topic of innovation in tourism). Then perform filtering steps through "summary", and "whole text", the total number of articles selected is 281 articles (table 1).
The research process of the systematic review of research will include the following stages:

Perform analysis based on criteria (research location, research method, innovation classification) in the research
Performing a bibliographic analysis of selected articles will identify the theoretical underpinnings of tourism innovation research, and then identify and describe the structure of these theoretical foundations.

281 articles will be reviewed in detail for the entire text, then classified into two main groups: (1) Articles that analyze the importance of innovation for companies in the tourism industry and (2) Articles focusing on innovation in the tourism industry in general.

Table 1: Search results on the selected database

Database	Web of Science
Keyword _	Innovation, tourism, SMTE
Search _	Topic (Title, Abstract, Keywords)
Document Type	Articles
Publication year	2005-2022
Language _	English
Research area	All
Web of Science Categories	All
Result _	215 articles

Source: author

According to the annual report of UNWTO (2016), 2016 was an important year in tourism as it witnessed the 7th consecutive year of growth in international tourism, reaching 1.2 billion arrivals. The strongest growth was

recorded in Africa and Asia and the Pacific region. The outstanding growth poses a problem for managers when they have to maintain and implement innovation strategies to attract and retain tourists.

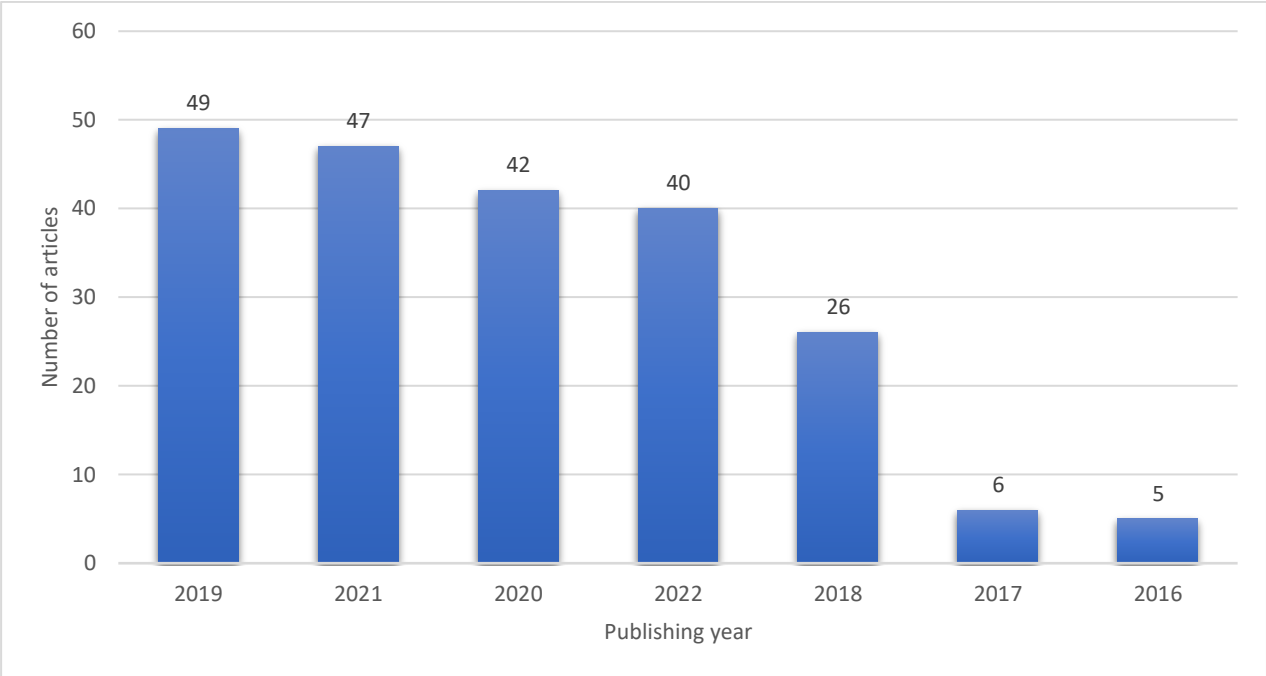

Figure 2: Selected articles each year in the field of tourism innovation

Source: author

The year with the most publications was 2019 with 49 articles, followed by 2021 with 47, 2020 with 42, 2022 with 40, and 2018 with 26 articles. In 2016 and 2017 there were 5 and 6 articles, respectively. It shows that the research trend towards this topic is getting more and more attention in the past 5 years.

2.3. Analysis

The second step of the analytical process includes the following stages: Analysis of relevant articles based on the following criteria: research location, methods used to conduct the research, published journals, the level of the paper's analysis, and the type of innovation analyzed in focus.

First for the position, out of 215 selected articles, 87 articles were researched on European tourism enterprises, accounting for 40.47% of the total number of articles confirming the position and interest of the tourism industry. Research on innovation in European tourism enterprises. Followed by articles surveyed in Asian businesses with 50 articles accounting for 23.26% showing the trend of interest in tourism innovation of tourism industry enterprises in developing Asian countries. develop. Twenty-one articles were surveyed in the tourism industry in the Americas, accounting for 9.77% of the total of 215 articles. This was followed by a survey of tourism businesses in Africa and Australia with a similar number of articles with a total of 5 articles per continent, showing a relatively low level of research. There were 28 articles about tourism industry businesses collected from different countries, so it is not possible to identify them specifically. In the end, 19 articles do not correspond to any enterprise because they are mainly articles discussing purely qualitative and building development models (specifically in Appendix A).

Table 2: Articles by location, method, level of analysis, and type of innovation

Location	Quantity	Proportion	Method	Quantity	Proportion
Europe	Eighty-seven	40.47%	Quantitative analysis	75	34.88%
Asia	50	23.26%	Qualitative analysis	113	52.56%

America and the Caribbean	21	9.77%	Theoretical articles	13	6.05%
Africa	5	2.33%	Both qualitative and quantitative	8	3.72%
Australia	5	2.33%	innovation	Quantity	Proportion
Multinational	28	13.02%	Process innovation	91	42.33%
No location	19	8.84%	Organizational management innovation	48	22.33%
Analytical level	Quantity	Proportion			
Micro	81	37.67%	Marketing Innovation	33	15.35%
Macro	82	37.67%	Product innovation	8	3.72%
Shared	53	24.65%	Mixture	35	16.28%

Source: author

Second, research methods are classified into three main categories: qualitative research, quantitative research, and theoretical articles. Table 2 categorizes the methods used in 215 research articles. In general, we can see that qualitative research is slightly better than quantitative research, which is also a feature of tourism research. Yang et al (2020a) find that quantitative analysis is not enough to understand the full story of environmental governance in some tourist destinations, such as how and why local governments react or implement national policies on land use and carbon emission reduction, while further influencing industry upgrading. Specifically, the articles are divided as follows:

Theoretical studies: 13 articles account for 6.05% of the total research, in which the research literature is compiled and discussed, it is the events in a project or the result of a project. project is discussed.

Qualitative methods: 113 articles, or 52.56% (including articles where only qualitative methods were used, such as in-depth interviews, ethnographic studies, case studies, case studies, action studies, or more than one of these methods).

Quantitative methods: 75 articles, or 34.88% (including literature review articles, using only quantitative methods, including questionnaires or, in some cases including secondary data). The articles using SEM to measure the factors affecting innovation for enterprises in the tourism industry reached 20 articles, accounting for 26.7%, reaching a relatively large proportion for a quantitative method.

Both qualitative and quantitative methods: 8 articles, or 3.72% (including literature review articles, qualitative methods were used followed by quantitative methods; in most in cases, qualitative methods such as interviews or focus groups were carried out in the first phase to gather enough information and knowledge in the research area to develop a suitable questionnaire. appropriate and reliable, will continue to be used in the second phase).

Third, the level of analysis in research articles. According to Mattsson et al. (2005) and Medina-Munoz et al. (2013), the research literature on tourism innovation is divided into three levels of analysis including (1) The article analyzes the factors affecting the innovation of tourism businesses (defined as the micro level); (2) The article focuses on innovation and development of tourist areas (Macro level); (3) The article focuses on the development of innovation theory and models in general (General). There are 81 articles out of 215 articles at the micro-analysis level, accounting for 37.68%, while the articles at the macro level also have the same ratio with 82 articles, accounting for 37.67%. While the studies mentioning innovation in tourism at the general level accounted for 24.65% with 53 articles.

In the final review, the articles were sorted according to the innovation types discussed in each article. According to Doris Omerzel (2016), who has classified and assessed various types of innovation in the tourism and hotel industry, the author has summarized 5 types of innovation including process and organizational innovation. organization, management innovation, service innovation, and finally product innovation. Although various types of innovation have been classified, in the process of researching the article, there are many general

types of innovation and it is difficult to classify into any of the above 5 types, so This research can combine different types of innovation in the same research to complement each other. Table 2 shows the frequency distribution for innovation types in a total of 215 articles collected.

Process innovation with 91 research papers equivalent to 42.33% accounted for the highest percentage because it mainly includes technological innovation, tourism means the introduction of information & communication technology in business in businesses, websites, social networking, booking, email as a means of business communication and other technological innovations.

Organizational management innovation includes 48 research papers, accounting for 22.33% of the total 215 articles, mainly related to research related to this innovation group focusing on inter-organizational relationships on the integration of key partners such as a combination of travel agencies into the development of new products/services. These relationships are presented as a framework that provides companies with innovative opportunities to operate in a competitive tourism environment. Besides, the company's tourism destination management issues are also noticed. Many research articles related to this type of innovation show that innovation to improve employee capacity will help accelerate the process of management innovation.

Marketing innovation has the same number of articles as service innovation, with 33 research papers. It points out that tourist destinations need to improve and innovate for marketing activities at tourist destinations to improve the ability to attract tourists as well as satisfaction when experiencing tourism.

Product innovation with 8 articles accounted for the least proportion with 3.72% of the total number of articles. This type of innovation refers to the need to innovate tourism products of tourist sites.

Mixed innovation with a total of 35 articles with a 16.28% share of articles comprised of innovation-related articles described in a general way and not focusing on a specific type of innovation. These materials include a description of the treatment of strategies for promoting innovation activities within a company, an analysis of the impact of innovation sector policies in the region, a discussion of the link between organizational environment and business innovation, and also describe some innovation projects in the tourism sector.
Bibliometric analysis
Bibliographic methods use quantitative information from bibliographic databases (Web of Science) to identify previous influential articles. The bibliographic co-citation analysis method is based on citation data in the field of tourism innovation to determine the structure of the theoretical underpinnings of the current literature. Therefore, it is also applied in the study of innovation in the field of tourism.

Raphic bibliographic data from the Web of Science for 215 reviewed articles were published and a co-citation analysis was performed to reveal the theoretical underpinnings of tourism innovation research. Co-citation is a measure of similarity between articles, authors, or journals (Zupic and Čater, 2014). If two articles are found together in a reference list, there is a high chance that they have something in common. If they appear together in a large number of reference lists, this connection becomes stronger. A co-c citation matrix for all documents cited more than five times in the tourism innovation literature was assembled. They are visualized as networks with Pajek software (Batagelj and Mrvar, 1998).

3. Results and Discussion

3.1. Analysis of study country distribution

Across 215 selected articles, there are 71 countries where businesses are surveyed and empirical research is taken for innovation in tourism. Table 3 lists the 10 countries with the highest publication rates from 2016-2022. The country with the highest percentage of articles is Spain with a total of 30 publications with total links (TLS) with other articles also reaching the highest with 4578 links. After Spain, China is the second country in terms of the number of research articles with a total of 25 articles, and is also one of only two rare Asian countries in this list along with Taiwan, demonstrating the interest of researchers as well as the government in this smokeless

industry. Followed by Portugal with a total of 18 articles with a total of 197 citations, an average of 10.94 times per article. Followed by Italy and the US are both countries with the fourth-highest number of articles published with a total of 17 articles each, but Italy is the country with the highest citation rate with 568 times, 3 times that of the US with 177 citations. Although the UK has only 14 articles published in this list, it has the second highest citation rate per article after Italy with 32.86 citations per article, proving the quality of each article. articles are published. Along with that, Australia also has the same number of articles as the UK with 14 articles and the number of article citations ranks third, with 23.64 citations per article. The last three countries are France, Norway, and Taiwan with 11,10 and 9 articles published respectively.

Table 3: 10 countries with the highest publishing rates

Research position	Quantity	Number of citations	TC/Art	Total Link Strength
Spain	30	381	12.7	4578
China	25	253	10.12	3240
Portugal	18	197	10.94	2924
IDEA	17	568	33.41	3426
America	17	177	10.41	3937
Older brother	14	460	32.86	3000
Australia	14	331	23.64	2905
France	11	178	16.18	1900
Norway	ten	82	8.2	1984
Taiwan	9	113	12.56	1807

Source: author

A co-cited cluster map was created to delve deeper into the country analysis and any relationship between them (see Figure 3). The frequency of occurrence of phrases representing each country determines the formation of clusters; terms tend to appear together more often, the more they are colored into clusters. The size of the circles represents the amount of product a country has produced, but the width of the lines indicates the degree of cooperation. VOSviewer map of cross-country research collaborations between countries identifying six clusters with minimal contributions from 15 countries that have published at least six articles out of 71 countries that have published at least one paper.

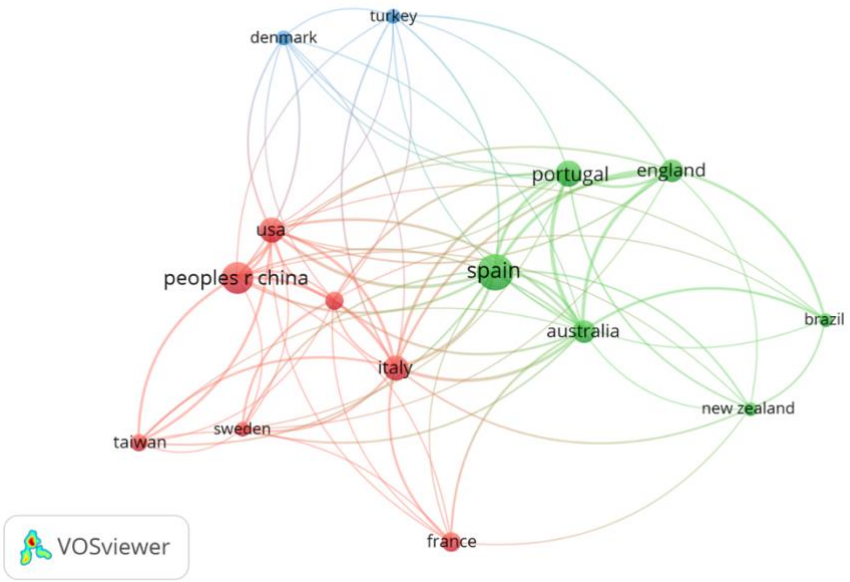

Figure 3: Network visualization map of the country

Source: author

With a total link strength of 4578, Spain is the country with the most significant association with the rest of the countries on the map in the cluster. Although the US is the country with the fourth largest number of published articles, it has the second largest link strength after Spain. Italy and China ranked third and fourth in total link strength, respectively. As seen in Figure 3, all of the strongest partnerships involve Spain. The strongest research cooperation is between Spain and the United States, with a connection strength of 665 and a dense border. The second strongest link is between Spain and England with 648 links.

3.2. Analysis of research organization distribution

After studying a list of the ten most productive countries, institutions, and their schools appear prominently in rankings of institutions published on the Web of Science database. According to Table 4, the top ten universities contributed 20% of the 71 countries named in the research area of innovation in tourism. The University of Surrey ranked first with 7 articles published, with the highest total number of citations 221 times, an average of 31.57 citations per paper from this university. “University of Aveiro” is the second university with a total of 6 articles published. Although ranked third in the number of articles published with 5 articles published related to innovation in tourism, “Victoria University” ranks second in the total number of citations, reaching 31 citations per paper, just behind “The University of Surrey” with fewer than 1 citation per paper. Along with Victoria University, Australia also has another university that is also in the top 10 universities with the highest number of published articles, which is Griffith University, with 4 articles and 57 citations. “Universidad De Castilla La Mancha,” “The University of Alicante,” and “Universitat Politecnica De Valencia” have the same number of published papers as 4 papers equivalent to Griffith University. Besides, although there is a total of 11 universities with 3 published articles, in this list, only 3 are selected, the schools with the highest citation rate are "Asia University Taiwan", and "Asia University Taiwan", respectively. Roskilde University", "University Algarve".

Table 4: 10 institutions with the highest number of published articles

STT	organization _	Country _	Quantity _	Quotes _	TC/Art
first	University of Surrey	Older brother	7	221	31.57
2	University of Aveiro	Portugal _	6	60	10.00
3	Victoria University	Australia	5	155	31.00
4	Griffith University	Australia	4	57	14.25
5	Universidad De Castilla La Mancha	Spain _	4	72	18.00
6	University of Alicante	Spain _	4	82	20.50
7	Universitat Politecnica De Valencia	Spain _	4	13	3.25
8	Asia University Taiwan	Taiwan _	3	47	15.67
9	Roskilde University	Denmark _	3	Sixty-one	20.33
ten	University Algarve	Portugal _	3	51	17.00

Source: author

Figure 4 depicts the directory connectivity of organizations using data visualization. With at least 3 published studies and 10 citations per institution, the results yielded 14 matched institutions from a total of 356 institutions from 215 research articles. Of the 10 universities with the highest total number of published articles, Spain has the highest number of universities with the top 3, Portugal and Australia with 2 each, and UK, Denmark, and Taiwan with one university. Of the 10 universities with the highest publication rate, the lead is “University

Surrey" with a total link strength of 601 links, followed by "Victoria University" with 563 links. "Griffith University" came in third with a total of 413 links. Although ranked fourth in terms of the total strength of association with other institutions and universities, "Griffith University" is the institution with the strongest link with the top two universities, "Victoria University" with a total of 271 links. The "University of Alicante" also has strong links with the "University of Surrey" with a total of 238 links.

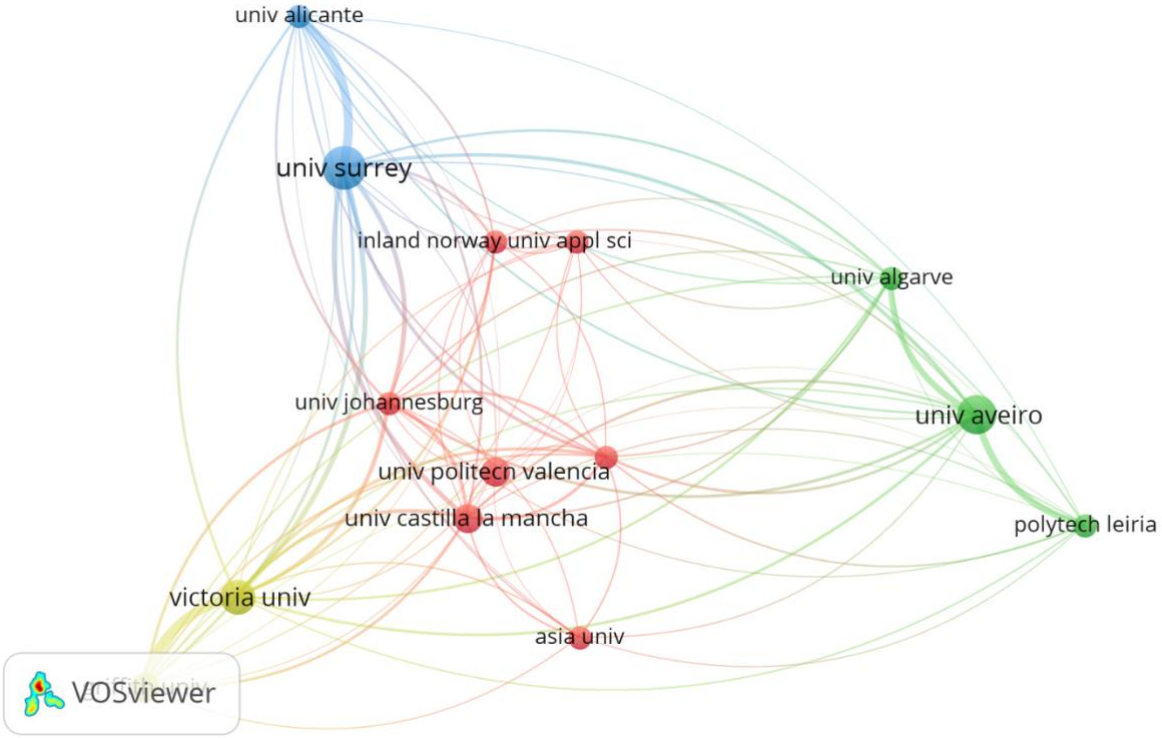

Figure 4: Network visualization map of institutions

Source: author

3.3. Distribution of leading published journals

Analysis of leading journals for each field is extremely important, in the research field of innovation for tourism, we collected 10 journals with the highest number of published articles out of 215 newspapers are collected. From Table 5, we can see that the journal "Sustainability" is the leading journal with a total of 28 related articles accounting for 13% of the total 215 articles, and at the same time has the highest total citations with 320 citations, proving that influence of the journal in this area. In second place is the "Journal of Hospitality And Tourism Management" magazine with 8 articles published and also has a total number of citations 263, ranked 2nd. Although ranked seventh in the number of published articles. With only 5 articles, however, "Tourism Management", ranked first in terms of citations per article with an average of 49.80 citations per article, and the journal with the highest Impact Factor index with 13.79 points.

Table 5: Leading magazines in the tourism sector

Magazine	Quantity	% 215	Citations	TC/Art	Impact Factors
Sustainability	28	13.02	320	11.43	3.89
Journal of Hospitality and Tourism Management	8	3.72	263	32.88	7.74
Current Issues in Tourism	6	2.79	136	22.67	7.57
Information Technology Tourism	5	2.32	188	37.60	6.09
International Journal of Contemporary Hospitality Management	5	2.32	157	31.40	8.65

Journal of Travel Research	5	2.32	135	27.00	10.87
Tourism Management	5	2.32	249	49.80	13.79
International Journal of Tourism Research	4	1.86	54	13.50	5.10
Tourism Economics	4	1.86	41	10.25	5.59
Tourism Management Perspectives	4	1.86	77	19.25	8.48
Tourism Planning Development	4	1.86	21	5.25	5.02
Worldwide Hospitality and Tourism Themes	4	1.86	9	2.25	1.51

3.4. Analysis of the distribution of leading authors

Regarding author analysis, 572 authors contributed to 215 documents selected for review. Authors possess at least 2 published papers related to innovation in the selected tourism sector. According to Table 6, author William, Allan m, is the author with the highest number of published articles, and he is also the leading author of many books related to tourism, his first book published Writing about tourism is "Critical Issues in Tourism: a geographical perspective" published in 1994, in 2019 after more than 2 decades, the author published a book related to innovation in tourism. “Tourism and innovation” with more than 1000 citations (based on Google Scholar). Next, the second author in terms of the number of published articles is Costa C with a total of 5 articles published. There are seven authors with a published count of 3 including “Divisekera S,” “Garcia-Villaverde PM,” “Koseoglu MA,” “Martinez-Perez A,” “Nguyen VK,” “Valeri M,” "Zuniga-Collazo A". “Valeri M” is the author with the highest number of citations with 176 citations, an average of 58 citations per article. In addition, there are 35 authors with 2 published articles, however, “Kraus, Sascha” is the author with the highest total number of citations with 147.

Table 6: Top 10 authors who work best with their h-Index

Authors	Counts	Citations	Total link strength
William, allan m.	6	151	1139
Costa C	5	53	591
Divisekera WILL	3	130	851
Garcia-villaverde PM	3	58	821
Koseoglu MA	3	62	391
Martinez-perez A	3	66	1065
Nguyen VK	3	130	851
Valeri USA	3	176	337
Zuniga-collazos A	3	5	349
Kraus, sascha	2	147	615

Source: author

3.5. Research keyword analysis

Co-word analysis for keywords appearing in each article allows the author to identify research trends or prominent topics in each field. The keywords used by the study's authors provide information on the most important research topics (NJ Van Eck & Waltman, 2014). Therefore, the present study examines the co-occurrence of keywords, which can be derived from the title, summary, or author. VOSviewer checked a total of 1242 keywords that appeared at least once, but with the simultaneous keyword analysis, we asked for at least 5 occurrences of each keyword and collected 90 related keywords has been shown in Figure 5.

In addition, the 20 most frequently occurring keywords ($\geq$ 13 times) are listed in Table 7. This ranking is extracted from Figure 5, where each keyword's size reflects its occurrence frequency. From Table 7, we can see

that the two main keywords in the topic of innovation in tourism appear the most, the keyword "Innovation - Innovation" appears the most 96 times, followed by "Tourism" 72 times.

Table 7: 20 keywords with the highest frequency

Rank	Keywords	Occurrences	TLS	Rank	Keywords	Occurrences	TLS
first	Innovation	96	380	11	Industry	17	92
2	Tourism	72	336	twelfth	Service innovation	16	92
3	Performance	39	239	13	Competitiveness	15	89
4	Management	39	224	14	Sustainable tourism	18	83
5	Hospitality	27	174	15	Behavior	13	81
6	Knowledge	27	140	16	Networks	11	71
7	Sustainability	21	127	17	Service	ten	71
8	Impact	22	126	18	Strategy	ten	Sixty-seven
9	Entrepreneurship	23	124	19	Destination	14	66
ten	Firms	21	119	20	Technology	13	65

Source: author

This study visualized the co-occurrence of keywords in 215 selected articles. With 90 selected keywords, the software has sketched five distinct clusters as depicted in Figure 5, including red, yellow, blue, green, and purple colors representing each cluster. Accordingly, the curved lines reflect the relationship level between words, the larger the nodes, the more keywords appear, and the larger the curves, the higher the strength of the association.

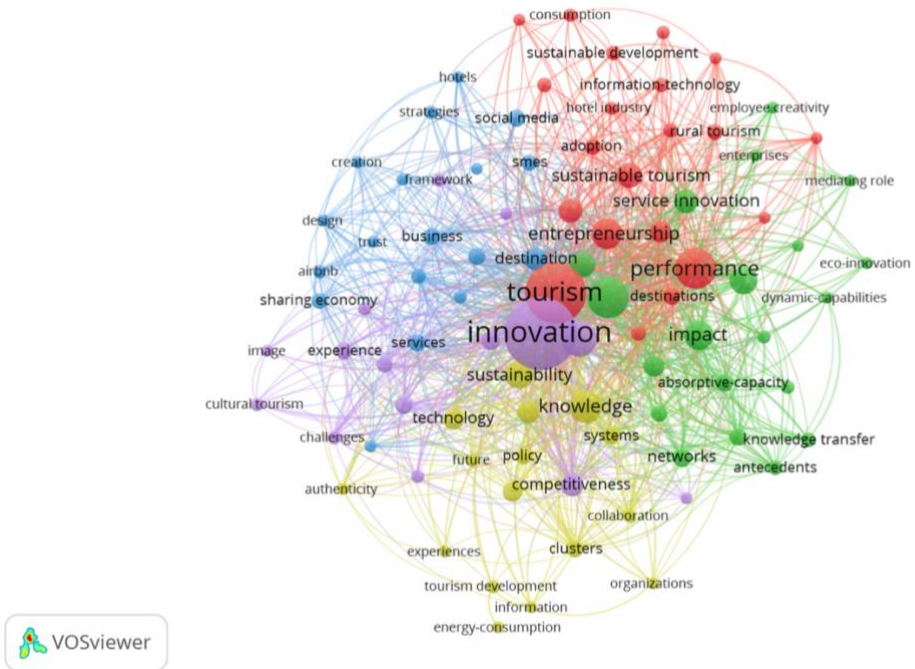

Figure 5: Network visualization map for co-occurring keywords

Source: author

Table 8 presents a comprehensive summary of the conceptual network by identifying five distinct clusters, each represented by a unique color in the accompanying map in Figure 5 and the corresponding number of keywords. Each cluster in the graph is characterized by a set of nodes and links, color-coded to facilitate visual identification. “Sustainable Tourism” is highlighted in red, “Knowledge” in yellow, “Management of organizational innovation” in green, “Innovation in Service” in blue, and purple “Innovation” respectively.

Table 8: Clusters identified in the keyword network

STT	Color	The name of the cluster	Number of keywords
first	Red	Sustainable Tourism	21
2	Green	Management of organizational innovation	20
3	Blue	Innovation in Service	18
4	Yellow	Knowledge	16
5	Violet	Innovation	15

Source: author

Cluster 1 – Sustainable Tourism: The red area on the map has the largest 21 keywords that appear together. In the middle of the map is the term "Tourism - Tourism", which appears in 72 articles and has links to most of the keywords on the cluster map. This is proof of its close connection with the keywords in the research paper on the topic of tourism. Besides, the phrase "Sustainable tourism" also appears as a bright omen in the red area, it is closely linked with other phrases such as "Rural tourism", "Sustainable development", and " Sustainable tourism development” shows the close interest of researchers in the topic of sustainability in tourism. Likewise, through an interdisciplinary perspective, Pan et al. (2018) has investigated sustainable tourism with original analyzes related to sustainability challenges and constraints, such as energy and pollution, and explored fundamental concepts such as green infrastructure, agriculture, and smart technology are all keywords that have appeared in the red zone. They conclude that sustainable tourism management requires an integrated and multidisciplinary approach, such as coordinating public policies and tourism strategies; combining local, national and international government; and promoting green pioneering and practice through environmental education. Finally, the paper by Alfaro Navarro et al. (2020) identified a gap related to the analysis of sustainable tourism at the local level, thus proposing an index to measure European level 2 NUTS sustainable tourism. The social and economic aspects are the most influential factors in terms of sustainability, but the environmental aspect has increased significantly in the process of building a sustainable tourism system. Therefore, regions that want to adopt sustainable practices should focus first on the environment and then on the social and economic aspects.

Cluster 2 – Management: The 2nd prominent cluster is shown in green with 20 keywords. Prominent is the keyword "Management" with the number of occurrences of 36 times. The map of this green cluster is closely related to the management issues of travel companies in the innovation process such as human resource management, strategic management, and innovation management. Typically, the appearance of keywords such as “Enterprises”, “Firms”, “Employee creativity”, “Small firms”, “Strategy”, “Dynamic capabilities”, “Knowledge transfer”, “absorptive capacity”, “Industry”, and "Impact". Narver and Slater, (1990) emphasized the importance of company resources for competitive advantage in the current globalization revolution. Chan et al., 1998; Orfila-Sintes and Mattson, 2009 also discussed research related to innovation behavior in companies, development, management and innovation in general.

Cluster 3 – Innovation in Service: shown in blue with eighteen keywords. Typical keywords emphasizing the importance of service innovation by travel companies that will impact customers such as: “Service”, “Social innovation”, “Social media”, “SMES”, “Education”, “Design”, “Creation”, “Airbnb”, “Business”, “Community”. The importance of innovation for services has been demonstrated through a series of studies by authors from previous centuries such as Barras, 1986; Darr et al., 1995; Drejer, 2004; Gallouj and Weinstein, 1997. In addition, four case studies for service innovation processes for travel agencies are demonstrated through each study, The first focuses on technological changes in travel agencies. different service sectors (Pavit, 1984), the second focuses on the relationship between organizational complexity and innovation (Damanpour, 1996),

and the third presents a discussion of the complexity of these services. dominated by the service sector (Tremblay, 1998), and the fourth is to define a chain as a collection of service firms (Ingram and Baum, 1997).

Cluster 4 – Knowledge: The yellow cluster includes 16 keywords that represent the need for staff to receive and improve knowledge, tourists' awareness of innovation, and sustainability in tourism development. in travel agencies. Expressed through keywords such as “Information”, “Knowledge”, “Future”, “Policy” “Experiences”, “Collaboration”, “Sustainability”, “Tourism development”, “Tourism innovation”. These keywords have a close relationship with knowledge, knowledge transfer, and knowledge absorption ability to improve the information awareness ability of travel agencies and tourists towards sustainable tourism, as well such as the policies of the mass organizations for the development and sustainability of the exploitation of tourist sites. (Cohen and Levinthal, 1990; Cooper, 2006; Nonaka and Takeuchi, 1995; Shaw and Williams, 2009; Vargo and Lusch, 2004).

Cluster 5 – Innovation: The final cluster with 15 keywords shown in purple located on the right side of the chart focuses on innovation implementation issues such as business model issues, challenges, the ability to co-create value between tourists and travel agencies, factors that lead to innovation include keywords such as: “Challenges”, “Co-creation”, “Competitiveness”, “Cultural tourism”, “Determinants”, “Knowledge management”, “Business model” and the output of this process “Experience”, “Satisfaction”, “Customer satisfaction”, “Image”. Pencarelli's study (2020) explores the impact and emphasizes the need for “Co-creation” strategies in both physical and digital domains to enrich the travel experience. Polese et al. (2018) also delve into the key factor steps to maximize co-creation and value sustainability in the tourism industry and transition from innovation to social innovation. The authors emphasize the importance of IT as an enabler of sustained client-server interactions. Research by Romão and Neuts (2017) highlights the important role of professional expertise in regional innovation and sustainable development strategies. The authors analyze the use of territorial resources (natural and cultural) and other capital features in different peanut regions in promoting professional management – “Knowledge management” and tourism performance. calendar through intelligent processes. The results show a gap in development between different countries in Europe, with tourism specialization not mitigating this problem. In the positive findings regarding selected areas, CO2 emissions, the authors recommend that industrial and technological development should prioritize energy-saving measures based on renewable sources. Thereby, tourist destinations will be able to innovate and develop sustainably.

Future gap

Researchers tend to co-work to come up with ways and solutions to promote innovation and innovation by SMEs and they increasingly realize this is the trend and the fastest way to maintain and grow their business. I think the innovation of SMTE will develop in the future more deeply in Europe countries and the researcher will give the solutions to improve the innovations at SMTE.

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Study of State Administrative Court Decisions as Enforcement of Guidelines for Handling Environmental Cases

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Abstract
In the process of examining and deciding cases, environmental judges need materials related to the environment, especially studies of environmental decisions. The study of environmental decisions opens up space for discourse on legal challenges and findings in environmental cases. One of the challenges faced in environmental cases is the inconsistency of decisions that will affect the granting of rights related to the environment to the wider community. Furthermore, the study of environmental decisions highlights issues that are very important in examining environmental cases, such as scientific evidence on environmental damage due to forest fires, industrial activities, mining activities, and others. The objectives to be achieved in this research are to know and analyze substantial aspects to procedural aspects of environmental law, such as the issue of imposing criminal penalties for corporate management, scientific evidence, environmental permits, application of strict liability, citizen lawsuits, issues of environmental case management and the placement of environmental judges. This research is legal research with the type of research that is normative research. Cases that go to court and are registered as environmental cases do not entirely contain legal substances related to the environment. There were many cases registered with the "LH" register whose legal substance was not directly related to the environment, namely criminal cases regulated in the Oil and Gas Law and cases of corruption in the Oil and Gas sector.

Keywords: Decision, State Administrative Court, Environment

1. Introduction

Various policies and lifestyle changes to prevent and overcome environmental damage are massively carried out. However, the government's efforts need to be supported by environmental law enforcement through the courts. In dealing with environmental cases, namely state administration, the role of judges is very important as the party representing the state provides rights related to the environment. The State Administrative Court (PTUN) is a judicial institution domiciled at the provincial level and authorized to examine and decide on administrative disputes at the first level. (Kasan & Rasji, 2021) Therefore, judges need to take sides with the environment through their decisions.

In the process of examining and deciding cases, environmental judges need materials related to the environment, especially studies of environmental decisions. Because every citizen has the right to a good and adequate environment. Thus, the government through its apparatus is obliged to fulfil good environmental facilities as a form of fulfilling the rights of its citizens. (Prastiti, 2022) The study of environmental decisions opens up space for discourse on legal challenges and findings in environmental cases. One of the challenges faced in environmental cases is the inconsistency of decisions that will affect the granting of rights related to the environment to the wider community. Furthermore, the study of environmental decisions highlights issues that are very important in examining environmental cases, such as scientific evidence on environmental damage due to forest fires, industrial activities, mining activities, and others. Besides that,

To support the provision of the results of the study of environmental decisions, the research team will carry out indexation and analysis of ± 164 environmental decisions. From the results of the decision review, the research target is to find various findings ranging from the substance aspect to the procedural aspects of environmental law, such as the issue of imposing criminal penalties for corporate management, scientific evidence, environmental permits, application of strict liability, citizen lawsuits, to environmental case management issues and placements. environmental judge.

Decision indexation is a series of activities consisting of downloading; sorting out; reading, and analyzing court decisions based on certain criteria to see certain trends or problems in law enforcement by using court decisions as to the object of study.

The indexation activity of environmental case decisions was carried out by the research team from November 2021 to May 2022 with the object of the decision in the form of environmental case decisions live in a State Administrative Court (TUN) both at the first level; appeal; appeal; and Review (PK). The decisions indexed are decisions issued in the period 2009 to 2019 for TUN cases

The problem or the object of the problem in this research can be identified as follows:
How Substantial aspects to procedural aspects of environmental law, such as the issue of imposing criminal penalties for corporate management, scientific evidence, environmental permits, application of strict liability, citizen lawsuits, issues of environmental case management, and the placement of environmental judges.

This research will provide concrete guidelines for institutional actions that can and should be adopted to promote better and more consistent and predictable outcomes in the case of the environment. Even if an adequate legal framework has been adopted, it must be applied by the courts competently and consistently manner to effectively implement the environmental protections for which the law was drafted. This research will show how courts too often fail to apply the law. However, because this research is based on empirical detail and good analysis, it also shows the steps that need to be taken by the Supreme Court to correct this deficiency to more fully implement the public interest that the law wants to protect.

The findings in this study are followed up with recommendations for policymakers, especially the Supreme Court. The Research Team recommends that the Supreme Court take steps to overcome the problem of inconsistency of decisions in environmental cases, one of which is through thematic training for judges in areas with specific tendencies in environmental cases. The research team assessed that this recommendation was something that the Supreme Court could do as a follow-up to the Environmental Judge Certification Training which had been conducted regularly by the Supreme Court.

2. Method

This research is legal research with the type of research that is normative research. This research aims to find substantial aspects to procedural aspects of environmental law, such as the issue of imposing criminal penalties for corporate management, scientific evidence, environmental permits, application of strict liability, citizen lawsuits, issues of environmental case management, and the placement of environmental judges. This research is

focused on the judge's decision in environmental cases. Normative research uses primary and secondary legal materials. (Marzuki, 2013)

3. Results

The following are the primary legal materials in this research as follows:

1. the 1945 Constitution of the Republic of Indonesia;
2. Code of Civil law;
3. UU no. 32 of 2009 concerning Environmental Protection and Management;
4. SK KMA No. 36/KMA/SK/II/2013;
5. Decisions of Judges in Environmental Cases;
6. Other relevant laws and regulations.

Secondary legal materials are all publications on the law that are not official documents, such as textbooks, legal dictionaries, legal journals,(Marzuki, 2013) opinions of scholars, legal cases, results of seminars, workshops, symposia including sources of legal material in the form of publications using the internet related to this research material (added an interview method to the Surabaya High Court). This research is library research. Library research is research that uses library materials as a source of information and data sources. These include books, magazines, newspapers, laws and regulations, etc (Khaesarani, 2022).

The legal materials collected in this study were produced from a literature study. Therefore, the technique of collecting legal materials used in this research is literature review and documentaries.

The collection of legal materials is carried out by tracing, namely (1) tracing Substantial aspects to procedural aspects of environmental law, such as the issue of imposing criminal penalties for corporate management, scientific evidence, environmental permits, application of strict liability, citizen lawsuits, to issues of environmental case management and the placement of environmental judges.

Problems regarding substance aspects to procedural aspects of environmental law, such as the issue of imposing criminal penalties for corporate management, scientific evidence, environmental permits, application of strict liability, citizen lawsuits, issues of environmental case management, and the placement of environmental judges. Described based on the legal materials obtained then the next step is to conduct an analyze an interesting idea to be displayed in this study on primary legal materials and secondary legal materials. Primary legal sources consist of statutory regulations, judges' decisions, and official records of making laws and regulations. While secondary legal sources consist of the results of legal publications such as books, journals, analyses of decisions, etc. (Kristiadi et al., 2022) After all the materials have been collected, the next activity is to analyze the primary and secondary legal materials that have been obtained. The analytical technique in this study was carried out in an analytical prescriptive manner, which aims to produce a prescription about what should be the essence of legal research that adheres to the character of legal science as applied science. (G, 1975)

The data collection procedures in this study are indexation of decisions begins with searching and downloading decisions by the research team on environmental case decisions contained in the Decision Directory (http://.cepatan3.mahkamahagung.go.id) as the official website for the publication of the ruling managed by the Supreme Court (MA). The search process is carried out from October to January 2022, at which time the Decision Directory website experienced technical problems where the site was often inaccessible causing some decision data to be inaccessible. The decisions that were traced and downloaded are as follows:

1. Decisions whose case registers use the code “LH” (Environment), namely for decisions issued from March 2015 to 2019. (Surat Keputusan Mahkamah Agung No. 037/KMA/SK/III/2015 Tentang Sistem Pemantauan Dan Evaluasi Sertifikasi Hakim Lingkungan Hidup., 2015) One of the objectives to be achieved by examining the decisions given in one of the "LH" codes is to see how far the court and The Supreme Court categorize a case as an “environmental” case; and
2. Decisions related to (applicable to decisions issued from 2009 to March 2015) This was done considering that during that time the Supreme Court had not yet applied a special code (LH) for environmental causes. These

decisions are decisions that in the lawsuit, demands, and/or orders containing one or more of the aforementioned Laws. The sorting of decisions is not carried out using a search engine because of the poor facilities in the Decisions Directory.

a. Living natural resources, as regulated in Law (UU) Number 5 of 1990 concerning Biological Natural Resources and their Ecosystems;
b. Environment, as regulated in Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH);
c. Forestry, as regulated in Law Number 41 of 1999 concerning Forestry (Forestry Law) and Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction;
d. Water resources, as regulated in Law Number 7 of 2004 concerning Water Resources;
e. Fisheries, as regulated in Law Number 31 of 2004 concerning Fisheries and Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004;
f. Minerals and coal, as regulated in Law Number 4 of 2009 concerning Mineral and Coal Mining; and
g. Oil and gas, as regulated in Law No. 22 of 2001 about Oil and Gas.
h. Plantations, as regulated in Law Number 39 of 2014 concerning Plantation.

The decisions that have been downloaded are then sorted by sector and issued to be recorded in a table. The information contained in the table includes:
TUN verdict:
1. Case registration number
2. Court name
3. Plaintiff
4. Defendant
5. Also Defendant
6. Classification
7. Object of the lawsuit
8. Amar PN's decision
9. Panel of judges and registrar substitute for PN
10. PN decision date
11. Case registration number at the High Court (PT)
12. The decision of the PT
13. The panel of judges and substitute clerks at PT
14. PT decision date
15. Cassation case registration number
16. The decision of the cassation
17. The panel of judges and the clerk of the cassation substitute
18. Date of cassation decision
19. Cassation case registration number
20. The decision of the cassation
21. The panel of judges and the registrar instead of PK
22. PK decision date
23. General Principles of Good Public Governance (AUPB) which considered
24. The rule of law
25. Keywords

For decisions containing interesting legal issues and/or considerations, a summary of the decision is also made. The summary of the decision aims to make it easier for the public to understand the case and the contents of the decision quickly, without the need to read the entire text of the decision. Furthermore, for some decisions that contain the same legal issues and/or describe a certain trend (trend), the decisions and legal issues are summarized and described in a digest. The decision indexation activity produces 3 (three) outputs that have been compiled by the research team, namely:

1. Decision indexation data set (document in excel form containing the list indexed decisions along with important information related to decisions) a total of 164 decisions, which consist of:

Decision	First Level	Appeal	Cassation	PK	Total
TUN's verdict	19	8	103	34	164

The number of decisions indexed does not reflect The actual number of environmental issues bear a few things in mind. First, indexation is done by the sampling method (chosen randomly). Second, not all decisions, especially decisions in the TUN case at the end of 2019 have been decided by the court; and have been uploaded by each court into the Directory of Decisions. Indexed decisions it is an ongoing case (starting from the first level to legal remedies and the entire decision is found in the Decisions Directory), or stand-alone (only the first instance decisions are found or only legal remedies are found in the Decisions Directory). Summary of decisions, a total of 27 summaries and 3 digests.

4. Discussion

Substance Aspects to Procedural Aspects of Environmental Law, such as Issues on Imposing Criminal Cases for Corporate Management, Scientific Evidence, Environmental Permits, Implementation of Strict Liability, Citizen Lawsuit, to Issues of Environmental Case Management and the Placement of Environmental Judges.

4.1 Overview of Findings

The indexation and analysis of 164 environmental TUN case decisions conducted by the research team found various environmental issues that are often disputed in the TUN courts, namely as follows:

Forestry:

1. Employ forest area
2. Forest function conservation
3. Utilization of forest products
4. Property application
5. Protected forest area
6. Geospatial information
7. Swap Forest area
8. Forestry business license.

Environment:

1. Environmental destruction
2. Environmental pollution
3. Environmental Permit
4. Reclamation Permit
5. Disturbing the order
6. eviction.

Conversion of Biological Resources and Their Ecosystems (KSDHAE):

1. Wildlife conservation permit

Mining:

1. Mining license
2. Overlap mining business permits.

Plantation:

1. Plantation business license
2. Reserve plantation land.

Etc:

1. Determination of cultural heritage

The lawsuits were filed by:

1. Corporation (60 decisions;
2. Individual (50 decisions);

3. Organization (31 decisions).

The search for decisions also found that the absence of an analysis of Environmental Impact or AMDAL is the basis for the lawsuit that is most often used by plaintiffs, especially in lawsuits related to business licenses, which are 54 decisions. In addition to the AMDAL, other reasons that were also found as the basis for the lawsuit were:

1. The TUN decision which is the object of the lawsuit is deemed to have harmed or has the potential to harm the plaintiff;
2. The defendant is not authorized to issue the TUN Decree that is being sued;
3. The defendant issued a decision that exceeded his authority;
4. The TUN official who issued the TUN Decree had violated the General Principles of Good Governance (AUPB).

The research team found that the types of TUN decisions that are often contested are as follows:
1. Mineral and coal mining business license (68 decisions);
2. Plantation business license (17 decisions);
3. Cultivation rights (14 decisions).

Based on the category of officials issuing the TUN Decisions, it was found that the TUN Decisions that were frequently challenged by the Administrative Court were as follows:
1. Regent's Decree (SK) (39 decisions);
2. Ministerial Decree (18 decisions);
3. Governor's Decree (15 decisions);
4. SK Head of Agency (10 decisions);
5. Mayor's Decree (9 decisions)
6. SK Head of Service (8 decisions).

In deciding the TUN case, apart from relying on the laws and regulations, invitation, TUN judicial judges are also guided by the AUPB. 38 However, the research team's findings show that not all environmental TUN decisions include AUPB in their legal considerations. Of the 164 decisions indexed, AUPB was only considered in legal considerations for 77 decisions with the following details:
1. 9 decisions of the first instance;
2. 1 decision at the appeals level;
3. 46 decisions of cassation;
4. 21 PK decisions.

In terms of the distribution of cases, environmental TUN lawsuits are spread over 7 PTUN, namely:
1. Jakarta (26 cases);
2. Samarinda (23 cases);
3. Bandung (11 cases);
4. Banjarmasin (4 cases);
5. Palangkaraya (2 cases);
6. Attack (7 cases);
7. Pontianak (2 cases).

The number of environmental TUN cases that enter the Jakarta Administrative Court is due to:
1. There is a lawsuit against the TUN Decree issued by the central government, either the Minister, the head of the Agency/Agency or the Directorate General of the Ministry/Institution;
2. The Jakarta Administrative Court also handles lawsuits against the KTUN issued by the Governor of DKI Jakarta as well as heads of government institutions, such as Decree of the Head of the Civil Service Police Unit, Head of Division, and Head of Service in the Provincial and City Administration areas of Jakarta (Central, North, South, East, West and the Thousand Islands).

Of the 26 decisions made by the Jakarta Administrative Court, 15 lawsuits were granted, 7 cases were rejected, and 4 lawsuits were declared unacceptable (Niet Onvankelijk/ NO). TUN decisions that are often challenged in the Jakarta Administrative Court include:

1. TUN decisions issued by the National Land Agency, especially related to land use rights.
2. TUN decrees issued by the Ministry of Environment and Forestry, especially related to business permits and environmental permits.
3. TUN decisions issued by the Governor of DKI Jakarta, especially related to building permits, reclamation, natural tourism permits, and business plans for development activities.

Meanwhile, in the Samarinda Administrative Court, of the 23 decisions handed down, 11 of them granted the lawsuit, 8 rejected the decision, and 4 others were declared NO.

1. Mining business license;
2. Plantation business license;
3. Reclamation permit;
4. Permit for disposal of liquid waste into rivers,
5. Borrow-to-use forest area permit
6. Permit to build a building.

The search for decisions also found that the TUN panel of judges at the cassation level began to consistently apply the reasons for the cassation request in their legal considerations. Of the 103 cassation decisions studied, 6 decisions contain legal considerations that the panel of judges at the cassation level is not authorized to try facts because of their role as judex jurist.

4.2 Finding Legal Problems

Of the 164 decisions indexed, several interesting legal considerations and legal issues were found, namely:

1. Terms of Kabul and Legal Efforts for Positive Fictitious Applications

Within the scope of the TUN judiciary, there are fictitious positive and fictitious institutions or mechanisms for the decisions of TUN officials. According to Indroharto, a fictitious TUN decision is the silence of the TUN's body or position, not doing anything and not issuing any decision on the application submitted, even though what is being requested falls within the area of authority that is its obligation. (Indroharto, 2000)

Fictitious shows that the TUN decision being sued is not form. It is only the silence of the TUN body or official, which is then considered to be equated with a written TUN decision. Negative fictitious indicates that the TUN decision being sued is considered to contain a rejection of the application that has been submitted by the individual or civil legal entity to the TUN agency or official. (Irvan Mawardi, n.d.) This negative fictitious is regulated in Article 3 of Law no. 5 of 1986 concerning State Administration Courts.

In 2014, the DPR and the Government passed Law no. 30 of 2014 concerning Government Administration (UU AP). Philosophically, the existence of this law aims to maximize the implementation of authority by government administrative officials for the welfare, prosperity, and justice of the community. The presence of this law will also become the material legal basis for every official in carrying out government administration, to complement the formal law as regulated in the State Administrative Court Law (UU No. 5 of 1986, in conjunction with Law No. 9 of 2004 and Law no. 51 the year 2009).(Government statement in a working meeting with Commission II DPRI related to AP bill, 2022)

However, it turns out that the AP Law has several legal problems, especially those related to the TUN judiciary. In addition to regulating the material law of government administration, this Law also regulates several provisions of procedural law (formal law) that conflict with the state administration judicial procedural law that has been regulated in the Administrative Court Law, one of which is regarding fictitious decisions. If the

Administrative Court Law recognizes a fictitious negative institution, then the AP Law uses a positive fictitious, namely, the silence of the TUN officials is legally considered to have granted the applicant's request.

The silence of the TUN officials as regulated in the AP Law is not automatically granted. Article 53 paragraph (4) of the AP Law stipulates that to obtain a decision on the acceptance of the application, the applicant applies to the court. However, the AP Law does not further stipulate whether the judge is obliged to grant the applicant's request or not.

To fill the legal vacuum, decisions and regulations of the Supreme Court (Perma) have provided guidelines for whether or not the applicant's application is granted as contained in decisions number: 175 PK/TUN/2016 and 341 K/TUN/LH/2017, as well as PERMA No. 8 of 2017 concerning Guidelines for Proceedings to Obtain Decisions on Acceptance of Applications to Obtain Decisions and/or Actions of Government Agencies or Officials. In both the decision and the PERMA, the Supreme Court thinks that the applicant's application does not automatically have to be granted, but is still examined and assessed for the completeness of the application requirements. Because the "positive fictitious" institutions in the AP Law are intended to make improvements to the quality of services based on law, not the other way around.(Legal Consideration Of Decision No.: 175 PK/TUN/2016). The court's decision regarding this positive fictitious petition is also final and binding: there is no appeal, cassation, or PK.

2. Elements of Real State Loss in Environmental Cases

One of the interesting legal issues found by the research team in the indexation of TUN decisions is the necessity of an element of real loss due to the issuance of the TUN Decree in environmental TUN disputes. This element is an interpretation of Article 53 paragraph (1) of Law no. 5 of 1986 concerning the State Administrative Court as amended through Law no. 9 of 2004 and the last amendment through Law no. 51 of 2009. The article stipulates that: "A person or civil legal entity who feels that his interests have been harmed by a TUN Decision may file a written lawsuit to the competent court containing a demand that the disputed TUN Decision be declared null and void, with or without a claim. compensation and/or rehabilitation".

The paradigm of "there must be a real loss" as a signal to be able to file against the TUN Decree has been expanded since the birth of the AP Law, article 87 letter e of the AP Law stipulates that: "With the enactment of this Law, the TUN Decree as referred to in Law no. 5 of 1986 concerning the State Administrative Court as amended by Law no. 9 of 2004 and Law no. 51 of 2009 must be interpreted as: ..... e. Decisions that have the potential to have legal consequences."(Legal Position Policy Paper Recommendations Of The State Civil Apparatus Commission In Disputes In The Administrative Court, 2017)

In practice, the research team found that not all judges paid attention to Article 87 letter e of the AP Law, as found in the following decisions:

1. Decision number: 36/G/LH/2018/PTUN.SMD, April 3, 2019 with the parties Dudin Waluyo Asmoro Santo against the Mayor of Samarinda;
2. Decision number: 40/G/2018/PTUN.JPR, dated February 6, 2019, with the party's CV. Alco Timber Irian against the Director of Contributions and Distribution of Forest Products, et al;
3. Decision number: 41/G/LH/2018/PTUN.PBR, 28 January 2019, with the parties
   The Environmental Foundation and People's Legal Aid (YLBHR) against the Head of the Office of Investment and One-Stop Services, Indragiri Hilir Regency, et al;
4. Decision number: 151 K/TUN/2014, dated 22 May 2014, with the parties the Indonesian Forum for the Environment (WALHI) against the Governor of Bali.

The legal considerations in these decisions essentially state that the plaintiff must be able to prove that there has been a real loss suffered by the plaintiff as a result of the issuance of the TUN Decision. If referring to Article 87 letter e of the AP Law, TUN decisions that have the potential to cause legal consequences can be sued to the Administrative Court.

Related to that, according to its characteristics, environmental cases are unique cases, where the losses incurred can be predicted even though they cannot be seen with the naked eye at the outset. For example, the establishment of a factory that dumps liquid waste into the river does not immediately feel the impact when the factory just dumps its waste into the river, but the consequences can only be felt after some time. However, the consequences of this disposal were predictable from the start of the plant's operations. If a new environmental lawsuit can be filed after the pollution has occurred and has an impact, there will be more losses arising from the act. Because of that, “potential loss” is appropriate to apply in environmental cases to prevent adverse impacts on the environment.

3. Period of filing a lawsuit against TUN

Article 55 of Law no. 5 of 1986 (UU Administrative Court) states: "A lawsuit can be filed only within a grace period of ninety days from the time the decision is received or announced by a state administrative body or official". In dealing with environmental cases, the 90 (ninety) day period is often a problem, especially regarding when to start calculating that period.

One of the interesting findings in the study of this decision is the Supreme Court's legal considerations in decision no. PK/TUN/2016 between Joko Prianto, et al vs the Governor of Central Java and PT. Semen Indonesia which was decided on October 5, 2016. In the section on the legal considerations of the decision, the Panel of Judges led by Dr Irfan Fachruddin, SH, CN, thinks that in examining the timeframe for filing a lawsuit in an environmental case, judges should not rely solely on Article 55 of the Administrative Court Law. According to the Assembly, the State Administration dispute in the environmental sector is a special case that has a special character and is different from other State Administration disputes in general. Therefore, in addition to paying attention to Article 55 of the Administrative Court Law, judges must also pay attention to Article 89 paragraph (1) of Law no. 32 of 2009.

The Panel of Judges also argues that by the special character of the environmental TUN dispute, the factual element of environmental pollution and/or damage is not absolute, because the environmental TUN dispute is only administrative. In other words, what is being tested is the administrative aspect of the disputed object's Environmental Permit. Therefore, the grace period for filing the quo lawsuit is calculated as 90 (ninety) days from the time it is known that there is potential for environmental damage and/or pollution (potential risk/potential loss) due to the issuance of an Environmental Permit for the object of dispute from the said facility.

4. Obligation to Announce Environmental Permits Through Multimedia;

Article 49 Government Regulation (PP) No. 27 of 2012 concerning Environmental Permits stipulates that every environmental permit that has been issued by the minister, governor, or regent/mayor must be announced through mass media and/or multimedia. The announcement is made within 5 (five) working days from the date of issuance.

In practice, TUN officials interpret Article 49 of the PP singly. That is, after announcing through mass media and/or multimedia, TUN officials feel that their responsibilities have been completed. TUN officials feel they do not have the obligation to conduct socialization directly (face to face) with the community potentially affected. TUN officials tend to generalize the level of technological literacy of the Indonesian people, without paying attention to the fact that most of the rest of society has not been friendly to technology.

To overcome the problems mentioned above, the court has given affirmation that it is appropriate that every issuance of the environmental permit must be announced through mass media and multimedia. However, according to the Supreme Court, in conducting socialization, TUN officials must also consider the level of education and habits of the people in the village who are generally traditional farmers who are far from access to the internet and newspapers. The government cannot generalize that all people are considered to have been aware of the existence of an Environmental Permit and its consequences for the environment. The court's attitude is contained in the number of the decision: 99 PK/TUN/2016 and 465 K/TUN/LH/2018.

5. Application of AUPB in Environmental Cases;

In essence, the principle has an important role in filling the legal vacuum of legal ambiguity.(Pratiwi & Dkk, 2016) Therefore, the existence of the AUPB is very important when the Administrative Court judge examines a case, where the legal basis has not been explicitly regulated in the legislation (legal vacuum/vacuum of the norm), or when the arrangements exist but are very vague (law ambiguity/vague of law). norms). (Pratiwi & Team, 2016)

UU no. 5 of 1986 does not explicitly regulate the AUPB. AUPB began to be strictly regulated in law since the birth of the Administrative Court Law of 2004. Recognition of the AUPB as a positive legal norm will be very useful for judges in exercising their independence and judicial power to examine all government actions that are considered arbitrary; against the law; or abuse their power with appropriate and accurate considerations with clear indicators and by prioritizing aspects of legal certainty.(Pratiwi & Dkk, 2016)

In dealing with State Administration cases related to the environment, judges also often use AUPB to assess State Administration decisions or actions. The research team found that the principle of legal certainty and the principle of accuracy are the AUPB most often used by judges in legal considerations. At the cassation level, for example, the principle of legal certainty was found to be used in 36 decisions, while the principle of accuracy was found to be used in 26 decisions. Furthermore, the Supreme Court also often uses other principles, such as the principle of professionalism; the principle of accountability; and the principle of impartiality in adjudicating TUN cases. AUPB is most often used in environmental cases related to environmental permits; plantation business licenses; mining licenses; environmental pollution; and environmental destruction.

However, the research team also found that there were far more decisions on environmental cases that did not use AUPB in their legal considerations. Of the 19 decisions at the first level, for example, only 9 decisions used AUPB. At the appeal level, out of 10 decisions, only 1 decision used AUPB. Meanwhile, at the cassation level, out of 103 decisions, only 46 decisions used AUPB. At the PK level, out of 35 decisions, only 21 decisions used AUPB.

6. Permissions

The research team also found interesting legal considerations in environmental TUN case decisions related to licensing, namely as follows:

a. Issuance of TUN decisions regarding waste disposal permits must be based on the study of the impact of wastewater disposal on fish and animal farming and plants, soil and groundwater quality, and public health. This is as referred to in decision number: 187 K/TUN/LH/2017.
b. A decision regarding a permit will expire if the decision is returned, revoked, and expires. As referred to in decision number: 273/G/2017/PTUN-JKT. Termination of a business license directly is a form of arbitrariness. According to the court, before the business license is terminated, the TUN officials must give administrative sanctions in stages, namely giving a written warning which if not implemented can be continued with a second sanction in the form of a temporary suspension of business activities. This is as referred to in decision number: 37/G/2017/PTUN-PLG.
c. The granting of a lease-to-use forest area permit is not the authority of the regional government, but the authority of the Minister of Environment and Forestry. The lease-to-use permit for the Leuser forest area cannot be justified, because it contradicts Article 150 of Law no. 11 of 2006 concerning the Aceh Government and the City District Government, which states: That it is not allowed to issue forest concession permits in the Leuser ecosystem area. This is as referred to in decision number: 7/G/LH/2019/PTUN.BNA

7. AMDAL

Regarding AMDAL, the research team found interesting legal considerations, namely as follows:

a. The issuance of a business license is a procedural defect because it is not equipped with an environmental document in the form of an AMDAL as stated in the Legislation. This is as referred to in decision number: 409 K/TUN/2015.
b. The AMDAL Assessment Commission must include representatives from community elements who potentially affected, as referred to in decision number: 580 K/TUN/2018.

8. Public Information Related to the Environment

Concerning public information related to the environment, the research team found the following interesting legal considerations:

a. Cultivation rights (HGU) do not include information that is excluded from obtaining given to the public as referred to in Article 11 paragraph (1) letter C of Law Number 14 of 2008 concerning Openness of Public Information. This is as referred to in the decision number: 121/K/TUN/2017.
b. Geospatial information or maps in shapefile format have no legal force because they have not been authorized by the competent authority. Therefore, it is prohibited to disseminate geospatial information in that format, as referred to in decision number: 239/K/TUN/2017. This decision is considered not to reflect the spirit of public information disclosure, especially public information related to the environment, and therefore needs further attention. (Research, 2022)

9. Mining Activities for Strategic Interest

The research team also found legal considerations related to large-scale government activities that have an impact on the environment, namely in decision number: 039/G.PLW/2017/PTUN.Smg. In the ruling, the court ruled that mining and drilling above the Groundwater Basin (CAT) was in principle not justified. However, for the sake of the very strategic interests of the nation and state, according to the panel of judges, it can be excluded with very strict restrictions in certain and measurable ways so as not to disturb the aquifer system. The determination of the Environmental Permit should be accompanied by the approval of the official who determines the status of the area. The agreement functions as a policy and environmental and development policy, as well as the urgency of the interests of the nation and state.

The Research Team recommends to the Supreme Court reformulate the criteria for environmental cases to be registered with the LH register. In formulating these criteria, the Supreme Court cannot only rely on the law used in the lawsuit or indictment as it is currently in effect, considering that in the end, it also contributes to the registration of other cases which are legally unrelated to the environment. The law can only be the first filter in sorting environmental cases. Meanwhile, further sorting needs to be done by carefully examining the contents of the lawsuit and indictment.

The Research Team also recommends to the Supreme Court to provide capacity building related to case classification to the clerks as the front line in the registration of environmental cases. Capacity building also needs to be given to substitute clerks and operators, to ensure that the correctness and completeness of information on decision data displayed in the Decisions Directory have been carried out properly.

The inconsistency of decisions and several legal issues mentioned above need to be addressed by the Supreme Court further. This is considering that inconsistency of decisions can lead to injustice and legal uncertainty. In this regard, to minimize the occurrence of inconsistencies in decisions, the Research Team recommends to the Supreme Court to:

a. Cross-examine environmental decisions that are inconsistent with the list of judges who have participated in environmental judge certification to ensure whether there are benefits of certification to the judges concerned and to environmental law enforcement;
b. Carry out thematic training in certain areas based on case trends. The thematic training includes: (1) training related to forest fires and illegal logging in areas where there is still a lot of forest cover; (2) training related to environmental pollution in industrial areas; and (3) training related to wildlife trade in areas where there are conservation areas and/or there are many protected wild animals;

c. Establish a forum for environmental judges (such as the forum for environmental experts that was previously established by the Ministry of Environment and Forestry) as a medium for exchanging information and learning among environmental judges. This forum is necessary considering that knowledge and learning among judges are usually not only obtained through the certification process but also from discussions with fellow judges regarding their experiences in examining similar cases;

d. Implement inter-room plenary meetings in the examination of environmental cases at the cassation and/or PK level where the parties or legal substance are the same but are submitted separately (criminal, civil, and TUN) as possible based on the Decree of the Head of the Supreme Court No. 017/KMA/SK/II/2012 jo. SK KMA No. 142/KMA/SK/IX/2011 concerning the Application of the Room System; *(*Decision Of The Supreme Court No. 017/KMA/SK/II/2012 No Point VIII Angka 1, 2012)

e. Ensure that environmental judges are placed in areas that hear a lot of environmental cases and in the following areas:

TUN Judge	Placement
	State Administrative Courts, and/or Appellate Courts in the following areas: a. New expansion b. Rich in natural resources, biological resources and ecosystems c. Conservation d. Development priority e. The business centre or legal entity domicile f. Indicates the existence of ecosystem/environmental pressure.

f. Using the quality of legal considerations in decisions that have been issued by the judge concerned as a standard in the selection of environmental judge certification.

4. Apart from the issues of legal substance, there are also emerging legal issues and future trends in environmental cases that need to be responded to by the Supreme Court to be considered for inclusion in the environmental judge certification curriculum, which are as follows:

a. Conditions for granting positive fictitious applications;
Article 3 paragraph (2) PERMA No. 8 of 2017 concerning Guidelines for Proceedings to obtain a Decision on Acceptance of Applications to Obtain Decisions and/or Actions of Government Agencies or Officials has regulated 4 criteria for positive fictitious applications. In practice, 1 decision was found (decision number: 175 PK/TUN/2016) which stipulates that in addition to the 4 criteria, the Supreme Court also checks the completeness of the application files submitted to government agencies or officials to obtain a decision, while checking the completeness of the documents in the application for acceptance requirements positive fictitious applications are not regulated in PERMA.

b. The element of "potentially causing legal consequences";
In assessing the legal standing or interests of the plaintiffs in environmental TUNl cases, judges tend to use the argument that there must be real losses experienced by the plaintiffs, as formulated in Article 53 paragraph (1) of the Administrative Court Law. This shows that the judge has ignored the element of "potentially causing legal consequences" as regulated in Article 87 letter e of Law no. 30 of 2014 concerning Government Administration. By its characteristics, environmental cases are unique cases, where environmental losses that arise are not instantaneous losses that can be seen immediately but can only be seen or felt sometime after the incident. Environmental losses can be predicted scientifically even though they cannot be seen with the naked eye at first.

c. Public information disclosure;
The judge recognizes information related to the environment that is open and excluded, especially when the objection submitted to the Administrative Court relates to a request for public information that has been declared open information by the Information Commission, as well as the impact of opening and/or closing the information.

d. Socialization related to environmental permits;

Article 39 of Law no. 32 of 2009 and Article 49 of PP No. 27 of 2012 concerning Environmental Permits stipulates that every environmental permit that has been issued by the minister, governor, or regent/mayor must be announced in a way that is easily known by the public, through mass media and/or multimedia. However, socialization through face-to-face meetings with people who will be affected by environmental permits still needs to be done. This is as referred to in the Supreme Court decisions number: 99 PK/TUN/2016 and 465 K/TUN/LH/2018, which consider that the level of education and habits of the people in the village who are generally traditional farmers who are far from internet access and newspapers also need to be noticed.

e. Environment as the person in law;
The development of environmental law in several other countries such as India, The United States of America, Ecuador, New Zealand,(Magallanes, 2019) Colombia (Team, 2018) produce jurisprudence in which the environment, forests, and rivers are recognized as persons in law who have their rights. However, because of its different characteristics from the person in law in general, to ensure that the environment obtains its rights as a person in law, it must still be represented by another party, in this case, the state.[1]In this regard, when the government (in its capacity as the plaintiff) and judges (in their capacity as arbiter) are suing or deciding environmental cases, they are carrying out their duties as representatives of the state in protecting environmental rights. Citing Indian court decisions in the Ganges and Yamuna cases, the court held that injury or damage to the environment should be equated with injury or damage to humans. (Magallanes, 2019)

f. Judge independence;
The judge must act and show his independence when he is a direct victim of an event that has an impact on the environment, but at the same time also becomes a case breaker in that incident. Sampean River Case, Situbondo. this was examined by 2 judges who are also victims of environmental damage in the Sampean river. The two judges only chose the option o_p_t_ _o_u_t_ _in the class action lawsuit without resigning from the case. Related to that case, the Supreme Court in "C_l_a_s_s_ _A_c_t_i_o_n_ _&_…._,_" _p. 43 states that even if a judge who is also a victim continues to adjudicate class action cases, he has chosen to opt out where he is out of the lawsuit and is not bound by the decision on a group lawsuit, it does not remove the judge's direct interest in the case. So that the reason for the judge's interest in the case as argued by the defendant/cassation applicant in his cassation memorandum was accepted by the Supreme Court (see Supreme Court Decision No. 2537/K/Pdt/2010).

g. Citizen Lawsuit
The definition, characteristics, and several examples of citizen lawsuit cases have been regulated in SK KMA No. 36/KMA/SK/II/2013. While the characteristics; demands; and notification procedures in citizen lawsuits are not included in it.

Cases that go to court and are registered as environmental cases (register "LH") do not entirely contain legal substances related to the environment. There were many cases registered with the "LH" register whose legal substances were not directly related to the environment, namely criminal cases regulated in the Oil and Gas Law and cases of corruption in the Oil and Gas sector. On the other hand, some cases were not registered as LH cases but had legal substance related to environmental law enforcement, namely anti-SLAPP cases and requests for public information related to the environment. The research team concluded that a case can be categorized as an environmental case if the substance of the lawsuit relates to the following matters:

a. Destruction that has an impact on the disruption of environmental quality stone;
b. Pollution of water, air, and soil;
c. Land use; water and air;
d. Large-scale fires, eg land and forest;
e. Large-scale development, for example, housing; hospital; hotel; factory; power plants; etc.
f. Zoonoses;(Researcher, 2022)
g. Permits related to and/or impacting the environment;
h. Access to information relating to and/or impact on the environment;

As for cases related to public order (such as making noise, blasting, or roaming cattle) and oil trading, the Research Team thinks that these cases cannot be categorized as environmental cases.

It was found that there were inconsistencies in decisions in several similar environmental cases even though the provisions had been confirmed in SK KMA No. 36/KMA/SK/XII/2013, which are as follows:

a. Criminal reports in civil lawsuits for compensation for pollution;(verdict No: 1808 K/Pdt/2009., 2009)
b. Inclusion of strict liability in the lawsuit;
c. The burden of proof in strict liability in forestry cases and environmental pollution cases;(verdict No: 118/Pdt.G/LH/2016/PN.PLK, 2016) (Verdict No.: 118/Pdt.G/LH/2016/PN.PLK, 2016)
d. Application of strict liability and force majeure in forestry cases and environmental destruction cases; (139/Pdt.G-LH/2016/PN.JMB, 2016) (540/Pdt/2017/PT.DKI, 2017) (284/Pdt.G/2007/PN.JAK.SEL, 2007)
e. Application of environmental quality standards in proving the existence of pollution; (44/Pdt.G/LH/2018/PN.Bgl., n.d.) (44/Pdt.G/LH/2018/PN.Bgl., n.d.)
f. The use of the basis of punishment in cases of land burning and/or forest. Found 3 laws that regulate the crime of clearing forests and or land with different criminal threats, namely Law no. 41 of 1999 concerning Forestry; UU no. 32 of 2009 concerning Environmental Protection and Management; and Law no. 39 of 2014 concerning Plantations. The problem of ambiguity in the sentence imposed cannot be separated from the overlapping criminal provisions in the two laws themselves which both regulate land burning. Article 108 of the PPLH Law and Article 108 of the Plantation Law show that there are differences in the number of criminal threats, especially the special minimum criminal threat, whereas in the PPLH Law the defendant will be sentenced to a minimum of 3 years and a minimum fine of 3 billion rupiahs, while in the Plantation Law it is not there is a specific minimum penalty.
g. Utilization of the protected forest by residents (actions to use forest carried out by people living in or around the forest). (1367 K/Pid.Sus-LH/2016, 2016) (2647 K/Pid.Sus-LH2016, 2016)(2095 K/Pid.Sus-LH/2017, 2017)

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Comparison of Legal Policies Towards Law Enforcement on Money Laundering in Indonesia and Denmark

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Abstract
Money laundering as one of the crimes committed by a group of people. This form of money laundering is in the form of a follow-up crime, while the original crime is often called predicate offense. Some of the motivating reasons for committing criminal acts of money laundering are that illicit money is used as capital as a business or sent to non-banking financial service providers such as insurance. Money laundering affects and disrupts national and international economies and can disrupt the operational effectiveness of the economic system which will later lead to bad economic policies, especially in certain countries. Money laundering practices can also create instability in the national economy as money laundering causes sharp fluctuations in interest rates and exchange rates. Money laundering is felt to never run out even more and even its development from year to year is increasing both in cases, a number of state losses and its modus operandi. This study aims to see policies on money laundering cases in Indonesia and will be compared with Denmark so that it can find out the differences in state policies and what obstacles the Indonesian state faces in its enforcement in combating money laundering. So the author is interested in giving a title to this study as a Comparison of Legal Policies Against Law Enforcement on Money Laundering in Indonesia and Denmark. The legal research used is qualitative research which is included in the category of normative research. The data used is secondary data

Keywords: Policy, Law Enforcement, Money Laundering

1. Introduction

Legislators in the government are obligated to draft policies or laws that are in line with people's current and future lives due to the fact that the pattern and level of life in Indonesia cannot be separated from legal developments. The pattern or stage of development which is related to society, drives the development of law. Society is served with the law in this instance. Indonesia needs to be prepared to accept globalization as a nation and as a part of the world. The crime rate increases with the development of society. Indonesia needs to be prepared to accept globalization as a nation and as part of the world. Globalization is the expansion of technology and information that will affect how each member of society acts in terms of culture and knowledge. Notwithstanding social and

logical advancement and development, human conduct according to the general population and state life is likewise progressively convoluted and even multi-complex.

Money laundering crimes have recently received special attention from various circles. Through international cooperation, countermeasures are carried out on a national, regional, and global scale (Arifin & Choirinnisa, 2019). Money laundering is often referred to as a double crime or follow-up because it is a continuous act of predicate crime where the perpetrators use sophisticated, creative, and complex ways to convert a number of illegal funds into halal (Muh. Afdal Yanuar, 2019). Money laundering should be focused on tracing funds or financial transactions (Ginting, 2021). Money laundering has schemes whose purpose is to hide illicit money profits that appear to come from legal sources (Ogbeide et al., 2023). In the future that money laundering will impact the economy and businesses in a country because it will continue to undermine and sabotage the integrity of financial markets (Iwan Kurniawan, 2013). Generally, money laundering uses the transmission or submission of other monetary actions resulting from various other criminal activities such as corruption or the sale of narcotics (Lestari Aprilia, 2021). People who do this have the motivation to disguise the source of money from a crime so that the money can be freely used without having to be proven to the financial audit agency in any country (Yunus Husein, 2017).

There are many factors push the growth of money laundering activities in different countries, leading to various causes of money laundering. The following is some of the main reasons why money laundering occurs (Sutan Remy Sjahdeini, 2016). The first factor is due to globalization. In this case, globalization can result in money laundering utilizing the international financial and banking system to carry out their activities; The second factor is the rapid development of technology. This technological development is perhaps said to be the most encouraging factor for the rise in money laundering. The development of information technology such as the internet, for example, can have the effect of losing boundaries between countries. The third is about bank secrecy provisions. This provision makes it difficult for authorities to investigate an account they suspect is illegal; The fourth factor is that it is possible by banking regulations in a country for a person to deposit funds in a bank under a pseudonym; The fifth factor is the emergence of a new type of money, namely electronic money or E-money, which is in connection with the rise of electronic commerce or e-commerce through the internet. Money laundering activities carried out through the internet network are commonly referred to as cyber-laundering.

From this opinion, we can see that the more developed a country is, the higher the crime rate, especially in the financial sector. In 2022, there are at least 5 cases categorized as money laundering in Indonesia, including corruption of IDR 81.3 trillion, gambling crimes of IDR 81 trillion, Green financial crimes or crimes related to natural resources of IDR 4.8 trillion, narcotics crimes of IDR 3.4 trillion, embezzlement of foundation funds of IDR 1.7 trillion according to the results of the Center for Financial Transaction Reporting and Analysis revealing cases of Money Laundering (Andry Triyanto Tjitra, 2023). In the opinion of the Danish state, Danske Bank described 2022 as a "different year" with soaring inflation and high volatility following Russia's invasion of Ukraine and the deteriorating macroeconomic outlook. Danske Bank also set aside nearly 1.8 billion euros in a legal case related to a money laundering scandal involving an Estonian branch (Danske Bank Staff, 2023). Based on the background that has been written, this article will discuss a comparison of legal policies for the prevention of money laundering crimes in Indonesia and Denmark and see what obstacles will be faced with the implementation of these policies, especially in Indonesia.

2. Methodology

In this study, qualitative research methodology will be used. Qualitative research is conducted to analyze events, phenomena, social dynamics of groups or individuals. Therefore, the process of qualitative approach research begins with the development of basic assumptions. This study aims to see policies on money laundering cases between 2 countries, namely Indonesia and Denmark, and analyze the obstacles that will be faced with the implementation of these policies, especially in Indonesia.

Meanwhile, the research approach uses a normative juridical approach. Normative juridical is an approach based on legal concepts and laws and regulations related to this research. This approach is also known as the literature approach that studies books, laws and other documents related to this research

3. Result and Discussion

3.1. Comparison of Policy in Money Laundering Cases in Indonesia and Denmark

3.1.1. In Indonesia

Based on criminal law policy or criminal policy to overcome corporate crime in this case against money laundering, many approaches can be taken, in addition to through a repressive criminal justice system that leads to the imposition of criminal sanctions and / or actions. For non-penal methodology situations are no less important, as expressed by Clinnard and Yeager quoted from their book Muladi and Diah Sulistyani (Muladi and Diah Sulistyani RS, 2015):

a. Voluntary strategies to change the structure and behavior of the company;
b. Strong state political intervention to force changes in corporate organizational reforms, accompanied by criminal, civil, and/or administrative legal sanctions to prevent;
c. Boycotts of corporate products are examples of actions and pressure from consumers.

Barda Nawawi Arief (Muladi and Bardad Nawawi Arief, 2015) said that policies to stop crime are essentially part of efforts to protect the community (social defense) and achieve community welfare (social welfare). The methods used are not limited to correctional facilities (criminal law), but they can also be used in ways that aren't punishable. Because it focuses more on prevention, the latter method is regarded as the most strategic. Corporations are subject to the following regulations as a result of Law Number 8 of 2010 replacing Law Number 25 of 2003 regarding the Prevention and Eradication of Money Laundering.

This Law, corporations have the same responsibility as individuals (natuur person) because of their position as (recht person). This is evident from the clause that states that a corporation or its controlling personnel will be charged with a crime if they engage in the types of money laundering outlined in Articles 3, 4, and 5. Humans (elements of everyone) are the targets of the acts listed in Articles 3, 4, and 5. It is possible to say that corporations' inclusion in criminal acts is a departure from the provisions of the Criminal Code. Although this can be justified legally, it can make it difficult to enforce and interpret. Corporations that are suspected of committing placement, layering, and integration money laundering crimes first demonstrate whether individuals or on behalf of the management or corporation in question in order for sanctions to be imposed in accordance with their respective qualifications that carry out the acts of money laundering.

In imposing sanctions in accordance with their respective qualifications, corporations that commit money laundering crimes in the form of placement, layering, and integration must state whether these actions include money laundering crimes committed by individuals or on behalf of the management or corporation concerned. Article 7 of law number 8 of 2010 regulates several different types of crimes and is divided into two parts, namely the main punishment consisting of fines and additional penalties. The inclusion of imprisonment in lieu of a maximum fine of one year and four months for the management or controller of the corporation is listed in article 8.

Article 9 paragraph 2 states that the sale of assets belonging to the corporation seized as referred to in paragraph (1) is insufficient, imprisonment in lieu of fines is imposed on the controller of the corporation and takes into account the fines that have been paid. Regarding the imprisonment in lieu of fines, it can be carried out, including the calculation of confiscated corporate assets as a reason for reducing the criminal confinement in exchange for fines, which is not further regulated in the explanation of the law. So it can be concluded that Law Number 8 of 2010 still has shortcomings and weaknesses.

To support efforts to prevent and eradicate money laundering, it can be through follow the money approach or by finding where the money comes from. This method of following the money must involve several parties known as the Anti-Money Laundering Regime. Such parties have significant roles and functions including law enforcement agencies, whistleblowers and other related parties. Presidential Regulation Number 6 of 2012 concerning the National Coordinating Board for the Prevention and Eradication of Money Laundering which has been amended into Presidential Regulation Number 117 of 2016 which is to support efforts to prevent money laundering in Indonesia. This committee has the function to coordinate the prevention and eradication of money laundering.

Using Anti-Money Laundering approach to complement the conventional approach that has been used to combat money laundering crimes. This approach has advantages in uncovering Crime, pursuing the proceeds of Crime, and proving it in court. In order to maintain the stability and integrity of the financial system and assist law enforcement in Indonesia, it must be achieved by the establishment of INTRAC and Anti-Money Laundering.(Sutarno Bintoro, Sjamsiar Sjamsuddin, Ratih Nur Pratiwi, 2020)

3.1.2. In Denmark

Denmark's Anti-Money Laundering Act defines money laundering as:

1. To unlawfully accept for oneself or others a share in profits or means obtained through the commission of a crime
2. To a store, conceal, and assist in unlawful disposal or further serve to secure means or profits obtained through criminal offences
3. Participate or attempt in such actions
4. Arrangements made by anyone who commits offense to where profits or means derive from.

The fight against money laundering took a number of workers in Danish banks. Denmark's six largest banks employ around 4,300 staff and will be tasked with ensuring that banks will not be misused to provide avenues for terrorist financing, money laundering or other financial crimes. The number of such workers will continue to increase for a while and is expected to increase even more in the future. These efforts will not be focused on one area or region, but will be integrated in several areas to ensure that the bank or related staff in those areas comply with the bank's internal laws and regulations (FATF, 2019).

Anyone who has converted or transferred money resulting from the direct or indirect consequences of a criminal offence and concealing or obscuring its illegal origin may be punished money laundering in accordance with section 290 a of the Danish Penal Code. A predicate violation is an error related to tax evasion procedures, and can be a violation of the Danish Penitentiary Code. Corruption, drug trafficking, and other predicate violations are the most common examples of money laundering.

Money laundering acts committed by a Danish citizen or a person who has permanent or similar customary residence in Denmark are subject to Danish criminal jurisdiction, if, for example, they also commit a criminal offense under the laws of the country where the act was committed. Money laundering investigations and prosecutions fall under the purview of the Danish State Prosecutor for Serious Economic and International Crimes (SØIK).

Money laundering offenses are punishable by fines or imprisonment under the Danish Penal Code. For legal entities, the maximum penalty is a fine. The High Court of Eastern Denmark (stre Landsret) in 2017 handed currency exchange offices the largest fine to date, totaling DKK 111 million. A fine or imprisonment is the maximum penalty that can be imposed on an individual. Individuals' financial circumstances determine the size of the fine, while businesses' turnover at the time of the violation determines the amount of the fine. The length of the prison sentence depends on the severity of the offense and, as the main rule, is not more than one and a half years. However, this length can be increased to eight years in prison where the offense is very serious.

The penalty for money laundering offenses typically ranges from one and a half to eight years, so the statute of limitations is anywhere from five to ten years. However, the statute of limitations is always a minimum of ten years for systemically important financial institutions for gross violations committed by The Board of Directors or Executive Board members. Only the national level is involved in law enforcement; There is no state or regional enforcement. In Denmark, neither the management of any other bank or other regulated financial institution has been found guilty of money laundering; However, a lot of cases of money laundering in recent years, with the Danske Bank money laundering scandal being the most well-known example.

Money laundering that occurred in Estonian bank departments between 2007 and 2015 is the source of the Danske Bank case. The claim is not Danske Bank itself laundered money; rather, it is that the bank allowed itself to be used as a tool for large-scale organized money laundering by others through negligence. The case has led to further surveillance actions, parliamentary hearings, and criminal investigations. In addition, claims have been filed against Danske Bank outside Denmark; The United States and U.S. pension funds have filed claims in Danish courts against Danske Bank and its former CEO, Thomas Borgen, seeking redress for lost investments (Reuters Staff, 2018).

On the other hand, all banks in Denmark apply the main principle of must know your customer (KYC). In its implementation, the bank must know the scope of each customer's business relationship and must know the identity of the customer. Banks are required to know the customer's residence number and obtain other evidence such as the customer's passport. Banks must have extensive knowledge of all their customers under the Danish AML Act, the purpose of which is to help combat abuse of the financial system.

The requirements for new customers may be very complicated, but we can see from the positive side that a very deep knowledge of customers is very necessary for banks because it will be able to effectively monitor bank customer relationships and can identify activities related to money laundering or terrorist financing.

3.2. Challenges in Eradicating Money Laundering in Indonesia

First, the Increase in Money Laundering. In order to appear legitimate, criminals now have a number of options for concealing the proceeds of their crimes. The development of international banking technology as a result of the expansion of regional banking networks, also known as local networks, which eventually evolved into global financial institutions. Criminals involved in money laundering have access to this service network, which enables them to influence money from illegal transactions to become legal in international financial institutions (Ari Purwadi, 2012). At this time, anything related to money laundering crimes is certain these crimes transcend jurisdictional boundaries, provide a high level of confidentiality, or the use of various financial mechanisms, allowing money to move through banks, money transmitters, businesses, and even remittances abroad to be treated as net money laundering.

Second, the limitations imposed by the Center for Financial Transaction Reporting and Analysis (PPATK) in combating financial crime (Yoserwan, 2023). There are still difficulties in carrying out the responsibilities and authorities of PPATK, such as:

1. Suspicious Financial Transaction Reports (FSIs) and Cash Financial Transaction Reports (LTKT) from Financial Service Providers (CHDs) are limited sources of information.
2. The Financial Transaction Reporting and Analysis Center (PPATK) is informed of the accuracy of customer data contained in the Financial Transaction Report (LTKM) and Financial Transaction Report (LTKT) Cash;

The number of interpretations that have differences by academics, Financial Service Providers (CHDs), and law enforcement officials;

1. Financial Transaction Report and Financial Transaction Report online
2. Restrictions on the information technology system of Financial Service Providers (CHDs). (David Ramadhan, 2018)

Third, Challenges Faced by the Banking Sector (Shirlsy, 2011). Other factors that pose challenges for the banking sector include the following:

a. It is difficult to determine the true identity of the customer, and applying the basic principle of service use may lead the customer to withdraw funds or avoid banking services because it would be considered a breach of his privacy;
b. Luring banks into involving their administrations in tax evasion and other criminal activities through the use of fictitious administration client characters.
c. Because bank employees are less knowledgeable, they are unaware of their role in the fight against illegal tax avoidance programs.
d. Because there is not enough of an online network, bank information technology must manually report transactions.

Fourth, Challenges Posed by Investigators in Preventing and Eliminating Money Laundering Crimes If Money Laundering Law Cannot Be Followed Up. Parties involved in the enforcement process still do not understand some of its provisions that contribute to part of its scope. For example, the mail format for blocking and requesting customer asset information is not standardized, making its implementation often ineffective. We can understand that Indonesia's Financial Transaction Reporting and Analysis Center cannot tackle money laundering and terrorism financing on its own. The President encouraged all parties ranging from government agencies, the financial industry, to the public to jointly maintain the integrity and stability of the Indonesian economic and financial system. In combating increasingly massive economic crime, the President asked the Indonesian Financial Transaction Reporting and Analysis Center to find legal breakthroughs on various fundamental issues and immediately carry out digital transformation. For example, improving digital services by developing new service platforms and improving existing digital services. Ministries/agencies including **Indonesian Financial Transaction Reports and Analysis Center** which is the focal point and financial intelligence agency (FIU) can move quickly in dealing with new modes of money laundering and terrorism financing. It is very important to anticipate as early as possible at various levels to prevent efforts that can disrupt the integrity and stability of the economic system and a financial system, and to always anticipate an increase in economic crimes such as cyber crime and other crimes that utilize technological sophistication.

Indonesia is required to comply with the best international regulations and standards applicable as part of the global order of international relations. The FATF, through one recommendation, suggests that each country direct a national risk evaluation. To develop and implement a risk-based approach regime, each country must first identify, evaluate and understand money laundering risks. In addition, these cases require great responsibility and very difficult handling related to the prevention and eradication of money laundering crimes that have not been fully balanced with government measures. To respond to these developments, Indonesia must implement the prevention and eradication of money laundering through strategic risk mitigation innovations.

4. Conclusion

Existing policies in Indonesia for money laundering cases are subject to fines or imprisonment in accordance with the provisions of the article, but in Indonesia it is often not firm in providing punishment to the perpetrators of criminal acts. Some are not in accordance with the rules that have been applied. So that perpetrators in criminal cases do not feel the deterrent effect and that will later make the crime rate higher in Indonesia. When compared by the Danish state, criminal punishment will be adjusted to the level of crime he has committed. The similarity with the Indonesian state is that it is subject to fines and confinement.

The challenge in Indonesia to law enforcement on money laundering is because Indonesian Financial Transaction Reports and Analysis Center only does it alone, not supported by others, even though the crime rate of money laundering is very large from year to year. Therefore, the President encourages all parties ranging from government agencies, the financial industry, to the public to jointly maintain the integrity and stability of the Indonesian economic system and financial system. In combating increasingly massive economic crimes, the President asked **Indonesian Financial Transaction Reports and Analysis Center** to find legal breakthroughs on various fundamental problems and immediately carry out digital transformation.

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Analysing Education Law Implementation in Dibrugarh District Tea Community

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Abstract
Every human being has the inherent right to receive an education, regardless of caste, gender, or other factors. Recognizing this fundamental right, "The Right of Children to Free and Compulsory Education Act" was enacted on April 1, 2010, to safeguard the educational rights of children aged 6 to 14. This study focuses on the implementation and awareness of these educational laws within the tea garden community of Dibrugarh District. To gather insights, we conducted surveys in six randomly selected tea gardens within the district, where we interviewed a diverse group of individuals including students, locals, members of the Assam Chah Mazdoor Sangha (ACMS), members of the All-Assam Tea Tribe Students Association, and teachers from state-run schools. The age range of the interviewees spanned from 6 to 57 years, and approximately 100 people were randomly interviewed from each tea garden. Our findings indicate that most children in the tea garden community have received education up to the primary level, typically until class 5, and expressed a strong desire to pursue further studies. While a handful of them managed to attend college and pursue bachelor's degrees, the majority did not have the opportunity to do so. It is worth noting that parents residing in the tea gardens were well aware of the significance of education for a better life and actively encouraged their children to pursue education to the best of their abilities. However, they lacked awareness of the specific laws and regulations about education, which resulted in missed opportunities for their children. By gaining a deeper understanding of the challenges and underlying reasons for the limited educational progress among children in the tea garden community, we are better equipped to devise and implement new laws and provisions that cater specifically to their needs. This research serves as a stepping stone towards improving educational opportunities and outcomes for the tea community, ultimately contributing to their overall development and well-being.

Keywords: Right to Education, Tea Community, Assam Tea Tribe Students Association, Dibrugarh District

1. Introduction

Education is a fundamental right that holds the key to empowering individuals and improving their lives. It is a powerful tool that can break the shackles of poverty and provide opportunities for growth and development. Every human being deserves access to education, regardless of their background or social status. In this regard, the tea tribes of Assam, India, represent a unique community with a rich historical background that dates back to the

colonial era. The discovery of tea plants in the upper Brahmaputra Valley by Robert Bruce in 1823[1] led to the establishment of tea plantations by the British. To meet the demand for cheap labour in these plantations, migrants were brought in from various regions of India, including Jharkhand, Odisha, Chhattisgarh, West Bengal, and Andhra Pradesh. These migrants and their descendants formed the tea tribes of Assam, a community that now comprises a significant population residing in approximately 803 tea estates in upper Assam.

Despite their contribution to the tea industry, the tea tribes have faced historical neglect when it comes to basic rights and access to quality education. The tea estates themselves have evolved into self-sustained microcosms with their social structures, norms, and unique cultural identities. Isolated from the outside world, many within the tea community lack the awareness of the transformative potential of education. This perpetuates socioeconomic disparities and restricts opportunities for personal and collective growth. The tea community's transient nature of work and the constant movement of workers from one estate to another pose challenges in establishing consistent and accessible educational opportunities. Moreover, a lack of understanding of their rights and a sense of fearlessness towards the law often leads to non-compliance with the Plantation Labour Act of 1951, which mandates that estates with twenty or more children between the ages of six and twelve must provide free and quality education.[2] Consequently, the basic right to education is hindered, limiting the potential for upward mobility and overall development within the tea community.

Efforts to improve educational access and quality within marginalized communities, including the tea tribes, have gained momentum in recent years. The Indian government, along with non-governmental organizations and other stakeholders, has initiated several initiatives to enhance educational opportunities in the tea estates. Special focus has been placed on improving infrastructure, such as LP Schools, to meet the requirements of the Plantation Labour Act. Sensitization programs aimed at raising awareness about the importance of education have been conducted, encouraging parents and guardians to prioritize their children's education. Grassroots organizations have played a pivotal role in supporting educational initiatives tailored to the specific needs and aspirations of the tea community. They have addressed language barriers and cultural differences by introducing innovative teaching methods and curricula that resonate with the community.

Despite these positive strides, access to quality education remains a pressing concern for many tea estate children. Bridging educational disparities requires sustained advocacy and collaboration among government agencies, civil society organizations, and the tea estate community. While the establishment of infrastructure is crucial, it must be complemented by continuous efforts to improve teacher training, provide better learning resources, and address infrastructural gaps. Ensuring a comprehensive and holistic educational ecosystem within the tea estates is essential. Moreover, efforts to promote education must be integrated into a broader development framework that addresses the underlying socioeconomic issues faced by the tea community. This multifaceted approach will empower the tea tribes and contribute to creating a more equitable and inclusive society.

Education holds the potential to break the cycle of poverty and bring about transformative change. For the tea tribes of Assam, access to quality education represents an opportunity for empowerment, enabling individuals to make informed decisions, actively participate in society, and contribute to the nation's progress. Realizing the right to education for every child within the tea estates requires collective responsibility and collaborative action. Policymakers, educational institutions, communities, and other stakeholders must work together to overcome the challenges hindering educational opportunities. By fostering education, we can foster sustainable development and unlock the full potential of the tea tribes, benefitting not only the community itself but also contributing to the progress and prosperity of the entire nation.

The tea tribes of Assam represent a significant community with a unique historical background, contributing significantly to the tea industry. Despite their contributions, they have faced historical neglect in accessing quality education. However, recent initiatives have brought about positive changes, paving the way for educational opportunities in the tea estates. To address the remaining disparities, collaborative efforts are necessary, including

[1] Indian Tea Association. (n.d.). History of Indian Tea. https://www.indiatea.org/history_of_indian_tea
[2] Plantations Labour Act 1951

better infrastructure, improved teacher training, and comprehensive community engagement. By examining the historical context, challenges, and recent developments, this research paper aims to generate awareness and mobilize stakeholders to work towards ensuring that every child within the tea estates receives a quality education, fostering social progress and empowerment. Only through concerted efforts can we break the barriers hindering education and unlock the true potential of the tea tribes of Assam.

2. Purpose of the Study

This study aims to assess the implementation of the RTE Act in the tea community of Dibrugarh district and explore awareness among teachers, parents, and children. Despite being in effect for over a decade, challenges persist, like low attendance and high dropout rates in tea estates. The research focuses on understanding factors hindering RTE Act's success. Interacting with stakeholders in select estates, we seek insights into awareness levels and examine location's influence. By studying disparities, we aim to contribute to understanding implementation challenges in marginalized communities. Findings will provide valuable recommendations for policymakers to enhance RTE Act's effectiveness and ensure quality education for all tea estate children, fostering empowerment.

3. Significance of the Study

This study is vital for understanding the implementation challenges of the RTE Act in the tea community of Dibrugarh district. It provides valuable insights into low attendance, high dropout rates, and limited awareness among teachers, parents, and children. The findings can inform targeted interventions and policies to ensure equitable access to quality education within tea estates. Policymakers can use this research to design effective strategies for better educational outcomes, benefiting marginalized communities. Ultimately, the study contributes to building a just and equitable society through the promotion of education as a fundamental human right.

4. Methodology

The research methodology adopted for this study aimed to delve deep into the level of implementation of the Right to Education (RTE) Act in the tea community of the Dibrugarh district, as well as to gauge the awareness and understanding of RTE provisions among key stakeholders. By using a combination of primary and secondary data collection methods, the study sought to provide a comprehensive assessment of the challenges and opportunities in the educational landscape of the tea community.

Six tea estates out of 172 in Dibrugarh district were selected for a practical and thoughtful approach due to time and resource constraints. The factors justifying this selection were:

A. Geographical Distribution: Chosen estates covered both urban and rural areas, capturing different socioeconomic backgrounds.
B. Sample Size: Six estates provided a manageable size for data collection and analysis, allowing for in-depth insights.
C. Representativeness: The selected estates were considered representative of the broader tea community.
D. Resource Constraints: Focusing on six estates allowed the effective allocation of limited resources.

The decision to interview 812 participants was based on:

A. Statistical Significance: A large enough sample size ensured statistical significance and increased confidence in results.
B. Diversity of Perspectives: Interviews represented various stakeholders, providing diverse insights on the RTE Act's implementation.
C. Depth of Analysis: Many interviews allowed for a more detailed analysis of data.
D. Credibility and Reliability: A larger sample size enhanced the credibility and reliability of research findings.

The primary data collection involved a rich array of sources, including field observations, one-on-one interactions, and interviews with various stakeholders. Researchers engaged with teachers, students aged 6 to 14 years, parents,

welfare officers of the estates, and representatives of prominent organizations such as the Assam Chah Mazdoor Sangha (ACMS) and the Assam Tea Tribes Students' Association (ATTSA). The ACMS, being one of the largest workers' unions in Asia with members spread across tea estates in Assam, provided valuable insights into the overall educational condition in the district. To ensure a comprehensive understanding of the challenges and perceptions of parents, they were categorized based on occupation: Permanent workers, Non-Workers, Casual Workers, and Retired workers. Thirty parents from each estate were interviewed, and a set of five carefully designed questions were posed to gather pertinent information about their understanding and awareness of the RTE Act provisions.

Moreover, students and teachers from one school in each estate were interviewed to gain a holistic view of the current state of education in the tea community. The inclusion of passed-out students in the interviews added a temporal dimension to the study, enabling researchers to assess changes and improvements in educational opportunities over time. Despite the challenges of data collection, the researchers strived to include as many interviewees as possible to ensure the study's representativeness and credibility. However, due to various constraints and factors, the number of interviewees varied between estates, particularly for passed-out students.

In addition to primary data, secondary data from estate officials and local NGOs played a crucial role in the research. The records of literacy rates and attendance maintained by the estates were reliable and served as a crucial reference for the study. The data on average attendance and the number of students allowed researchers to analyze trends and patterns in school participation. The research team encountered some limitations during the data collection process. For instance, some estates were in the process of updating their literacy rate data for 2022, leading to incomplete information in certain cases. Nevertheless, the overall methodology of combining both primary and secondary data sources ensured a comprehensive analysis of the RTE Act's implementation and awareness in the tea community of the Dibrugarh district.

5. The Description of the estates is as follows

The Description of these estates is given based on the secondary data given and based on the observations made by us in the estates.

- Estate I: Rural Setting with Challenges
  Estate one is located in a rural area, far from major cities, requiring a 6 km inward travel from the national highway. With two government schools for classes one to five, it has a total capacity of around one hundred eighty students. However, attendance fluctuates, with seventy percent during the off-season and forty-five percent during the operational season. Engaging with the people initially proved challenging due to their traditional mindset. Building rapport allowed us to gain valuable insights into the implementation and awareness of the Right to Education (RTE) Act in this estate. Understanding the reasons behind low attendance and limited RTE Act awareness is essential for formulating targeted interventions to improve educational opportunities within the tea community.
- Estate II: Semi-Rural Landscape with Positive Engagement
  Estate two is situated in a semi-rural area, far from a national highway, approximately twelve kilometers from the nearest town. It features two government schools and an estate school, providing classes one to ten. The total capacity of all three schools is around three hundred students, with attendance fluctuating between seventy-five percent and seventy percent. In contrast to estate one, the people in this estate displayed a modern outlook and willingly participated in open discussions with us. This openness allowed us to gain deeper insights into their perceptions and experiences regarding education and the RTE Act.
- Estate III: Another Semi-Rural Scenario with Modern Outlook
  Estate three is also situated in a semi-rural area, approximately thirteen kilometres from the nearest town. Similar to estate two, it has two schools catering to classes one to five. With a total capacity of around two hundred students, attendance patterns in estate three are akin to estate two. The people in this estate also displayed a modern outlook, and many of them had their businesses. Understanding the dynamics of education and the RTE Act awareness in this estate contributes to a comprehensive understanding of educational challenges faced by the tea community in the Dibrugarh district.
- Estate IV: Urban Setup near an Industrial Town

Estate four, strategically located near an industrial town, boasts a predominantly urban setup with various shops, hotels, and commercial establishments. It mainly comprises a young population, with approximately 70 out of 100 individuals having received an elementary-level education. The estate's location right beside a highway connects it to the nearby town, about 10 kilometres away. In contrast to the previous estates, estate four has a single government school catering to classes one to five. This school's total capacity is around a hundred students, and attendance rates are impressive, with ninety percent during the off-season and eighty-five percent during the on-season. Interestingly, many individuals here do not work in the tea estate itself, preferring to commute to the nearby town for better pay and opportunities.

- Estate V: Multiple Schools and High Educational Aspirations
  Estate Five is strategically located right beside a highway, making it easily accessible. The estate comprises a predominantly young population, with approximately 80 out of 100 individuals having received an elementary-level education. The proximity to a highway connects the estate to a nearby town, about 7.3 kilometres away. In contrast to the previous estates, estate five stands out with six government schools, five of which cater to classes one to five, and the last one provides education for classes six to ten. This estate is divided into six divisions, each with its school, with a total capacity of around twelve hundred students. Attendance in estate five remains impressively high throughout the year, with a remarkable ninety-five percent during the off-season and approximately ninety-three percent during the on-season. This consistent attendance indicates a stable educational environment, irrespective of seasonal variations, and reflects the community's commitment to education. Many people here also engage in various businesses, and interestingly, a significant number do not work within the tea estate itself but prefer to commute to the nearby town for employment.
- Estate VI: Scenic Semi-Urban Setup
  Estate Six is strategically situated right beside a highway, making it a semi-urban tea estate. The estate is home to a predominantly young population, with approximately 64 out of 100 individuals having received an elementary-level education. Its location close to a highway connects it conveniently to a nearby town, which is approximately 4.3 kilometres away. Interestingly, the estate's picturesque beauty has made it a popular sightseeing destination among locals. Similar to some of the other estates, estate six has one government school catering to classes one to five. The school's total capacity is around one hundred students. Despite being a semi-urban location, the estate maintains commendable attendance rates, with approximately eighty-five per cent attendance during the off-season and around eighty percent during the on-season. This consistent attendance indicates a stable educational environment, irrespective of seasonal variations, and reflects the community's commitment to education. Much like the previous estates, the people in estate six also display a modern outlook. Many of them are involved in various businesses. Interestingly, a significant number of individuals in this estate also choose not to work within the tea estate itself but prefer commuting to the nearby town for employment opportunities, where they can find better pay and prospects. The unique characteristics of estate six, including its semi-urban setting, popularity as a sightseeing spot, and preference for off-estate employment, offer valuable insights into the dynamics of education and livelihoods within the tea community. Understanding how a semi-urban location and tourism potential can influence education and economic choices will enrich the overall research study on the implementation of the RTE Act in the tea community of the Dibrugarh district. By closely analyzing the dynamics of estate six and comparing them with the other estates, we gain valuable insights into the factors contributing to educational success and progress within the tea community. Understanding the role of accessibility, school availability, and community attitude toward education in this estate will provide valuable information for shaping policies.

6. Results and Findings

After conducting extensive data collection from both primary and secondary sources, the study revealed astonishing results regarding the implementation and awareness of the RTE Act within the tea community. It was

found that the entire population of the tea community was aware of the RTE Act's existence and its main provisions. While not all residents were familiar with the specific sections of the Act, they had a general understanding that the government must provide free and quality education to children between the ages of six to fourteen and that preventing a child from going to school is illegal. The level of awareness among teachers, students, and parents was quite commendable, with teachers being able to articulate the objectives of the RTE Act and its significance as a fundamental right.

Several factors contributed to the high level of awareness observed in the tea community. Firstly, local NGOs played a crucial role in raising awareness about child rights and the RTE Act. These NGOs often had members from the tea estates and regularly conducted surveys within the communities. Secondly, the advent of the Internet has significantly contributed to increased awareness. Access to information through the Internet has empowered both children and parents, making them more aware of their rights and the importance of education. Another essential factor contributing to awareness was the active involvement of welfare officers and other managerial staff in the estates. These officials worked diligently to ensure the welfare of the workers and also took the responsibility of informing them about their rights, including the right to education. They played a pivotal role in spreading awareness and addressing any grievances within the community. Additionally, the Worker Union and the Assam Chah Mazdoor Sangath (ACMS) played a significant role in advocating for the rights of the tea community. They actively worked to raise awareness and represented the grievances of the community to the appropriate authorities. Their efforts have been instrumental in empowering the tea community with knowledge of their fundamental rights, including the right to education.

However, one area where the study found a need for improvement was the awareness among students about the role of the Assam Tea Tribes Students' Association (ATTSA). In some instances, students were unaware of the association's purpose and its mission to protect the rights of children. Addressing this knowledge gap and enhancing the engagement of students with ATTSA could further strengthen the tea community's awareness of their rights. Overall, the study demonstrated that the RTE Act has made significant strides in terms of awareness within the tea community. The combined efforts of NGOs, the Internet, estate officials, and worker unions have played a vital role in creating awareness and promoting the right to education among the tea community. By leveraging these factors and addressing specific areas of improvement, policymakers and stakeholders can further enhance the implementation of the RTE Act and contribute to the development and empowerment of the tea community.

Despite the tea community having a good awareness of the RTE Act, we observed that its implementation in terms of school attendance was not uniform across all estates. Estates I, II, and III showed lower attendance rates compared to Estates IV, V, and VI. Further research revealed several reasons contributing to this disparity.

- Perceptions and Attitudes Towards Education

  In our research, we noticed significant differences in the perceptions and attitudes towards education among the tea community members residing in Estates I, II, and III compared to the other estates. The mindset of the people in these particular estates appeared to be distinct, shaped by factors such as limited exposure to the outside world, fear of the unknown, and a lack of active involvement in their children's education. Many individuals in Estates I, II, and III seemed content with their current societal status and were reluctant to explore opportunities beyond the confines of the tea estates. They perceived education as having limited utility, believing that even if their children received an education, they would eventually return to work as labourers in the estate. This viewpoint stemmed from their lack of exposure to the world outside the estate and a sense of comfort within their familiar surroundings. The prevailing notion seemed to be that life within the estate was sufficient and venturing outside could be risky or uncertain. Despite understanding that education could potentially be a pathway out of poverty, some students who managed to pursue education up to the higher secondary level still returned to work in the estate. The fear of the unknown and their limited knowledge about the opportunities beyond the estate discouraged them from exploring alternative avenues outside their community. Moreover, we observed that parental involvement in their children's education was lacking in these estates. Parents who did send their children to school did so with little active interest in their academic progress or school activities. There seemed to be a sense of detachment and a lack of understanding about the significance of parental involvement in shaping a

child's educational journey. This lack of guidance and support from parents might hinder the students' overall development and academic performance. The perceptions and attitudes towards education in Estate I, II, and III appeared to be shaped by factors like limited exposure, fear of the unknown, and inadequate parental involvement. Understanding these underlying attitudes is crucial for designing targeted interventions to promote a more positive outlook towards education within the tea community. By addressing these issues and fostering a deeper understanding of the benefits of education, we can strive to create a more conducive environment for the holistic development and academic success of the children in these estates.

- Poverty:

  Poverty plays a significant role in hindering education within the tea community, affecting the dreams and aspirations of many children. Estates IV, V, and VI stand apart from the rest, as a considerable number of residents in these estates run businesses, such as dairy farming, from their homes. This economic advantage enables them to support their children's higher studies, fostering a strong commitment to sending their children to school at the elementary level. However, in the other estates, poverty poses challenges, resulting in cases of students not attending school or leaving education prematurely due to a perceived lack of prospects or the necessity to contribute to their family's income. In Estates IV, V, and VI, where economic conditions are relatively better due to successful home-based businesses, parents prioritize education for their children. They recognize the importance of education as a means of social mobility and escaping the clutches of poverty. This awareness drives their efforts to ensure that their children receive an elementary education and, when possible, pursue higher studies. Conversely, in other estates facing more challenging economic circumstances, some children do not attend school regularly or discontinue their education prematurely. These students often perceive limited opportunities for advancement within their community, leading them to question the long-term value of education. Additionally, poverty's burden necessitates the need for some children to contribute to their family's income at an early age, making it difficult for them to prioritize schooling. The cyclical nature of poverty further compounds these challenges, as limited access to education perpetuates socio-economic disparities within the tea community. Children from financially disadvantaged backgrounds often lack the necessary resources and support to overcome these barriers, leading to a vicious cycle of poverty and restricted educational opportunities.

- Alcoholism:

  Alcoholism has been a long-standing tradition in the housing lines of tea estates since the British colonial period. Many residents of the tea community, especially in Estate I, II, and III, indulge in drinking alcohol every evening after a hard day's work. Unfortunately, this habit consumes a significant portion of their overall income, which could otherwise be utilized to improve their own and their family's lives. The prevalence of alcoholism not only leads to financial strain but also creates a negative environment within households, influencing the mindset of children who witness their parents' excessive drinking. The excessive consumption of alcohol contributes to the perpetuation of poverty in the tea community. A considerable amount of money that could have been allocated for children's education and the betterment of living conditions is instead spent on alcohol. This financial drain further hampers the ability of families to invest in their children's education, leading to a lack of resources for educational support. Moreover, the presence of alcoholism in households negatively impacts the children's perception of their future. When children grow up in an environment where heavy drinking is prevalent, they may develop a misguided belief that this is the norm for their own lives. Witnessing domestic violence and family conflicts resulting from alcohol abuse further pollutes the minds of young impressionable minds, leading to emotional and psychological distress. The consequences of alcoholism on education are far-reaching. Not only does it directly hinder financial support for schooling, but it also affects the emotional well-being and motivation of children to pursue education. The cycle of poverty and alcoholism creates a challenging environment for children to thrive academically and personally. The issue of alcoholism in the tea community requires concerted efforts from various stakeholders. Educational programs and awareness campaigns can be organized to highlight the negative effects of alcoholism on families, children, and the overall well-being of the community. Community-based support systems and counselling services can be established to help individuals struggling with alcohol addiction. Moreover, measures to improve the economic conditions of the tea community through skill development, job

opportunities, and financial literacy can aid in reducing the prevalence of alcoholism and its detrimental impact on education. By breaking the chains of alcoholism, the tea community can create a more conducive environment for education and upliftment.

- Impact of Child Marriage on Education in the Tea Industry

  Child marriage remains a significant issue in the tea community of the Dibrugarh district. Despite the efforts of honourable Chief Minister Himanta Biswa Sarma and other government officials, the practice of child marriage continues to persist in the shadows. While some culprits have been arrested, the prevalence of child marriage poses a severe threat to the education and well-being of young girls in the community. One startling aspect of the problem is that often, it is not the parents who initiate child marriages, but rather young children themselves. Many girls between the ages of 12 to 14 run away from home to get married, a distressing trend that hinders their education and personal development. Due to their status as minors, these young individuals cannot be held fully accountable for their actions, and their parents are not entirely at fault, as they did not consent to such decisions. Child marriage has detrimental consequences on the educational opportunities for young girls in the tea community. When girls get married at such a young age, their education is usually cut short, and they are forced to assume adult responsibilities prematurely. The societal pressure to prioritize marriage over education perpetuates a cycle of limited opportunities for girls to reach their full potential. Furthermore, child marriage significantly impacts the physical and mental well-being of these young brides. Early marriage often leads to early childbirth, posing health risks for both the mother and the child. Moreover, young brides may face social isolation, lack of support, and limited access to essential services, leading to a compromised quality of life. Addressing the issue of child marriage requires a multi-faceted approach. Raising awareness about the negative consequences of child marriage and promoting the value of education for girls is crucial. Educational institutions, NGOs, and community leaders should collaborate to support and counsel young girls at risk of child marriage. Empowering girls with knowledge and life skills can help them make informed decisions and resist early marriage. Additionally, engaging parents, teachers, and community members in discussions about the importance of education and the harmful effects of child marriage can bring about positive change.

  The tea industry and society as a whole need to work together to eradicate child marriage and create an environment that fosters education, gender equality, and empowerment for young girls. By breaking the shackles of child marriage, the tea community can pave the way for a brighter and more promising future for its youth.

- Insufficient School Facilities as a Barrier to Education

  One significant reason contributing to the low attendance and dropouts in the tea community is the lack of adequate school facilities. While each tea estate has a government school catering to classes one to five, the provision for higher education is limited, with only a few estates having schools for classes six to ten. This lack of higher educational institutions poses a major obstacle for children who wish to continue their studies beyond the elementary level. As a result, many families do not see the practicality of promoting education if their children are unable to complete their schooling due to the unavailability of suitable facilities. In certain tea estates located near towns, the problem lies in the financial aspect. Families may struggle to afford the additional expenses associated with sending their children to schools or colleges located far away from their homes. Transportation costs, boarding fees, and other related expenditures become significant burdens for families already facing economic constraints. As a result, children from such estates may be forced to discontinue their education, perpetuating the cycle of limited opportunities and lack of socio-economic mobility. Similarly, estates situated in rural areas face similar challenges. The remoteness of these locations often translates to limited accessibility to educational institutions. With schools and colleges situated far away from their homes, students from rural tea estates encounter difficulties in pursuing higher studies. The lack of nearby educational facilities leaves families with few options to support their children's educational aspirations, leading to a disheartening cycle of limited educational opportunities. The absence of appropriate school facilities creates a barrier to education, hindering the academic and personal development of children in the tea community. Addressing this issue requires collaborative efforts from government authorities, estate management, and other stakeholders to invest in and establish educational institutions that cater to higher-grade levels within or near the tea estates. By bridging this gap in educational infrastructure, the tea community can

have greater access to quality education, empowering the younger generation with enhanced opportunities for personal growth and socio-economic advancement.

- Lack of Fear Factor and Respect for the Law

  One prominent issue contributing to the non-compliance with the RTE Act in the tea community is the diminishing fear factor and respect for the law. Despite being aware of the RTE Act's provisions, many members of the tea community choose not to follow the law, and instances of its violation often go unreported. This lack of adherence to the law is attributed to the strong sense of brotherhood and unity within the community, which dissuades outsiders from intervening in their affairs. In the close-knit tea community, there is a prevailing belief that they are immune to the consequences of breaking the law, especially when it comes to minor offences. The perception that they can evade punishment fosters a sense of impunity, leading some individuals to believe they are above the law. This misplaced confidence in their immunity from legal consequences undermines the effective implementation of the RTE Act. Moreover, the solidarity among members of the tea community further contributes to the disregard for the law. The sense of collective support and loyalty creates an environment where individuals feel shielded from external scrutiny or consequences. This bond of brotherhood often prevents any dissent or willingness to report fellow community members for breaking the law, even if it involves non-compliance with the RTE Act. As a result, the fear factor and respect for the law have gradually eroded in the tea community, leading to a culture of non-compliance with legal provisions such as the RTE Act. To address this issue, efforts are needed to instil a sense of responsibility and accountability among community members, fostering a culture where everyone upholds the law, irrespective of their social affiliations. Raising awareness about the importance of adhering to the RTE Act and promoting a sense of collective responsibility for the education of children can help in restoring respect for the law and ensure the implementation of the Act's provisions for the benefit of the tea community's younger generation.

- Adverse Domestic Environment

  A significant barrier to the implementation of the RTE Act in tea estates is the prevalent negative environment. This environment encompasses various factors, including the influence of bad company on children, which can adversely impact their education. Children are highly impressionable, and the company they keep can shape their attitudes and behaviours, leading to distractions from their studies. In many instances, the negative environment in the tea estates is exacerbated by the presence of alcoholism and its consequences. When neighbours or family members engage in excessive drinking and create disturbances, it disrupts the peaceful atmosphere necessary for focused studying. The noise and commotion caused by such activities can hinder a child's concentration and make it challenging to concentrate on their studies, particularly during crucial examination periods. The negative environment prevailing in some tea estates can also give rise to social issues, such as domestic violence, which can further impact children's well-being and academic progress. Witnessing or experiencing domestic violence at home can create emotional turmoil for children, affecting their mental and emotional development, and subsequently, their ability to excel academically. Moreover, the lack of positive role models in the community can contribute to the negative environment. When children do not have inspiring figures to look up to, they may not prioritize their education or set ambitious goals for themselves. The absence of such role models can lead to a lack of motivation to pursue higher education or strive for academic excellence. Addressing the negative environment in the tea estates is crucial for fostering a conducive atmosphere for education and implementing the RTE Act effectively. Measures such as community-based awareness programs, counselling services, and support for families dealing with alcoholism and domestic issues can help create a more positive and nurturing environment for the children.

- Impact of Social Media

  The advent of social media has brought about both opportunities and challenges for the tea community, particularly in terms of education. With the shift to online classes during the pandemic, access to education became heavily reliant on digital devices. However, this transition posed a significant challenge for many students in the tea estates who could not afford smartphones or reliable internet connections. As a result, a considerable number of students were unable to continue their studies effectively. For those who managed to access smartphones, social media became a major distraction from their studies. Instead of focusing on their textbooks and coursework, many students got engrossed in social media platforms,

diverting their attention from academic pursuits. This diversion led to a decline in their academic performance and sometimes contributed to dropping out of school. Moreover, the rise of social media has brought about new challenges in the form of child marriages. The easy access to social media platforms exposes children to various influences and interactions, some of which may not be suitable for their age. Online spaces can sometimes facilitate harmful practices, including child marriages, which further disrupt the education and well-being of children in the tea community. The impact of social media on the tea community's education system necessitates a comprehensive approach to address the issue. This could include promoting digital literacy among students and parents, encouraging responsible use of social media, and providing support to ensure that every child has access to digital devices for online education. Additionally, awareness campaigns on the potential risks of social media and online platforms can help empower students to make informed choices and prioritize their studies over distractions. By acknowledging and addressing the impact of social media on education, the tea community can work towards creating a more conducive learning environment for its children and ensure that the provisions of the RTE Act are effectively implemented.

- Impact of Population Growth

  One might think what does the population have to do with children going to school, But it has so much to do, In tea estates, we can see as given in the description of the tea estates that the percentage of attendance decreases during season time. This decrease is a lot in some cases and some cases are very little. Most of this decrease is because older children stay back at home to look after their younger siblings. While their parents go to work there is no one to look after the young ones. In tea gardens, there is a creche house available that looks after the young ones while the parents work, But this is available only for permanent workers. Heading: Impact of Population Growth Population growth plays a significant role in influencing children's attendance at schools in tea estates. During the peak season, when work demands intensify in the estates, the percentage of student attendance tends to decrease. This decline is attributed to older children staying back at home to take care of their younger siblings while their parents are engaged in work. In such circumstances, the responsibility of looking after the young ones falls on the elder siblings, leading to their absence from school. In tea estates, there are creche houses available to take care of young children while their parents are at work. However, these facilities are typically limited to permanent workers, leaving casual workers and non-workers with no access to such support. As a result, children from families that do not qualify for these services face a greater challenge in attending school regularly, especially during the peak season when the demand for labour is high. The issue of population growth further underscores the importance of implementing policies and measures that support families with children in tea estates. Ensuring access to childcare services for all workers, regardless of their employment status, could alleviate the burden on older siblings and enable more children to attend school consistently. Additionally, community-based initiatives and collaborations with NGOs can help provide support to families with limited access to resources, mitigating the impact of population growth on children's education. Understanding the relationship between population dynamics and children's attendance in tea estates is crucial for designing targeted interventions that address the barriers hindering educational opportunities. By recognizing the influence of population growth on education, stakeholders can work towards creating a more inclusive and supportive environment that enables all children in the tea community to exercise their right to education.

- Lack of Educational Guidance

  In tea estates, a lack of proper educational guidance poses a significant challenge for families aspiring to send their children to college for further studies. Many parents are unaware of how to guide their children from a young age to prepare them for higher education. As a result, children may miss out on crucial opportunities and support that could have otherwise fostered their academic growth. Without adequate guidance and support, children may not be aware of the various educational paths available to them or the steps they need to take to achieve their goals. This lack of clarity can lead to a decline in the overall educational attainment of children within the tea community. Additionally, parents who are unfamiliar with the education system may struggle to provide the necessary motivation and resources to help their children succeed academically. Moreover, the absence of proper guidance can also impact children's long-term career prospects. Many children in tea estates may not have access to role models or mentors who can inspire them to pursue higher education or explore diverse career options. Consequently, they may

be limited in their aspirations and opportunities for personal and professional growth. Addressing the issue of lack of educational guidance requires targeted efforts by both the government and community-based organizations. Initiatives that focus on educating parents about the importance of early education, career opportunities, and academic support can empower them to better guide their children's educational journey. Additionally, mentorship programs that connect students with successful individuals from similar backgrounds can provide invaluable guidance and encouragement. By recognizing and addressing the challenges stemming from the lack of educational guidance, the tea community can take significant strides towards improving educational outcomes and fostering a brighter future for its children.

Education decline in the tea community is attributed to factors like parental and child motivation. Some parents face obstacles, that impact their ability to support quality education, while others in Estates IV, V, and VI, and a few in Estates I, II, and III show exceptional dedication to their children's education. Understanding the reasons behind these contrasting outcomes is crucial. The reasons are as follows:

- Positive Parental Mindset

  A positive parental mindset emerged as a crucial factor influencing children's access to education in the tea estates. During the interviews with parents, it was evident that some of them displayed a mindset that prioritized their child's education above all else. Despite facing poverty and limited educational opportunities themselves, these parents demonstrated unwavering determination to support their children's future through education. Many parents in the tea community engaged in side businesses or took on additional work solely to finance their children's education. They firmly believed that education was the key to breaking the cycle of poverty and providing better opportunities for their children. Their self-sacrifice and resilience reflected a strong commitment to ensuring their child's access to quality education. The presence of such positive parental role models within the community can serve as a source of inspiration for other parents and children alike. By fostering a mindset that places value on education, more families can be encouraged to overcome financial challenges and prioritize their children's educational pursuits. The support and encouragement provided by parents with a proper mindset can empower children to persevere in their studies and pursue higher education despite the obstacles they may face. Recognizing and promoting the importance of a positive parental mindset within the tea community can be instrumental in enhancing overall educational outcomes. Encouraging parent-teacher collaborations and community engagement can further strengthen the impact of a proper mindset on children's educational aspirations. By fostering an environment that values education and supports parental involvement, tea estates can create a conducive atmosphere for students to thrive academically and realize their full potential.
- Impact of Education Facilities

  Access to education facilities significantly influences the educational opportunities available to children in tea estates. Estates that are connected by highways have a distinct advantage in providing easier access to colleges and schools essential for their future education. Having proper transportation infrastructure in place makes it more feasible for students to travel to educational institutions outside the estate and pursue higher studies. In contrast, estates that lack convenient access to educational facilities face challenges in ensuring that children receive quality education beyond the elementary level. The limited availability of schools for classes six to ten often compels students to travel long distances to continue their education. This can be a major deterrent for both students and parents, leading to a decline in attendance and an increase in dropouts. Ensuring better access to education facilities, especially for higher education, is crucial in enhancing the educational outcomes for children in tea estates. By strategically planning the establishment of educational institutions and addressing transportation issues, the tea community can empower its youth with better educational opportunities and pave the way for their future success.
- Impact of Side Income

  The availability of side income opportunities in several tea estates near urban areas has had a positive impact on children's education. Many individuals from these estates seek additional employment in nearby towns, where they often receive better pay. As a result, families have access to increased financial resources, which, in turn, promotes a supportive environment for their children's education. With the availability of side income, parents can invest more in their children's schooling, covering expenses like school fees, books, and uniforms. This financial stability enables children to attend school regularly

without the worry of financial constraints. Moreover, parents who have a steady additional income are more likely to prioritize their children's education and provide the necessary support and encouragement for their academic growth. Additionally, the presence of side income has contributed to a more stable lifestyle for these families. Unlike the traditional model where the sole reliance on estate jobs can lead to uncertainties and relocation, having supplementary income allows parents to settle in one place, ensuring continuity in their children's education. This stability fosters a conducive learning environment for the children, leading to better educational outcomes.

Furthermore, the pursuit of better-paying jobs in urban areas has also exposed parents to the significance of education in securing higher-paying jobs. This exposure motivates parents to value education and aspire for better educational opportunities for their children, leading to an overall improvement in the educational aspirations within the community. In estates IV, V, and VI, where community members have actively pursued side income opportunities, we observed a strong culture of family support for education. Parents in these estates actively encourage their children to pursue their studies and provide the necessary guidance and resources to help them succeed academically. As a result, children in these estates have access to a supportive family network that nurtures their educational growth and fosters a positive attitude towards learning.

7. Suggestions

To address the challenges impacting educational outcomes in the tea community, several targeted interventions can be implemented. Here are a few suggestions to fix these problems:

1. Community Awareness Programs: Organize community awareness programs to educate parents about the long-term benefits of education. Highlight success stories of individuals who have achieved personal and professional growth through education.
2. Improved School Facilities: Focus on improving the quality of existing government schools and establishing schools for higher classes in estates lacking such facilities.
3. Reduce Alcoholism: Collaborate with local authorities and NGOs to address alcoholism within the tea community. Create awareness about the detrimental effects of alcohol on family dynamics and promote support systems to address addiction.
4. Digital Literacy Programs: Introduce digital literacy programs to familiarize students with technology and the Internet. Teach responsible use of smartphones and social media platforms to minimize distractions and ensure that students use technology for educational purposes.
5. Inclusive Educational Policies: Advocate for inclusive educational policies that consider the unique challenges faced by the tea community. Policies should aim to provide equal educational opportunities and remove barriers hindering access to education.
6. Parent-Teacher Engagement: Strengthen the collaboration between parents and teachers through regular meetings, progress updates, and parent-teacher associations. Involving parents in their child's educational journey can lead to better support and encouragement from home.

By implementing these suggestions and fostering a supportive environment for education, it is possible to improve educational outcomes and create a brighter future for the tea community. It requires a collaborative effort involving government authorities, NGOs, tea estate officials, worker unions, and the tea community itself to overcome the challenges and ensure every child receives a quality education.

8. Conclusion

Education in the tea estates is a critical issue that demands attention. Although the tea community is well aware of the RTE Act, its implementation varies across the Dibrugarh district's tea gardens, resulting in unequal student attendance rates. To address this, a shift in the community's mindset is imperative. While each estate has at least one elementary school, targeted interventions are needed. Establishing police outposts to ensure law and order and focusing on underdeveloped estates are crucial steps. By promoting community awareness and providing better infrastructure and resources, the government can bridge the educational gap. Equitable access to quality education

is essential for the tea community's children, empowering them to build a brighter future. Concerted efforts to ensure the effective implementation of the RTE Act and address hindrances to educational growth will pave the way for a more prosperous and educated tea community in the Dibrugarh district. By fostering a supportive and conducive environment for education, we can empower the tea community's children with the knowledge and skills needed to build a brighter future for themselves and their community.

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Analysis of Legal Protection of Patients in Doctor Consultation Services in Alodokter Application

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Abstract
Health service consultation now has a wider scope due to the increasingly widespread availability of online health service media on Android devices, such as the applications Alodokter, SehatQ, Halodoc, and so on. This application uses internet media which is relatively new and is still rarely known by the general public. Therefore, it is necessary to pay attention to legal protection and obligations of the parties, as well as potential losses and defaults. This study aims to learn about the consumer protection available to patients who use the Alodokter application and the legal options available to users whose accounts are affected by automatic debits without their consent. Qualitative descriptive analysis was used in this study. The findings of the study show that Alodokter and online media providing doctor consultation services are required to protect patient data so that it is not misused by unauthorized parties. Business actors who violate the provisions in electronic business will be subject to criminal, administrative and compensation sanctions, in accordance with Article 45 A paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. losses, so that it is expected to reduce and stop similar fraud in the future. However, due to the well-known standard clause of the Alodokter application, Article 6, which states that Alodokter is not responsible for any loss, death, damage or loss suffered by users as a result of the practices of Service Providers or other third parties, the user does not have a clear legal path and protection.

Keywords: Patient Legal Protection, Online Health Services

1. Introduction

Information technology opens the world's eyes to a new world, various activities from all aspects change very quickly and are integrated through development of information technology. Internet technology has succeeded in changing patterns community interactions, namely business, economic, social and cultural interactions. Depart from there the internet has made such a large contribution to society, company/industry and government. Presence of the internet can support the effectiveness and efficiency of the company's operations, especially its role as a means of information needed by a business and form of agency business or institution. Technology internet can functions as an effective and efficient strategic promotion event, because of the internet can reach all jurisdictions law countries in the world (Handyani, 2020)

The development of information technology in the field of medicine in the future will be directed to facilitate user access to health services. The maturity of the knowledge and technology process in the field health has developed rapidly and is supported by increasingly sophisticated health facilities. This development also affects the professional services inthe health sector which is growing from time to time. Various method maintenance developed so that as a result, increases the possibility of making mistakes. In many ways related to health problems, cases are often encountered harm user. Because of that, it is not a suprise if the health profession as well as protection to user is discussed in intellectual and public settings (Hamson, et al, 2021).

Profit technology in field health makes it easy for the user. Technological presence makes it easy for users particularly in accessing health information and services. Only with mobile phone or computer, now users can access various kinds of information health on the internet. In addition, various health care services are present in online format, which also makes it *easier* for users to access health services.Users can now access information, get consulting services to do *online* prescription drug redemption. This of course saves a lot power and user time.

Development of health this way contains a problem, in which it should be embodied by the government in accordance with the ambition of the nation as meantin the 1945 Constitution, which protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate life and carry out independence, eternal peace and social justice. In general, health services are known to have service providers, in this case doctors and those who receive services or make health efforts in this regard is user. Already, since formerly known, exists a connection of trust which is called transaction therapeutic. Transaction is reciprocal relationships generated through communication whereas therapeutic is interpreted as something that contains elements or treatment, legally transaction therapeutic interpreted as connection law between doctor and user in professional medical services based on appropriation of competence with certain expertise and skills in the field of medicine, which services gives characteristics of gift help or help which is based of the trust with physician users.

On the user's own position as user which get service from doctor, the practice of Doctor *On line* is a means of service health which function to provide and organize health efforts that are healing consultation and recovery user. Health services which is given by Doctor *Online* parties to users can also be seen as a service provided between business actors (doctors) and users (users). This is appropriate Law Number 08 of 1999 concerning Consumer Protection. On generally, users are also included as users, to be precise as users in field health, Because on generally user is person Which do consultation problem health For obtain service that health needed, matter This in accordance with exists connection engagement between partyDoctor with user Which known with contract therapeutic, that is partydoctor make an effort in a manner maximum For cure users, p This Also strengthened by the decision of the Minister of Health of the Republic of Indonesia No.756/Menkes/SK/VI/2004 about preparation liberalization trading And service inthe health sector, thus Law No. 8 of 1999 concerning Consumer Protection can also be applied to the health sector. (Pasaribu, 2019)

Health services are increasingly varied, many of which take advantage of the development of Information Systems and Information Technology such as mobile phones, computer, And camera. See condition the so development application health based *mobile* And *web* become very important For continously developed moment This Also Lots form voice, *software*, *SMS/MMS*, *web-based apps* , and *video conferencing* . Example a number of application health Which There is inIndonesia for example application consultation on line like Halodoc, Alodokter, Klikdokter, and others. Currently, the use of *mobile -based applications* is increasing increase used by public especially For application *telemedicine*.

Telemedicine is a health practice using audio communications, visual aids and data, including care, diagnosis, consultation and treatment as well exchange data medical And discussion scientific distance Far. Based on understanding in on,As we can understand, the scope of telemedicine is quite broad, including provision service health distance Far (including clinical, education And administrative services), through transfer information (audio, videos, chart), with use devices telecommunication (audio-video interactive two direction,computer, And telemetry) with involve doctor, user And parties other. In simple terms, telemedicine has actually been applied when it happened discussion between two doctor talk about problem user past telephone (Wirman, 2021)

Sites or *websites* that provide online health consultations become one of the trends born from the development of communication technology. HealthReplies.com And Halodoc is a number of between Enough many site *on line* which is quite famous in Indonesia. Online health consultation supported by pre doctor Which own background behind knowledge health Which capable analyze And diagnose condition health the user. However No Can ignored, the existence of this *online* consulting site is also not without problems, difficulties in facilitate behavior and motivate users not effective.

Difficulty other Which arise And Enough Serious is information health Whichbe delivered sometimes not enough relevant so that risky lower quality user service and trust. User protection is part oflaw that contains principles or rules that are governing and also contain properties that protect the interests of users, including on case Auto debet in Wrong one application service service health HealthReplies.com

The Alodokter case was found which has recently been in the spotlight public that is related with *telemarketing* or *sales* HealthReplies.com Which accused has done fraud because offer auto debet Which difficult canceled. This acknowledgment begins when the account of one of the clients is looking for information about the problem method disable account HealthReplies.com Which used during This. afterwards, these users find there is only one way, namely by contacting e-mail *support* HealthReplies.com And wait until three day For confirmed termination. HealthReplies.com clarifies the complaints that mention user not Can close account in platforms telemedicine That And auto practice debit (automatic debit) without user consent. Even so, users themselves cannot delete accounts (Prastya. 2021)

Case other, related with auto debit HealthReplies.com Also complained Because relatedwith exists offer program insurance DHF (fever bloody *dengue*) with a protection value of 2 (two) million. Many complain because they ask data self user like Photo ID CARD, number account, And Photo book savings. Even though the user has not received approval, Alodokter continues cut some costs of IDR 35,000. Case other Which similar experienced a assistant House ladder old 46 yearin West Bekasi. He got an insurance *telemarketing call* from Alodokter onJuly 2021. Assistant House ladder the say that himself No aware when service insurance HealthReplies.com it turns out paid, Because *telemarketing* call it free. Account bank assistant House ladder This time truncated auto-debit around IDR 35,000 where payment occurs once in August 2021. The Alodokter team responded to the resolution of the problems above state that marketing Which done team HealthReplies.com only simply telemarketing just For do offer. User can close the account, However need time three day Work For verification. customer can convey complaint And application closing account to number WA 0812- 8888-0256. Application closing account can be delivered on o'clock 08.00 WIB– 20.00 WIB in day Work, or 08.00 WIB – 17.00 WIB on day holiday or date red. Matter This Then, can is known if Team HealthReplies.com only do clarification However No do replacement on loss Which experienced by user. As if settlement done with method non litigation, issettlement dispute Which done use ways Which There is in outsidecourt based on say agreed (consensus) Which done by para party Which dispute Good without or with help para party third Which neutral. When a user consume or use something product goods or service, so every user Certain want exists satisfactionto product the, minimum user want exists information Whichclear on product Which will used, belief that product Which used can be utilized according to needs, both in terms of quality and price, users know method use, There is warranty from product Which he bought. However reality Which appear often user No obtain What Which expected to the maximum so that as a result the user feels disadvantaged. Weak position user often utilized by perpetrator business For get the maximum benefit from users. no factor you know user, No he explained information to service goods/services Which given perpetrator business, No he understood user on mechanism transactionbecome weak factor user position. (Mahmudah, 2019)

Users should receive good protection due to services provided has offered, However Not yet in accordance with Constitution Protection Consumer. According to studies owned by hutomo, Kurniawan, & Suhartana that the implementation of doctor consultation through online media in Indonesia is subject to and must obey Constitution ITE, Constitution Health, the law Invite Practice Medical And regulation legislation Which related other. Providers of doctor consultation services through *online media* are required to maintain secrecy documents/data user/ user, And must guard security data in order to avoid data leakage that will be misused by people Which do not have right. (Suhartana, 2020)

Temporary That, according to study owned by Listianingrum, Budiharto, & Easy, connection between company application And user is connectionindependent, connection between company application And doctor, pharmacy, or partyothers are partnership relationships, and relationships between users and application company partner is the relationship between the provider and the user fromgoods and/or service. Not quite enough answer company application Actually onlylimited about use application. Whereas, not quite enough answer to riskreceived by the user is the responsibility of the partners of the company the application in question which arose as a result of negligence and carelessness in carry out their professional duties or do not fulfill the rights of users who has regulated in law.

Online health service should be further regulated in regulation special. Breakthrough consultation from conservative to *on line* or online mustprotected by law, both protection for doctors, system administrators and especially important for users or users of online media users. There is blur And emptiness law about matter the And need exists decomposition more carry on about form protection Which can given tousers without harming the business actor or vice versa, it is deemed necessary to carry out the interpretation of the laws and regulations that become base he did something process service health in a manner *on line* the.

Therefore, in order to create a good transaction climate, then service user service health *on line* including HealthReplies.com can increase effort Which Healthy for user, so that need endeavored something form new and adequate legal arrangements capable of regulating everything activity.

2. Method

Processing material law, that is organize ingredients lawso that it can be read (*readable*) and interpretable (*interpretable*). Activity This includes parsing and classifying materials according to their qualifications wanted. In analyzing the data, the writer uses descriptive analysis qualitative, namely focusing more on legal analysis and reviewing materials law that is studied as a whole, namely by combining between legal issues and legal materials obtained thus generated something conclusion Which can used For answer formula problem which exists.

3. Discussion

3.1. Non Litigation through Body Completion Dispute User

Based on provision about settlement dispute asWhich arranged in Chapter X Constitution Protection Consumer, emphasized that conflicts occur between business actors and users resolved through litigation or non-litigation channels based on choice voluntarily by the parties. Article 48 of the Consumer Protection Actmentions that the settlement of disputes through litigation refers to to provision Which apply in Justice general. Meanwhile, the solution in outside court here it is Which can done with take advantage of the User Dispute Resolution Agency (hereinafter referred toBPSK) as regulated in Article 49 - Article 58 of the Law Protection Consumer.

Objective formation BPSK nor perpetrator business with create system protection user Which contain element certainty law Andopenness information. Existence BPSK will part from even distributionjustice, especially for user Which feel harmed by business Because dispute in between user And perpetrator business usually nominal small so that user seldom For submit the dispute in Court No comparable between cost case And magnitude loss Which in experience. [73] Under the provisions of Article 54 paragraph (3) of the Protection Act Consumer, so decision BPSK This is finals And tie for para party Which dispute, as well as decision BPSK This registered to CourtCountry local Where user harmed For get strengthexecutive as arranged in Chapter 57 Constitution Protection Consumer. In relation with matter like has outlined previously that BPSK Actually beginning formed For settlementmatters small, Because most case- user disputes scale small And characteristic simple. If dispute the mustresolved in court, so precisely will "harm user because the cost of litigation that must be borne by the user is greater than the value the loss.

By Because That, in principle every user Which harmed, Which want to finish dispute user However with scale nominal Which ratedrelatively small amount can be done out of court through the Agency Completion Dispute User (BPSK), as arranged in chapter
49 paragraph (1) Constitution Protection Consumer. Whereas Which meant with Body Completion Dispute User is body Whichresponsible for handling and resolving disputes between business actors and user as arranged in chapter 1 paragraph (11) Constitution Protection Consumer.

The Consumer Protection Act states in Article 23 "that if the manufacturing business actor and/or distributor business actor refused and/or did not respond and/or did not fulfill the compensation make a loss on demands user, so user given right For suedbusiness actors and resolve disputes that arise through the Agency Completion Dispute User (BPSK) or by submit lawsuit to Justice in domicile user the".

para party in finish dispute lawsuit civil in electronic transactions can use arbitration channels, or other institutions like mediation, conciliation, And negotiation. Security is an interest in carrying out electronic-based transactions. [76] Law Invite No. 8 Year 1999 about Protection Consumer, arrange about Penalty Administrative. Chapter 60 stated on paragraph:

1. Body settlement dispute user authorized drop penalty administrative action against business actors who violate Article 19 paragraph (2) And paragraph (3), Article 20, Article 25, and Article 26.
2. Administrative sanctions in the form of determining compensation of a maximum of Rp 200,000,000.00 (two hundred million rupiah).
3. The procedures for determining administrative sanctions as referred to in paragraph (1) arranged more carry on in regulation legislation.

Peaceful settlement is when the parties to the dispute with or without power/companion choose ways peace For resolve the dispute. As for what is meant by peaceful means the form negotiation in a manner discussion And or consensus between parathe party concerned. By peaceful settlement of disputes This, indeed want to worked on form settlement Which easy, cheap,and relatively faster. The legal basis for this peaceful settlement regulated in article 45 paragraph (2) jo. Article 47 of the Protection Act Consumer, in side That, arranged in Book III, Chapter 18, chapter 1851 untilchapter 1858 BW, concerning peace/ *daddy*.

3.2. Non-litigation through the Alodokter User Cancellation Process Procedure

Settlement peacefully held to achieve agreement about form and magnitude change make a loss and/or about action certain For ensure No will happening return losses suffered by users, as determined in article 47 of the Law Consumer Protection Act. Article 47 of the Protection Act The consumer also confirms that the user's dispute resolution is outside courts are convened to reach an agreement regarding the course of action to guarantee it will not happen again or will not be repeated return loss Which suffered user. In matter This form guarantee Which intended in the form of a written statement explaining that it will not repeated return deed Which has harm user the. The resolution of the dispute does not eliminate criminal responsibility as regulated in law.

In matter This, HealthReplies.com has claim that For complaint processblock auto debet Which considered long, HealthReplies.com mention that needed time For verify user. Process cancellation subscribe takes 3 working days. Alodokter customers can cancel subscription package by contacting the customer service Alodokter via email at support@alodokter.com or WhatsApp message 0812-8888- 0256 and telephone at 021-30000256. Clarification of account closure the have to go through the process complete verification. HealthReplies.com claim always respond to complaint Which be delivered via social media at the latest 1 x 24 O'clock. Day Work o'clock 08.00 WIB-20.00 WIB And day holidays/dates red 08.00 WIB-17.00 WIB. User can convey complaint And application closing account tonumber WA 0812-8888-0256. Application closing account can be submitted at 08.00 WIB - 20.00 WIB on weekdays, or 08.00 WIB WIB – 17.00 WIB on day holiday or red date.

Connection between user with company application in online health services such as Alodokter are basically regulated in the Article 11 Number 1 from Condition and Terms Application:
"Connection We with You is something connection independent and between us there is no agency, partnership, business relationship joint venture, employee or owner franchises Which will arise as is Provision Use This".

Connection law Which happen between company application in service health on line with user can called as agreement regarding the procedures and conditions for using the application, like Which regulated in condition and conditions from this app:

> "By downloading, installing, and/or using the application or web app, user agree that user has read, understand, know, accept, and agree to all information, terms and conditions for using the application or web app Which there is in Provision Use This. Provision this use constitutes a legal agreement regarding the procedures and terms of use of the application or web app or website between users with application manager or web app or website ie provider service".

Obligation from company application Which status as liaison is to provide applications as a platform where service providers meet with user (user service) besides That as perpetrator business liaison, company application connect user with provider service if there is question, complaint, nor application change loss from the user (service user) to the service provider while the rights are accepted by company application is accept payment Which will later be divided according to the agreement in the partnership agreement between application companies and healthcare service providers. Then, the responsibility of the user as user service arranged in Chapter 5 Invite Invite Number 8 Year1999 Concerning Consumer Protection namely: [78]

1. Read or follow the information instructions and usage procedures or utilization of goods and/or services, for security and safety;
2. Have good faith in conducting goods and/or services purchase transactions;
3. Pay according to the agreed exchange rate;
4. Participate in proper legal settlement of user protection disputes.

Right Which accepted by user from company application is canuse application For do transaction electronic with service provider and be heard or assisted for resolution if any question, complaint nor application change make a loss Because exists loss.Therefore, a request for closing an account is also one of the rights that can demanded by user application HealthReplies.com And must done with as soon as possible so that No raises loss Which more big foruser HealthReplies.com on auto debit case.

3.3. Completion Dispute Through Track Litigation in Court

In principle, any user who is harmed can sue the perpetrator business through institution Which on duty finish dispute between user Andperpetrator business (BPSK) or through body Justice in place position user,as specified in article 23 of the Consumer Protection Act. If efforts have been made to resolve user disputes amicably and dispute resolution through BPSK, then the lawsuit through the court only can be taken if the effort is declared unsuccessful by one of the parties party or by para which party dispute.

Authority to resolve user disputes through internal courts general court environment with reference to the provisions in force in the general court environment. This means the procedure for filing a lawsuit in the case of user protection refers to the civil procedural law apply. Parties who can file a lawsuit for the violation of the perpetrator business according to Chapter 46 paragraph (1) Constitution Protection Consumer that is:

a) A user Which harmed or expert inheritance Which concerned.
b) A bunch user Which have interest Which The same.
c) Institution protection user self-subsistent public Which fulfil conditions, namely in the form of a legal entity or foundation within the budget basically stated explicitly that the purpose of the establishment of the organization the is For interest protection user And has carry out activity in accordance with the basic budget.
d) Government and/or agency related if goods and/or service Which consumed or utilized resulting in large

material losses and/or not a few victims.

An injured user can file a claim for compensation directly to BPSK either personally or through a non-governmental user protection agency, while a claim made by a group of users, non-governmental user organizations and the government or related agencies can only be filed in court, as stipulated in Article 46 paragraph (2) of the Consumer Protection Act.

If an out-of-court settlement of user disputes has been chosen, a lawsuit through court can only be pursued if the attempt is declared unsuccessful by one party or by the parties to the dispute. This means that the settlement of disputes through the courts remains open after the parties fail to resolve their disputes outside the court, but by using the basis of the lawsuit regulated in BW (Burgerlijk Wetboek)/KUHPerdata.80

The establishment of the BPSK, which is a mandate from the Consumer Protection Law, is expected to be a means for users who aim to protect the rights and obligations of users with legal certainty. However, this does not mean that the existence of the Consumer Protection Act is to kill business actors, but rather as a means to compete in facing the free market era, because business actors are required to be able to compete in terms of producing and trading quality goods and/or services, which in the end will lead to encouraging a healthy business climate.

UU no. 8 of 1999 concerning Consumer Protection also regulates Criminal Sanctions, regulated in Article 61 states: Criminal prosecutions can be carried out against business actors and/or their management. Meanwhile, Article 62 paragraph:

1. Business actors who violate the provisions referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be punished with a crime maximum imprisonment of 5 (five) years or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah).
2. Business actors who violate the provisions referred to in Article 11, Chapter 12, Chapter 13 paragraph (1), Chapter 14, Chapter 16, And Chapter 17 paragraph (1) letterd and f shall be punished with imprisonment for a maximum of 2 (two) years orcriminal fine most widely Rp 500,000,000.00 (five hundred million rupiah).
3. To violation Which resulted wound heavy, Sick heavy, disabled stillor death provisions apply criminal Which apply.

Article 45 A paragraph (1) of Law Number 19 of 2016 concerning Amendments to Constitution Number 11 Year 2008 About Information And Transaction Electronics mentions where business people violate regulations legislation in business electronic will imposed penalty criminal, administration, and compensation so it is hoped that it will reduce and prevent case fraud like This happen Again. As for sound chapter 45A the that is: Every Person Which with on purpose And without right spread news Lie and misleading resulting in user losses in Transactions Electronic as referred to in Article 28 paragraph (1) shall be punished with maximum imprisonment of 6 (six) years and/or a maximum fine IDR 1,000,000,000.00 (one billion rupiah).

4. Closing

Based on the description that has been explained above, it can be concluded that Legal remedies that can be taken by a user whose account is affected by auto-debit without the user's consent, namely first, by resolving disputes through non-litigation channels involving a user dispute resolution agency and with the ease of the Alodokter user settlement process procedure. Second, dispute resolution through litigation in court. In the future, Alodokter must include clear information regarding the procedures for canceling Alodokter users and facilitating verification of deleting Alodokter accounts, so that it does not harm users.

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The Importance of Personal Data Protection Act for The Protection of Digital Society in Indonesia

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Abstract
The era of technological disruption is marked by massive use of digital services and devices which always require submission of personal data free of charge. Digital companies can use personal data to identify behavior of their users freely without supervision. This is exacerbated by vulnerability of personal data protection due to hacking, mining or misuse of personal data, as happened with Facebook, Yahoo, Tokopedia, Bukalapak. In this phase, government has to active to provide protection which in Indonesian context is realized through formation of PDP Act as mandated by 1945 Constitution of Indonesia. This research intends to examine importance of PDP Act and its developments in Indonesia for digital society protection. This normative-empirical research uses primary data (observations and interviews) and secondary data (regulation searches and textual literature) that are processed qualitatively by content analysis. The idea of protecting personal data originates from recognition of the right to privacy that has developed and been institutionalized in various legal documents, both national, regional and international. In Indonesia, prior to enactment of PDP Act, personal data protection arrangements were scattered sporadically and sectoral which caused personal data protection to not be optimal. PDP Act complements and refines previous regulations to provide certainty for protection of personal data in Indonesia. The existence of PDP Act gives important meaning as a manifestation of state's commitment to provide protection, guarantee order and security of digital society, optimize law enforcement and reform personal data processing practices and encourage changes in society's culture to respect personal data.

Keywords: Act, Digital Society, Indonesia, Personal Data Protection, Privacy Rights

1. Introduction

The development and progress of technology have transformed the civilization of society with various benefits and challenges faced due to the use of technology. Almost all aspects of life involve technology and are connected in a global information and communication system network, both in industrial, business, financial, banking, education, health, trade, transportation, and government sectors. Especially in Indonesia, this technological disruption and intervention has driven 4.0 industrial revolution towards 5.0 industrial revolution. These changes are generally marked by the increased use of Internet of Things (IoT)-based technology,

information and communication systems, and digital industry. By using internet and high-technology digital devices, everything can be connected and controlled remotely through digital applications or information system networks provided by digital companies (Kusnadi & Wijaya, 2021).

Large companies engaged in technology and digital devices, such as Facebook, Twitter, Instagram, TikTok, WhatsApp, YouTube, and others, work by providing services or using available features (both free and paid) on digital devices. Instead, digital companies obtain rights or permission to obtain and utilize specific information or data from its users. User-specific data or information is then collected, stored, and managed in a "big data" in "Cloud" network. The "Cloud" network is a new metaphorical term that describes a digital data storage system in a non-physical space that can process collection, arrangement, storage, and processing of data resulting from engineering computer technology. In simple terms, “Cloud” is explained as a system for storing and processing or distributing data, applications, services for all internet users that don’t require physical data storage instruments (Sudibyo (a), 2021). Digital device user data is collected and obtained from all digital platforms and applications that are connected to internet network.

Although in general, all services for digital devices and applications are provided free of charge to users, this doesn’t mean that there are no consequences. There are no digital services that are completely free but are always bartered by submitting personal data for free as well. Philips N. Howard stated that in the IoT era, advances in digital technology raise serious problems related to privacy security, social engineering, and public behavior manipulation. The flow of internet users' personal data collected by digital companies through digital devices and services has provided space for monitoring and controlling people's behavior (Sudibyo (a), 2021). In line with that, Foucault emphasized that technology present since industrial era has become a means to control people's behavior. Technological capabilities in supervising community without being watched by public (to see without being seen) and monitoring movements of community without the opposite has become a new form of power in modern era (Sudibyo (a), 2021). This vulnerability has an impact in the form of potential misuse of personal data for purposes that are detrimental to personal data owners. In the last decade, cases of illegal personal data mining through cybercrime to leakage of personal data (intentional or unintentional) have become a widespread problem in public sphere. In particular, cases of personal data leakage by digital companies have raised a number of concerns. Several digital companies have failed to protect their users' personal data, as illustrated in Table 1 below: (Lesmana et.al., 2022; Annur, 2021; Mediana, 2023)

Table 1: Cases of Personal Data Leakage in Indonesia

Year	Digital Platform	Amount Data Leaked
2019	Alibaba	1.1 billion accounts
2020	Tokopedia	91 million user data 7 million seller records
2020	Bhineka.com	1.2 million user data allegedly leaked and traded by a group of Shiny Hunters hackers on the dark web for USD 12,000
2020	Bukalapak	12,957,573 user data
2020	Kreditplus	890,000 customer data allegedly leaked and traded on Raid Forum
2020	*RedDoorz*	5.8 million user data is traded
2020	*Facebook*	130,000 user data
2022	Bank of Indonesia	Hack by Conti Ransomware Group
2020	Sina Weibo	538 million accounts
2021	*LinkedIn*	700 million accounts

The efforts to compete to obtain and control personal data aren’t only carried out in civil and private spheres, but also occur in state realm. Competition between countries has moved away from traditional patterns involving weapons of mass destruction or means of physical warfare towards competition using data to influence direction of state policy. For example, competition for data control related to using TikTok (owned by a company from China) which is growing from 65 million accounts (2017) to 1 billion accounts (2021). This sparked concern from United States government which pushed for a ban on using TikTok for security reasons and hacking of

personal data. Even United States is pushing for TikTok to leave its parent company, ByteDance or release all TikTok shares owned by Chinese citizens to entrepreneurs from other nations. This is due to United States' concern over geopolitical competition, especially after Cyberspace Administration of China (CAC) issued a policy ordering submission of digital technology algorithms for all Chinese companies to prevent anti-government content, and content that is contrary to Chinese socialism values. This policy sparked concerns in a number of countries that China would do same to TikTok user data in other countries. A number of countries have banned applications or social media from China, including India, United States, United Kingdom and New Zealand (Anwar, 2023).

The phenomena and developments of competition, hacking, and personal data theft show that is the tip of iceberg which has become a national to international issue. Cases of leaking personal data of users of digital technology that have been revealed are only a small part of possible reality. This happens because digital systems are very complex and limited, so it isn't easy to find out whether or not there is a hack or leakage of personal data for users of digital devices and services. To respond to these phenomena, continuous efforts to update personal data protection laws are being made by various countries. The principle of protecting personal data is the recognition of individual privacy and personal safety as part of human rights. In Indonesia, protection of citizens' personal data is one of constitutional obligations and responsibilities of the state which is explicitly contained in Paragraph IV of the Preamble of 1945 Constitution of Republic Indonesia (1945 Constitution of Indonesia), which emphasizes that state protects the entire Indonesian nation. Indonesia nation's recognition and guarantee of personal data protection urgency as part of human rights is clearly contained in Art. 28G p. (1) of 1945 Constitution, which states that everyone has right to personal protection and right to feel safety and protection from threat of fear to do or not do something that is a human right. Therefore, personal data must be protected, respected, maintained, and mustn't be ignored, reduced, or confiscated by anyone (Considerations of Human Rights Act No. 39/1999). In Indonesia, as a consequence of the state being based on law and constitution, protection of personal data should be actualized by laws and regulations. Since the Indonesia Independence (77 years ago), Indonesian government has only had a special law regulating personal data protection with the issuance of Law Number 27 of 2022 concerning Personal Data Protection (PDP Act). PDP Act is legal basis for governance and implementation of personal data protection in Indonesia. By paying attention to phenomenon of failure to protect people's personal data, developments in formation and ratification of PDP Act, to the emergence of various forms of digital crimes against personal data, it's necessary to carry out comprehensive research on PDP Act in order to respond to phenomena and legal needs of society and technological developments that very dynamic.

The latest research has an urgency to find out the development, scope, and potential legal loopholes that can be misused, misinterpreted or misused so as to cause harm to the public in efforts to protect personal data. Apart from that, it is also necessary to explore the importance of existence of the PDP Act as a special legal instrument for society protection in this digital era. Previous research has taken a lot of pictures and explained the urgency of protecting personal data from various perspectives. In general, previous research can be grouped into 5 (five) aspects, namely: ***First,*** research conducted by Yunarti (a) (2019), and Mirna, et al. (2023) which outlines various laws and regulations and basic principles that contain arrangements regarding protecting personal data in Indonesia prior to enactment of PDP Act. The research also contains foundations and factors that drive urgency of establishing PDP Act. ***Second,*** research conducted by Ramadhan & Wijaya (2022) and Tsamara (2021) which explains conception of a personal data protection commission, and a comparison of personal data protection in in other countries and international legal instruments against Indonesia before PDP Act.

Third, research by Afiudin, et al. (2022) and Setiawan, et al. (2020) which examines personal data protection arrangements prior to enactment of PDP Act on certain aspects/fields such as personal data protection related to online loans, e-commerce, and marketplace, as well as other electronic and digital devices. ***Fourth,*** research by Mangesti, et al. (2021) and Marune & Hartanto (2021) which examines personal data protection from a legal ethical perspective, and studies increasing public participation in strengthening personal data protection in general. ***Fifth,*** research by Manurung & Thalib (2022) and Kristanto (2023), who conducted a juridical review and outlined provisions in PDP Act in general and implementation of PDP Act related to legal phenomena in

certain aspects/fields. Both of these studies are descriptive in nature to provide an overview of PDP Act but haven't conducted a critical review of systematic norms.

By taking into account various previous research analyzes and developments, this research uses a different perspective because the research focus is directed at examining development of concept and regulation of PDP Act (including conducting a critical study of norms) and exploring importance of PDP Act to protect Indonesian digital society. This research was conducted to provide a more proportional description and critical analysis of PDP Act in order to complement and enrich literature studies that haven't been carried out much research after enactment of PDP Act. Based on background, main issues in this research are: (1) how is the development and regulation of personal data protection in Indonesia; and (2) what is the importance of PDP Act existence for digital society in Indonesia?

2. Method

This research focuses on examining the development of legal politics and regulation of personal data protection in various laws and regulations that apply systematically as an integrated legal system. It also analyzes and explores the importance of the PDP Act in responding to legal phenomena and developments in society related to personal data protection. This research attempts to provide a description and critical analysis of the importance of PDP Act in a comprehensive systematic description. The data used are in form of: (1) primary data obtained from observations (mass media and social media) and interviews with cyber law and telematics experts, namely: (a) Luluk Awaludin (Lecturer and Researcher at Faculty of Law, University of Bhayangkara Bekasi); (b) Tomy Prihananto (Analyst and Lecturer at Indonesia National Cyber and Code Agency); and (c) Dr. Andi Widiatno (Lecturer at Faculty of Law, Trisakti University); and (2) secondary data obtained from 1945 Constitution of Indonesia, PDP Act, and laws and regulations related to personal data protection, books, journals, and other supporting literature. The research data is processed based on validity and reliability of data to be studied and tested qualitatively using content analysis techniques. To deepen analysis, several perspectives and interpretations of laws are used.

3. Results & Discussion

3.1. Personal Data Protection: Development of Concept, Law, and Legislation in Indonesia

In digital society era, the benefits and economic value of user data for digital devices and services are very high, which has encouraged the behavior of mining personal data for certain purposes. In reality, not all parties are able to process and manage personal data of digital device users according to generate competitive advantage. On this basis, the collection and processing of personal data is very vulnerable to causing interference with a person's privacy. Privacy interventions occur because personal data can easily be arbitrarily transferred, and cause harm to society. In addition, so far, the public doesn't know how the management of their personal data works by digital.

With potentially violations of privacy, in a welfare state perspective, it's necessary to have an active role of state to oversee various activities of processing personal data and provide legal protection for potential misuse of personal data. In Indonesian context, the philosophical foundation of personal data protection is reflected in second precept of the Pancasila which states "just and civilized humanity". This philosophical basis emphasizes that personal data protection is necessary to create justice and form a human civilization that respects other people's personal data. Meanwhile, responsibilities and obligations of state in providing protection for security of personal data are stated in Paragraph IV of the Preamble 1945 Constitution of Indonesia, "Indonesian state government was formed to protect the entire Indonesian nation and all of Indonesia's bloodshed".

Discussions about personal data protection in Indonesia have only begun to be intense in last decade, although the problem of personal data protection in general isn't a new issue. The issue of protecting personal data globally developed in early 2003 in line with emergence of cybercrimes such as pornography, money laundering, hacking, malware (virus), carding crimes, and others. Technological advances have led to emergence of

technology-based crime and made demarcation between private and public space very thin. As a result, personal data becomes vulnerable to being stolen, shared, and misused for purposes that can harm society (Lesmana et.al., 2022). Before the phenomenon of cybercrime and the issue of protecting personal data surfaced, the idea of guaranteeing the right to privacy had been put forward by Samuel D. Warren and Louis D. Brandeis in 1890 as a development of the right to life. Warren and Braindes stated "Privacy is the right to enjoy life and right to be left alone and this development of law was inevitable and demanded legal recognition." There are 5 (five) arguments underlying importance of protecting privacy rights, namely: (Kusnadi & Wijaya, 2021)

1. As an individual, one needs time to be alone.
2. As a social being, a person needs to cover part of his private life to maintain his position at a certain level.
3. In domestic (family) relations, a person fosters marriage and family so that other people don't need to know about these personal relationships.
4. In terms of concept, privacy is a right that stands alone and doesn't depend on other people so that this right will disappear with publication to the public.
5. Violation of a person's right to privacy creates an impact that allows him to suffer losses due to disruption to a person's private life.

Starting from this idea, protection of right to privacy includes the right to feel comfortable in social interactions, and right to confidentiality of data or personal information. In its development, the scope of right to privacy has been expanded to include 4 (four) basic principles, namely: (1) right to privacy for information (collection and processing of personal information); (2) right to privacy for body (physical protection); (3) right to privacy for communication (security and confidentiality of any forms of communication); and (4) right to privacy for territory (Rianarizkiwati, 2022).

Today, the increasing need for privacy rights protection, especially for personal data, is caused by 3 (three) main factors, namely: (1) further development of human rights; (2) technological advances that give rise to cybercrimes, and result in vulnerabilities to personal data security; and (3) global competition in controlling data causes illegal data mining and misuse of public personal data. These conditions are dominant factors that encourage countries to establish regulations that specifically provide personal data protection. Several international documents have initiated and become guidelines for formation of personal data protection regulations, in various countries, both regionally and internationally, including: (Djafar & Santoso, 2019)

1) The OECD'S Privacy Guidelines 1980 and 2013 (revision).
2) European Union General Data Protection Regulation (EU GDPR).
3) UN Guidelines for the Regulation of Computerized Personal Data Files 1995.
4) Asia Pacific Economic Cooperation Privacy Framework 2004.
5) ASEAN Framework on Personal Data Protection.

Meanwhile, until now (2022), 132 of 193 countries has have laws that specifically regulate personal data protection. In particular, countries that are based on democracy place personal data protection as a human right and constitutional right of citizens, such as Portugal, Armenia, Timor Leste, Philippines, Colombia and Argentina, including Indonesia (Mangku, 2021). The following are development of formation of personal data protection regulations in several countries:

Table 2: Personal Data Protection Settings by Countries (Niffari, 2020; Kusnadi & Wijaya, 2021)

Country	Year	Name of Regulation
Europe Union	1984	*Data Protection Act*
	1998	*Data Protection Act 1998*
	2000	*Charter of Fundamental Rights of the European Union*
	2016	*General Data Protection Regulation*
United Stated	1974	*United State Data Privacy Act 1974*
	1988	*Computer Matching and Protection Act of 1988*
Hongkong	1995	*Personal Data Privacy Ordinance of 1995*
Japan	2003	*Personal Information Protection Act No. 57*

Russia	2006	*Federal Law on Personal Data*
South Korea	2011	*Personal Information Protection Act*
Malaysia	2010	*Personal Data Protection Act 2010*
Singapore	2012	*The Personal Data Protection Act No. 26 of 2012*
Philippines	2012	*Data Privacy Act 2012*
Laos	2017	*Law on Electronic Data Protection 2017*
Australia	2018	*Notifiable Data Branches Scheme*
China	2021	*Personal Information Protection Law*
Thailand	2019	*Personal Data Protection Act 2019*
India	2022	*Digital Personal Data Protection Bill 2022*
Indonesia	2022	*Law on Personal Data Protection No.27 of 2022*

As data shown in Table 2 above, Indonesia has just regulated personal data protection in a legal instrument that is specific through PDP Act in 2022. Previously, the arrangements of personal data protection were spread out in various laws and regulations. Several regulations that contain norms regarding personal data protection, prior to the enactment of PDP Act are described in Table 3 as follows:

Table 3: Personal Data Protection Arrangements Prior to PDP Act

Regulation	Chapter	Main Provision	Lack
Banking Act No. 10/1998 and the Amandement	Art. 40 p. (1)	Banks have an obligation to keep information about depositors and their deposits confidential	Doesn't include a description of the type of "information about depositors" which must be kept confidential. In addition, these obligations are sectoral banking affairs
Hospitals Act No 44/2009	Art. 32 letter I, 38, and 44 p. (1)	Patient own right on protection medical data privacy and hospital must save and reject disclose confidential of medical	Explanation of "medical data" or "confidential data/records". only regulated in Regulation of the Minister of Health No. 24/2022 and No. 36/2012 but the criteria for "patient identity" which must be kept confidential aren't further elaborated.
Practice Medical Act No. 29/2004	Art. 47 p. (2), Art. 48 p. (1), and 51 letter c	Doctors are obliged to keep confidential rights related to patients (medical records and medical secrets)	
Health Workers Act No. 36/2014	Art. 58 letter c, 70 p. (4), and 73	Health workers are obliged to store and maintain the health secrets of service recipients	
Nursing Act No. 38/2014	Art. 38 letter e	Users of nursing services have the right to maintain the confidentiality of their health conditions	
Openness Public Information Act No. 14/2008	Art. 2 p. (4) and Art. 17 letter h	This provision guarantees that personal data regarding history, health, finances, intellectual evaluation results, and personal records are exempt from disclosure	There is no definitive definition of personal data, only providing the types of personal data that must be protected.
Administration Population Act No. 23/2006 and the Amandement No. 24/2014	Art. 1 p. (22), Art. 8 p. (1) letter e, Art. 79 p. (1), and Art. 85 p. (3).	The state is obliged to protect, store and maintain correctness and security of personal data and population documents	There are significant differences regarding personal data that must be protected (Art.84) and the regulations aren't comprehensive enough.
Electronic Information dan Transaction Act No. 11/2008 and the Amandement	Art. 16, Art. 26 p. (1), and Art. 32 p. (3).	Overall, this rule contains arrangements to ensure protection against misuse of electronic technology and information	Doesn't contain specific arrangements regarding personal data protection
Trade Act No. 7/2014 and Government	Art. 91 Trade Act, and Art. 2, 33, 58, and	Trading data and information is open, unless otherwise specified. The government regulations	The definition and scope of "personal data" aren't regulated

Regulation concerning Trading Through Electronic Systems	59 Government Regulation	regarding trading through electronic systems contain obligations for business actors to store personal data and set standards for protecting personal data	
Government Regulation No. 71/2019 concerning Implementation of Electronic Systems and Transactions and Regulation of Ministy of Communication dan Informatics No. 20/2016 concerning Personal Data Protection	Art. 1 p. (29) Government Regulation and Art. 1 p. (3) Minister Regulation	This regulation contains a definition of personal data. This rule also explains quite fully the protection of personal data, both in the process of obtaining and collecting, processing and analyzing, storing, and destroying it.	There are different definitions and terms of "personal data" and "individual data". In addition, sanctions are only administrative penalties.

The various laws and regulations that contain norms for obligation to protect personal data that were in effect before PDP Act have several obstacles that impact the implementation of personal data protection, namely:

1) The definition and scope of personal data don't have fixed and clear parameters, so types of personal data that require to be protected become vague and ambiguous.
2) The obligation to provide protection for personal or confidential data is sectoral and sporadic because only applies to certain aspects.
3) Weaknesses of sectoral and sporadic regulation of personal data protection, impact on law enforcement process that isn't optimal, partial, and not systematically integrated. The sanction differentiated in various forms (administrative, criminal and non-sanctioned sanctions) are relatively weak for law enforcement.

Some of weaknesses in sectoral regulations are one of reasons for the need regulations urgency that specifically and comprehensively for personal data protection. In general, the PDP Act contains substance of personal data protection norms which can be described in Table 4 below:

Table 4: Norm Systematics of PDP Act (Yuniarti (b), 2022)

Indicator	Chapter	Explanation
General Terms	Art. 1 and 2	Definition of Personal Data: - Data about natural persons. - Identified or can be identified separately or combined with other information directly or indirectly. - Through electronic or non-electronic systems.
Principle	Art. 3	- Principles of protection, legal certainty, public interest, expediency, prudence, balance, accountability and confidentiality.
Types of Personal Data	Art. 4	- Specific Personal Data: (a) Health data and information; (b) Biometric data; (c) Genetic data; (d) Crime records; (e) Child data; (f) Personal financial data; (g) Other data according to the provisions. - General Personal Data: (a) Full Name; (b) Gender; (c) Citizenship; (d) Religion; (e) Marital Status; (f) Other Personal Data to identify a person.
Personal Data Subject Rights	Art. 5-15	- Right to information; to complete, update and correct errors or inaccuracies; to gain access; to end processing, delete, or destroy; to withdraw consent; to submit objections to automatic decision-making; to delay or limit data processing; to sue and receive compensation; and to use and

		send personal data from and to personal data controllers.
Personal Data Controller	Art. 1 and 19	- Individuals. - Public bodies. - International organizations.
Scope of Personal Data Protection Processing	Art. 16 – 18	- Acquisition and collection. - Processing and analysis. - Storage. - Fixes and updates. - Appearance, announcement, transfer or disclosure. - Deletion or destruction.
Basis for Personal Data Processing	Art. 20 (2)	- Explicit valid consent. - Fulfilment of agreement obligations. - Fulfilment of legal obligations. - On the basis of public interest, public service, or exercise of authority. - Fulfilment of other legitimate interests.
Obligations of Personal Data Controllers and Processors	Art. 19-54	- General requirements. - Obligations of data controllers. - Responsibilities of data processors. - Official or officer of personal data protection.
Transfer of Personal Data	Art. 55-56	- Within and outside Indonesian Jurisdiction.
Sanctions Arrangement	Art. 57, 65, and 67-72	- Administrative sanction. - Criminal penalties.
PDP Agency	Art. 58-61	- Duties and Authorities
International Cooperation	Art. 62	- Governments of other countries. - International organizations
Public Participation	Art. 63	- Directly and indirectly. - Through education, training, advocacy, outreach, and/or supervision.
Dispute resolution	Art. 64	- Courts, arbitration, and other dispute resolution institutions
Prohibition of Use of Personal Data	Art. 65	- Prohibition to unlawfully collect, disclose, use, or falsify personal data that does not belong to them.
Transitional and Closing Provisions	Art. 74-76	- Adjustment period of 2 (two) years. - Other regulations that are not contradictory still apply.

From a normative perspective, provisions in PDP Act have several positive aspects for efforts to protect digital society in Indonesia, namely:

1) The PDP Act was formed and formulated quite comprehensively and sufficiently to complement deficiencies or weaknesses of previous regulations.
2) The PDP Act provides clarity regarding definition and scope of personal data, rights and principle of personal data protection, responsibilities of controllers and processors, law enforcement procedures and dispute settlement, PDP agency, and existence of officials or officers of personal data protection.
3) The PDP Act provides an alternative as a basis for processing personal data as stipulated in Article 20 paragraph (2) letters a-f which is a cumulative alternative. With this format, the law doesn't place an excessive burden on controllers and processors of personal data to use and process the data (Ramli, 2023).

Even the formation of PDP Act has a positive image for efforts to protect digital society in Indonesia, after carrying out a critical normative review of PDP Act using an a contrario paradigm, it can be found notes that need to be prevented or reviewed so that enactment of PDP Act doesn't have a negative impact, that is: (Djafar, 2022; Awaludin, 2023)

1) Placement of crime records and child data categorized as specific personal data that must be protected doesn't have a rational juridical basis because: (a) related to crime records it can be used by the public as considerations that will affect social acceptance or social reintegration); and (b) regarding child data isn't yet specific because for certain parts are generally used for administrative or procedural requirements.

2) The PDP Act emphasizes full responsibility for personal data protection to controllers and processors of personal data. These obligations and responsibilities have the potential to be neglected if the norms aren't immediately complemented by the existence of a PDP agency.
3) The PDP agency, as sole organ of personal data protection, doesn't have law enforcement authority to resolve disputes over personal data protection violations. In addition, the appointment of an institution that is given the authority to supervise personal data protection hasn't been confirmed so that the effectiveness of implementation of PDP Act can't be implemented. This will have an effect if: (a) the establishment of a new institution creates a burden on the state budget; or (b) attached to or assigned to an existing institution, it is necessary to readjust or restructure the organization (Luluk, 2023).
4) There is a potential for injustice/inequality in law enforcement between the public and private sectors. It is only possible for the public sector to be subject to administrative sanctions (Art. 57 p. (2)), while private sector, in addition to administrative sanctions, can also be subject to administrative fines of 2% of annual income (Art. 57 p. (3) and its explanation) and criminal threats (Art 57, 67-70). Andi Widiatno emphasized that the 2% fine also applies to public institutions because it will affect performance appraisal and budget management capabilities of government institutions/agencies.
5) Exceptions to the obligations of processors and controllers of personal data for purposes stipulated in Art. 50 have potential to create loopholes for irregularities to misuse personal data. The state can use this reason to obtain personal data from controllers and processors for non-legal or extra-legal purposes.
6) With regard to issue of sentencing, practice in Indonesia shows the settlement of cases prioritizes corporal punishment. While protecting personal data, data owners often experience material losses. In this case compensation and other actions (account recovery, localizing data leaks that may occur, and others) aren't an option because the conversion of value of loss (personal data leakage) doesn't yet have a reference.
7) Data transfer involving data managers abroad, even though it has been regulated, has practical/technical problems because it requires Mutual Legal Assistance (MLA) which complicates and makes handling data protection increasingly complex and time-consuming. The government also needs to know about countries that have the potential to have personal data of Indonesian citizens to open or move their data centers to Indonesia, which in practice isn't easy to do.
8) The setting for an adjustment (transition) period of 2 (two) years in Art. 74 is less rational transition time due to several reasons, namely: (1) complexity of regulations synchronization; (2) preparation of implementing regulations; (3) establishment of a PDP agency; (4) internal reform of personal data controllers and processors; and (5) socialization and advocacy for regulations. This is important because it will have consequences for the public and legal obligations stipulated by PDP Act haven't been fulfilled.

Based on that analysis, normatively there is still disgrace from PDP Act. This at least includes gaps for misuse and abuse of personal data, potential for neglect and neglect of legal obligations by processors and controllers of personal data, conflicts of interest and injustice in law enforcement, to norms that require further regulation. The dependence of the PDP Act on implementing regulations is still very large to prevent the occurrence of elements that bias implementation of the law Andi Widiatno explain that PDP Act still requires guidelines or regulations at a more technical, procedural, and implemented level. Example: regulations related to cooperation and interconnection mechanisms between countries, complaint mechanisms, presidential regulations regarding PDP agency. The detail and quality depth of implementing regulations will determine effectiveness of PDP Act in providing personal data protection for Indonesia digital society.

3.2. The Importance of the Personal Data Protection Act for Protection of the Digital Society in Indonesia

As described in previous section that PDP Act provides the main foundation for general comprehensive personal data protection nationally to protect the public from negative impacts of technological developments. The next question is "is it still important and relevant to protect personal data in digital society era?". This can't be separated from the fact that personal data is distributed freely and widely on various digital platforms, both by irresponsible parties, digital companies, the government, and even by the owner (personal data) himself. In this digital era, the state and society unconsciously exist and live in a cycle of global supervision and control. The consequence is that personal data is very easily exposed and accessed in cyberspace, whether uploaded

intentionally or misused (Anonymous (a), 2023). In general, misuse of personal data can be caused by mining and illegal cyber activities. It can be proven that the intensity of cyber-attacks which are always increasing and getting more massive has occurred even after enactment of PDP Act. Safenet data shows that in 2022 there were 302 digital security incidents (54% increase from 2021 of 193 incidents). (Anonymous (b), 2023). While the National Cyber and Code Agency (BSSN) noted that in the period January-July 2023, there were 204,686,669 detections of cyber-attacks which included 53.54% malware activity, 29.7% Trojan activity, and 6.84% leaked data or information (Dewi, 2023).

This condition is in accordance with Zuboff's estimation which illustrates that in digitalization era, digital society is directed at the gateway to a new order of life that negates privacy. Public personal data that is confidential and private is easily exposed and exposed by other parties (Sudibyo (a), 2021). By entering a global digital system network, society has become an object of personal data mining as well as an object of unconscious monitoring and control. The practice of mining personal data occurs latently, automatically and continuously to produce very detailed user profiles for the benefit of certain parties. This condition is called “Panopticon Society”. Panopticon society is a term used to describe a society that lives in a world full of surveillance and control over personal data. In this era, discussions about personal data and privacy rights are less or no longer relevant (Sudibyo (b), 2023). In panopticon society era there is no guarantee that digital companies are able to provide protection for the personal data of users of digital platforms. These digital companies also utilize their users' personal data to predict and influence user behavior for the benefit of the digital business economy to practical political needs, such as formulating advertisements, product offers, being traded to monetizing personal data. This phenomenon, according to Schiller and Zuboff, has occurred as an exclusive violation because they have penetrated private spaces without permission. This is exacerbated by the absence of other parties who have power to intervene in behavior that violates propriety (Sudibyo (a), 2021).

In addition to what was stated by Schiller and Zuboff, accessibility to personal data which is very vulnerable in digital society era which can have a detrimental impact on society is also influenced by various factors, including: (Sugihartati, 2023; Attidhira & Permana, 2022)

1) The shrewdness of perpetrators of theft or hacking of personal data to take advantage of the victim's personal condition by mapping victim's social network and environment to carry out information espionage and manipulation.
2) The ability of privacy literacy and digital literacy is low which causes people to be easily deceived. Research by Hootsuite and We Are Social in 2021 estimates that no more than 25% of internet and social media users are digital media literate. Digital device users tend to be driven by a great desire for curiosity but low caution.
3) The low quality of Indonesian cyber facilities. Analysis of National Cyber Security Index (NCSI) in 2022 shows that Indonesia's cybersecurity ranks 83 out of 160 countries globally and sixth among ASEAN member countries (38.96/100), far behind Malaysia (79.22), Singapore (71.43), and Thailand (64.9) (Yuniarto, 2022). The low level of cyber security is related to indicators of the rule of law, the presence of government agencies, cyber cooperation, and public evidence.
4) Inadequate law enforcement capacity against cyber threats and personal data protection. BSSN stated that compliance and response of ministries and government agencies in following up cybersecurity infection efforts was still low. In 2021, out of 1,261 cyber threat notifications sent to ministries and government agencies (an increase in 2022 by 1,433 notifications), only 6% or 72 notifications were responded to. The Executive Director of the Institute for Community Studies and Advocacy (ELSAM), Wahyudi Djafar stated that cyber-attacks that occurred in ministries and institutions had an impact on leakage of citizens' personal data (Anonymous (c), 2023.

The various fundamental loopholes that cause various violations of personal data of digital device users, even though digital society era is marked by the loss of demarcation between public and private spheres, it will eventually cause losses, both physical, material and psychological. In this case, existence of PDP Act has an important meaning in providing protection for digital community in Indonesia to prevent losses arising from the use of digital device. The significance of PDP Act can be traced in 3 (three) aspects which, according to Soerjono Soekanto, also influenced the enactment of PDP Act), namely: (Sitabuana, 2017)

1) The philosophical aspect, that the PDP Act seeks to provide protection for Indonesian nation from the dangers of hacking, theft, misuse and dissemination of personal data against law. The Second and Third Precepts of Pancasila provide guidelines and encourage the need for a legal basis to provide security guarantees for personal data of Indonesian citizens and to foster public awareness of recognition and respect for other personal data owner (being a civilized human being).
2) The juridical aspect, that PDP Act was born as a form of state responsibility to provide protection for Indonesian nation as contained in Paragraph IV of Preamble and Art. 28G p. (1) of 1945 Constitution of Indonesia. The nature and construction of 1945 Constitution norm are adaptive and futuristic, it has been proven capable of being realized and manifested in PDP Act as a means of protecting the threats to constitutional rights of personal data owner/subject. Tomy Prihananto (2023) added, the legal formality of PDP Act has answered the political will of Indonesian nation for an urgent and non-delayed need for national interests.
3) The sociological aspect, that PDP Act was born on basis of a legal need in society to create order and progress in a digital society. Therefore, the importance of PDP Act in a sociological aspect includes 3 (three) things, namely: (a) guaranteeing protection, security and order in a digital society in relation to processing of personal data; (b) fostering and increasing public's sense of trust in providing personal data without misusing or violating their personal rights; and (c) contribute to smooth running and growth of the digital economy.

The importance of PDP Act in a more practical and implementable sense as stated by the Director General of Informatics Applications of the Ministry of Communication and Informatics, Semuel Abrijani Pangarepan, includes: (Rizki, 2022)

1) Means of providing protection for the fundamental rights of society.
2) A comprehensive legal umbrella to encourage reform of personal data processing practices.
3) Responding to the needs and demands of public law, especially consumers.
4) Promote responsible innovation and respect for human rights from a personal data protection perspective.
5) Development of new ecosystems and talents in protecting personal data and strengthening Indonesia's leadership in governance and global relations.
6) Growing public habits and awareness in personal data protection.

Meanwhile, Andi Widiatno (2023) gave an explanation of importance of PDP Act from a juridical aspect that the presence of PDP Act caught up with Indonesian people from other countries that had previously owned and provided personal data protection, complemented and perfected the gaps in legal construction of existing laws and regulations previously applied, and law enforcement more optimal and complete, especially implementation of sanctions (administrative, civil, and criminal penalties).

The meaning of PDP Act existence for digital community in Indonesia as previously explained will only provide benefits if it can be implemented and applied properly and thoroughly to protect the interests of the community. For this reason, it is important to identify the factors that influence the operation of the PDP Act based on Soerjono Soekanto's opinion (Soekanto, 2007; Satwiko, 2021), namely: ***First,*** legal factors (legal substance) through the integration of personal data protection laws in various laws and regulations. This is necessary to ensure that there is no legal vacuum and more complex arrangements, both in the material and procedural context. ***Second,*** law enforcement factors (legal structure). In this case the government must guarantee the implementation of protection of personal data by establishing and implementing policies, promotion and education, advocacy, and supervision, also set up supervisory and regulatory units on a small scale. Law enforcement officials need to follow and understand the flow of changing times and technology development, so they need to receive special training and education to increase their capacity and competence in dealing with and preventing cases of violations of personal data protection. ***Third,*** the factor of facilities and amenities. To increase effectiveness of personal data protection, the availability of qualified technological facilities and devices is needed. So far, relatively complete and modern cyber facilities have tended to be concentrated in big and strategic cities. In addition, in the event of a breach of personal data protection, channels and facilities that are affordable and easy to access for victims must be provided and communicated to the public.

Fourth, the society factor. The problem that often occurs is the low public awareness of the importance of protecting personal data. Therefore, socialization and education to improve digital literacy must be carried out massively. Collaborative governance needs to be encouraged to accelerate personal data protection goals so that society can benefit from digital developments and digitization processes. The state in this context is responsible for providing equal and equitable education or knowledge for every citizen. ***Fifth,*** cultural factors (legal culture). This can be done by providing legal outreach and training to the community, especially those who are left behind by technological advances. This process can be carried out in 2 (two) forms, namely: (1) formal socialization including socialization formed by the government and the community through institutions that have a special task in disseminating values, norms and the roles of community in ensuring personal data protection; and (2) informal socialization, including socialization to instill mutual respect for personal data and right to privacy among community members (Marune, 2021). To fight hegemony and potential theft of personal data, it is necessary to develop what is called deleuze as a control society, namely a society that is no longer part of being regulated and controlled by digital systems and technology but becomes a society that is not trapped in the manipulation of desires and pleasures offered by digital technology.

Andi Widiatno (2023) provided guidance regarding the steps to maximize the potential for personal data protection, especially after the PDP Act, namely: (1) an educational aspect approach that is provided to all stakeholders and interested parties through an education and outreach process of increasing digital literacy and cybersecurity literacy. This stage is the basis for the public to have awareness in protecting their personal data; (2) a system approach charged to personal data processors and controllers (electronic system operators) to provide reliable software and hardware; and (3) a legal approach as the final step in personal data protection in the event of violations that are detrimental to the interests of personal data protection (generally the losses incurred are material). Therefore, the transition or transition period becomes a momentum for all stakeholders to accelerate and optimize efforts to make the law effective. This is done solely to provide and increase public confidence in the capacity of the state to guarantee and ensure the protection of the personal data of all its citizens as mandated by the 1945 Constitution of Indonesia.

4. Conclusion

Various cases of leakage, hacking, abuse leading to cybercrimes have caused a lot of harm to Indonesian nation. This phenomenon is related to the development of industrial era and digital society, which underlined the rise of data mining and ownership as a commercial commodity. The idea of personal data protection developed from embryo of right to privacy which was then formulated and standardized in various legal documents, both national, regional and international. Today, various countries have domestic regulations to provide protection for personal data of their citizens. In Indonesia, the obligation to provide protection (personal data) is a constitutional mandate based on 1945 Constitution of Indonesia and Indonesian government has issued regulations of personal data protection. Before PDP Act enactment, personal data protection arrangements are scattered in various laws and regulations that are sporadic and sectoral that impact to law enforcement aren't optimal. With enactment of PDP Act, it will complement other regulations. The PDP Act normatively has a positive impact because it provides clarity regarding the scope of personal data generally and systematically. However, several issues that have the potential to add the complexity of protecting personal data include issues of independence and authority of PDP agency, overcriminalization and discrimination in the application of the law, potentially abuse of law, irrational transition times, and dependence on implementing regulations.

Apart from dynamics of normative regulation, the formation of PDP Act gives important meaning to the protection of digital society in Indonesia, namely: (1) fulfilling constitutional responsibility and obligation to provide protection for all citizens as mandated by 1945 Constitution of Indonesia; (2) responding to legal needs, especially in digital era to guarantee order and security for community; (3) foster public trust in the state to provide reliable protection of people's personal data; (4) encouraging digital economic growth in Indonesia; (5) catching up with laws regarding the protection of personal data in global relations; and (6) fostering public awareness and culture of recognition and respect for personal data. Therefore, in order for the goals and implementation of personal data protection to be correlated and coherent, need to be done, namely:

1. Synchronize laws and regulations and accelerate the process of forming of implementing regulations for the

PDP Act.
2. Conduct advocacy, assistance, and outreach, both formal and informal to all stakeholders, especially the general public.
3. Increase the capacity and qualifications of officials, processors, controllers and law enforcement officials to ensure reliable and responsible personal data protection through a system (technology) approach.

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WAQF Water Management Development Law for Countries in the African Continent

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Abstract
Insufficient water availability will threaten the survival of humans in a region. Countries in Africa are known to be barren and have extremely hot climates. The ongoing clean water crisis has taken a huge toll. The Indonesian government in collaboration with all countries should have a role in unraveling this problem. One of the solutions offered is legal protection and the development of clean water infrastructure and facilities by building waqf wells. This research intends to examine the management of waqf wells, the condition of water scarcity in African countries, and how the role of the government and waqf institutions in Indonesia and around the world to overcome the scarcity of clean water in Africa. The research method used is qualitative. As a result, we found one humanitarian agency (Aksi Cepat Tanggap), which is quite active in implementing the waqf well program in several countries in Africa. In general, the program has received a positive response from the beneficiaries of the waqf wells.

Keywords: Water Crisis, Africa, WAQF Wells, Government

1. Introduction

The legislative mandate of the Department of Water and Sanitation (DWS) is to ensure that the nation's water resources are sustainably protected, managed, used, developed, preserved, and controlled for the benefit of all, people and the environment. DWS is responsible for developing a knowledge base and implementing effective integrated planning policies, procedures, and strategies for both water resources and services. This includes meeting water-related legal and policy requirements, including constitutional requirements, that are essential to ensuring access to adequate food and water, transforming economies, and alleviating poverty. The strategic goals of DWS are:

1) Ensure efficient water use by helping municipalities implement ongoing water conservation and demand management programs;
2) Maintain a fair and reliable water supply by developing new conditioning strategies and updating existing strategies for Richards Bay water management areas by March 2016, Limpopo North by March

2017 and Mahikeng before March 2018;

3) Generate information to be used to make decisions about water management programs by improving water resource monitoring through the development of a hydrographic water monitoring network that allows all existing water monitoring networks prior to March 2017.
4) Ensure water resource protection by developing an integrated water quality management strategy to define resource quality targets for 11 river systems by March 2018.

The DWS has published draft regulations requiring restrictions on water extraction for irrigation purposes, monitoring, measuring, and recording for public comment. Under the National Water Act 1998 (Act 36 of 1998), the Minister of Water and Sanitation must enact regulations under Section 26 of the Act that require the extraction of water for crop irrigation to be restricted, monitored, measured, and recorded. Regulations limit toll rates, regulate procedures, empower authorities, and define offenses. These regulations are necessary to effectively monitor and enforce compliance with water licensing limits and conditions. South Africa's Constitution and Bill of Rights stipulate a basic human right to have access to adequate water and a safe and healthy environment. Governments exercise these rights through the DWS, supported by specific legislation:

1) The National Water Act 1998 ensures that South Africa's water resources are protected, used, developed, conserved, managed, and controlled in a sustainable and equitable manner for the benefit of all.
2) The Water Service Act 1997 (Act 108 of 1997) provides for the legal obligation of municipal governments, as water service regulators, to provide water and sanitation in accordance with local regulations, standards, and national standards. It also enshrines water management boards as key water service providers and gives executive authority and responsibility to the Minister of Water and Sanitation to support and build capacity for municipal governments in managing their own affairs, exercising their powers, and performing their duties. The Water Services Act 1997 makes the Minister obligated to maintain the national water service information system and to oversee the operations of all water service organizations.
3) The Water Research Act of 1971 (Act 34 of 1971) regulates the promotion of water-related research through the Water Research Commission (WRC) and water research (South African Government, 2021)
4) The National Environmental Management Act (NEMA) of 1998 (Act 107 of 1998) provides for collaborative environmental management by establishing decision-making principles on matters affecting the environment, institutions that promote cooperative governance, and procedures for coordinating environmental functions performed by public agencies. The National Water Policy is based on three basic principles of water resource management: equitable, environmental sustainability, and efficiency.
5) Sanitation service delivery is governed by the Water Service Policy Framework (2003) and the Water Service Act 1997. All water users do not receive water from service providers or local governments. local authority, water board, irrigation board, governmental water system or other bulk supplier, and those who use water for irrigation, mining, industrial, livestock, or authorized purposes Generally, there is a legal obligation to register.

This includes the use of surface water and groundwater. Other uses that must be registered include diverting streams, dumping waste, or storing water containing waste, including any person or body that stores water for any purpose from the runoff. Surface, groundwater, or fountain flows greater than 10,000 m3, or when the water area at an adequate supply exceeds one hectare (ha) of the total land area owned or occupied by such an individual or entity and without permits or authorizations from local authorities and other bulk suppliers with their water and wastewater treatment facilities, control activities such as waste irrigation, water power generation, atmospheric regulation, or aquifer recharge.

An assessment of the environmental requirements of the relevant stream is carried out prior to licensing. To promote equitable and sustainable management of water resources, the Department has developed and continues to update a series of water management strategies (South African Yearbook, 2015).

1.1 Transformation

In line with the transition, DWS prepared in mid-2016 to finalize the National Water and Sanitation Bill, which would pass the congressional process and be released for public consultation.

The goal of the bill is to fundamentally transform the water and sanitation sector along the value chain and create an enabling environment to provide basic water and sanitation services to historically disadvantaged communities. history, thereby improving accessibility, equity, and sustainability. The department will also ensure that the establishment of the Water and Sanitation Infrastructure Authority is sound and continue to strengthen and streamline the water panels to establish wall water panels.

The legal framework for water permits has been revised to accommodate an integrated licensing approach. In addition, the regulation on measuring water for irrigation purposes has also been published in the Official Gazette for public comment and is expected to be finalized in 2016.

1.2 Policies and Strategies

NWRS2 defines a vision and strategic actions for effective water management. These include water security, environmental degradation, and resource pollution. NWRS2 describes the key challenges, limitations, and opportunities in water resource management and proposes new approaches to ensure a collective and adequate response for the benefit of all people in South Africa. This strategy aims to realize and achieve an inclusive, sustainable, and equitable economy. NWRS2 ensures that the management of national water resources contributes to the achievement of South Africa's growth, development, and socioeconomic priorities in an equitable and sustainable manner over the next 5 to 10 years.

The strategy also meets the priorities set by the government in the National Development Plan (NDP) and the National Water Act 1998 to support sustainable development. It revolves around three main goals: Water supports development and reduces poverty and inequality. This strategy acknowledges that water distribution has not been uniform in the past and favors certain segments of the population.

Therefore, the aim is to correct past imbalances in water allocation. Water contributes to the economy and creates jobs. Water is protected, used, developed, conserved, managed, and controlled in a sustainable and equitable manner. NWRS2 also focuses on water conservation and water demand management as key priorities. The WfGD framework highlights the relationship between water availability and the many forms of economic activity that depend on available water supplies at specific quality levels.

The ministry's view is that the country's economic growth goal cannot be achieved at the expense of the ecological sustainability of water resources or the satisfaction of people's needs. It aspires to meet the needs of different economic sectors, and this is best achieved when water supply and the impact of water use are considered in the planning process. Rather than being a supplement or a complementary solution, the ministry's view is that water needs should be mainstreamed and central to all planning decisions in the public and private sectors. For water to support economic growth without compromising basic needs or ecological sustainability, fully integrated strategic planning is required. Although the WfGD framework was approved by the Cabinet, it was never published in the Official Gazette. However, the revised NWRS2 incorporated aspects of WfGD related to water resource management as a core strategy.

As a country with the largest Muslim population in the world, Indonesia certainly has a strategic role in helping countries in Africa. There is great potential that this nation has in mobilizing the solidarity of Muslims to distribute aid. In addition, to aid in the form of basic necessities, medicines, clothing, and so on, the provision of clean water is the most fundamental need to be realized on a massive scale, because of its sustainable impact. One of the ways to provide clean water is by building wells.

The construction of wells can be one of the productive waqf programs. Waqf is one of the instruments in Islamic economics as a means for people to spend some of their wealth in fulfilling infrastructure needs, such as educational, health, social, and other facilities. The waqf well program in African countries affected by water scarcity is one of the solutions to overcome the problem. Because they are mostly poor countries, of course, external assistance is very much needed.

In Indonesia itself, there are many Zakat, Infaq, Sadaqah, and Waqf (Ziswaf) institutions engaged in social, economic, and humanitarian fields (Munir, 2015). This institution collects donations to create programs to help ease the burden of Muslims who are experiencing difficulties. One of them is the construction of waqf wells to help supply clean water to countries in Africa. It is hoped that water scarcity will no longer occur, people can fulfill their needs live healthier, and avoid various diseases due to lack of clean water.

Based on the background above, the focus of study in this paper are: (1) How is the management of waqf wells; (2) How is the condition of clean water scarcity in African countries; (3) How is the role of waqf institutions in Indonesia in helping to handle clean water scarcity in African countries? In answering these research questions, a descriptive qualitative method was used. Researchers conducted a literature review related to the research topic and traced information through online media to strengthen the data used. The data was then processed analyzed and presented to find the facts of what actually happened.

2. Method

Qualitative research is a means of discovering and understanding the meaning that individuals or groups attribute to a social or human problem. The research process includes emerging questions and procedures. Data is usually collected within the scope of the participant. Data analysis is built inductively from specifics to general themes. and the researcher makes interpretations of the meaning of the data. The final report is written with a flexible structure. Participants in this form of inquiry support a research view that celebrates an inductive style, with a focus on individual meaning. and the importance of calculating the complexity of a situation (Creswell. 2013). Information provider:

1) Ministry of Religious Affairs of the Republic of Indonesia
2) Ministry of Foreign Affairs of the Republic of Indonesia
3) Ministry of Law and Human Rights of the Republic of Indonesia
4) Humanitarian organizations (Aksi Cepat Tanggap)
5) South African government

3. Results and Discussion

3.1 Waqf Well Management

Etymologically, Waqf or Wacf comes from the word wakafa which means to hold, stop, stay in place, or remain standing. The word Wakafa - Yaqifu - Waqfan is the same as Habasa - Yahbisu - Tahbisan. The word al-Waqf in Arabic contains several meanings, namely holding back, holding property to be endowed, and not transferred. As for the term, fiqh experts have various views on defining waqf.

The Hanifah school is of the opinion that waqf is holding an object that, according to the law, still belongs to the waqif (waqf giver) in order to use its benefits for good. This means that the ownership of the waqf asset is still held by the waqif, even though he is allowed to withdraw it or sell it. If the waqif dies, the property becomes an inheritance for his heirs. In other words, what is waqfed is actually the good benefits of the waqf property.

Meanwhile, the Maliki Mazhab is of the view that the waqif does not fully release the waqf property to the mustahiq (waqf recipient). However, the waqif is prevented from taking any action that might dispose of his ownership to another person. The waqif is obliged to donate the benefits and may not withdraw his waqf during the contract. Therefore, the waqif previously made a waqf contract for a certain time according to his wishes.

Meanwhile, the Shafi'i and Ahmad bin Hambal are of the same view that waqf is the complete relinquishment of the waqif's property to the mustahiq to be used as intended. The waqif no longer has rights to the waqfed property. If the waqif dies, then the waqf property can no longer be inherited by his heirs. Another school of thought differs in terms of the ownership of the waqf property, in that the mustahiq does not have the right to sell or grant it.

There are many proofs of the importance of giving charity or waqf as a way to get rewards from Allah, both in the Qur'an and the Prophet's Hadith. The evidence contained in the Qur'an, among others:

1) The command to spend some of the wealth in the way of Allah, in Q.S Al Baqarah [2]: 267 which means "O you who believe! Spend (in the way of Allah) some of the fruits of your labor, and some of what We bring forth from the earth for you". Tafsir (Ministry of Religious Affairs of the Republic of Indonesia 2013) explains that believers will undoubtedly spend their property obtained from halal businesses, whether in the form of money, food, fruit, or livestock. Alms obtained from haram acts will not be accepted as good deeds by Allah SWT. Spending property is a form of gratitude for the gift of property given by Allah SWT.
2) Get perfect virtue if you spend some of the property, in Q.S. Ali Imran [3]: 92 which means "You will never reach the (perfect) virtue before you spend some of what you love". This verse explains that the property and infaq issued should be the goods we love in order to obtain the perfect virtue.
3) The rewards of those who spend their wealth in the way of Allah, in Q.S. Al Baqarah [2]: 261 which means "The parable (of the spending by) those who spend their wealth in the way of Allah is like a seed that grows seven spikelets. In each ear a hundred seeds. Allah multiplies the reward for whomsoever He wills, and Allah is All-Wide (His bounty) and All-Knowing". In this verse, Allah, the Almighty, illustrates how great the reward is for those who spend their wealth. The parable of plant seeds shows that a person's infaq will grow fertile and produce very large grains.

According to (Usman 2015) in general, hadith reports about waqf can be used as evidence for the lawfulness of waqf (dalil al-masyru'iyyah). Something that has been practiced and approved by the Prophet at least gives the law that an action can be done. Because in fact, the Messenger of Allah would not be able to do and allow an act that is prohibited in religion. The prophet's traditions relating to waqf are:

1) Hadith narrated from Ibn 'Umar ra, that 'Umar Ibn Khattab acquired land (garden) in Khaibar, then he came to the Prophet, saying, "O Messenger of Allah, I acquired land that I have never acquired better property for me than this land, so what do you command (to me) about it?". The Prophet replied, "If you wish, you keep the principal and give it in charity". Ibn 'Umar said, "So 'Umar gave the land in charity (on condition) that it was not sold, not given away, and not inherited, namely to the poor, relatives, riqab (slave labourers), sabilillah (the righteous), guests and Ibnu Sabil (the unfortunate). There is no sin on the one who manages it to eat from it in a reasonable manner or to feed a friend, without taking it as property.
2) Hadith narrated by Imam Muslim from Abu Hurairah. The text of the Hadith is: "When a man dies, his deeds are cut off except from three sources: charity (waqf), the knowledge that can be benefited, and a righteous child who prays for him" (H.R Muslim).
3) Hadith narrated by Ibn Umar (may Allah be pleased with him), who said: "Umar ra. got a piece of land in Khaibar then he went to the Prophet to ask for guidance on its utilization. Umar said: O Messenger of Allah, I got a piece of land in Khaibar that I have never got any other property that is more valuable. from him. What is your advice on this matter? He said: If you like, you can endow the asset and give charity with the proceeds. So Umar gave in charity with the proceeds on the basis that his assets were not to be sold, bought, inherited, or given away. Umar gave charity to the poor, relatives, free slaves, jihad in the cause of Allah, ibnu sabil, and guests. There is no sin on the one who manages it to eat some of its produce in a good way or to feed a friend without keeping it" (Sahih Muslim No. 3085).

Waqf is divided into 2 types based on its designation, including 1) expert waqf or dzurri, which is waqf intended for a specific person, whether the waqif's family or not. The advantage of this waqf is that the waqif gets the reward of waqf and can strengthen the relationship between families. However, this type of waqf will make it

difficult for the heirs to distribute it. In its development, expert waqf began to be considered less beneficial for public welfare because waqf assets are managed by experts and are less productive; 2) khairi waqf, which is waqf that is expressly for the benefit of religion and public virtue. This waqf is usually designated to build mosques, schools, hospitals, bridges, and other public facilities (Nissa, 2017).

In terms of its use, khairi waqf has more benefits than expert waqf. It is not limited to the parties who benefit from the facilities built and allows for the development of the facilities built. Such as the construction of a mosque, school, or hospital, then the management can be done for the general public. Or the construction of a well to be accessed by all people who are free to take water. Productive waqf empowerment is of course very social in dimension (Kasdi, 2014).

Waqf management consists of the nazir as the waqf manager, the waqf management system, and its accountability. In our society, waqf is generally managed by individuals. As for those that are professionally managed by institutions or organizations that have legal entities, there are still very few. However, compared to individual waqf nazirs, it turns out that waqf management based on legal entities or organizations has a much better development in the future (Kasdi, 2017).

Waqf can be done by handing over movable or immovable property. For the sake of practicality, waqf can be done in cash. Cash waqf allows the nazir to manage it widely and is not only limited to the establishment of mosques. Although not yet familiar, cash waqf can make a real contribution to the economy of the target community (Dewi Sri Indriati 2017). Cash waqf that has been accumulated can be used, for example, for the provision of rice fields managed by the community whose yields are used to meet food needs, interest-free business capital that can be used on an ongoing basis for people who have businesses, and the provision of breeding livestock, whose puppies can be distributed to the community for farming (Director General of Islamic Guidance and Hajj Organization, 2003).

Economically productive waqf will provide benefits that can be felt continuously by the general public. Therefore, waqf assets, which can be in the form of land, must be managed properly and in accordance with the needs of the surrounding community. Several principles must be considered in its management, namely the principles of economic welfare and general welfare, both concerning economic needs, moral improvement, religious education, and so on. Thus, waqf will be productive if it is beneficial and can improve the welfare of the general public. For example, the construction of waqf wells in areas where clean water sources are scarce (Agus Purnomo and Luthfi Hakim 2019).

It is narrated in history that Uthman bin Affan once bought a well as a waqf for the benefit of the people. At that time, the city of Medina was hit by a very long drought, clean water scarcity occurred, and the wells owned by residents dried up. Except for a well-owned Jew named Ruumah, which is now located next to the Qiblatain Mosque. Faced with difficulties like this, Ruumah then charged people who wanted to take water from his well. Uthman came to bid for the well at a high price, but he refused. Uthman also took the initiative to bid again at an even higher price with the condition that the ownership of the well was alternating. One day belonged to Uthman and the next day belonged to the Jews, so ownership changed every day. Finally, Ruumah agreed.

Uthman also invited residents to take unlimited water for free and advised each family to take a two-day supply. When the next day came, there were no more people who came to buy and take water. Over time, Ruumah finally sold his well in full to Uthman. For the benefit of many people, the well was donated to the public. This story inspires us to realize the immense benefits of waqf for the benefit of the general public.

The management of waqf assets by building wells as a source of clean water is very targeted. Areas that experience water scarcity can certainly be a source of livelihood for the surrounding community. With the need for clean water fulfilled, the community's economy will also revolve because people will no longer be preoccupied with finding and fetching water in distant places. Crops and livestock will grow and thrive well.

There are 2 (two) types of waqf well management, depending on the contract of the waqif. Whether the waqf well is an expert waqf or a khairi waqf. If it is expert waqf, then usually the waqf well will be made for one family only on the private land of the waqf recipient. However, if the type of waqf is khairi, the waqf well will be built on waqf land that is intended for the general public. Waqf wells for the general public are usually coupled with public facilities such as bathrooms, water closets, ablution places if the location is close to a mosque, and other supporting facilities such as pumping machines and reservoirs.

3.2 Clean Water Scarcity Conditions in African Countries

Africa is the second largest continent in the world after Asia. The area is 30,224,050 km2. Astronomically, it is located at a latitude between 37o21o North latitude (LU) to 34o South latitude (LS). Then, in longitude, it is located between 51o24o East Longitude (BT) to 17o West Longitude (BB). The borders of the African continent are to the north bordering the Mediterranean Sea and the Red Sea; to the east bordering the Indian Ocean, Bab el Mandeb Strait, and Mozambique Strait; to the west bordering the Atlantic Ocean, the Gulf of Guinea and the Strait of Gibraltar; and to the south bordering the Atlantic Ocean.

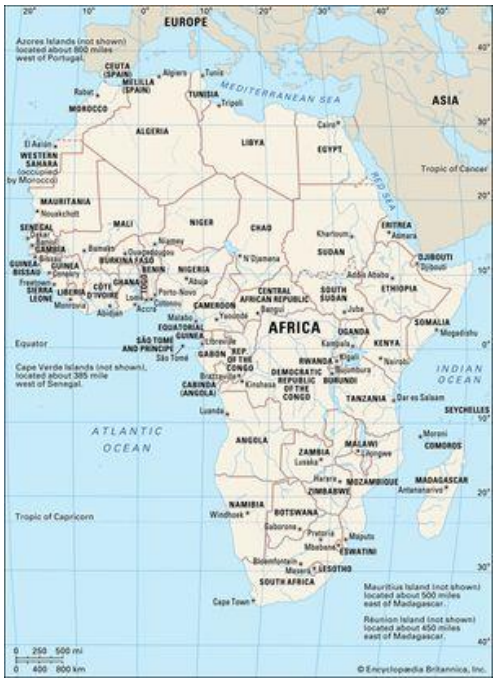

Figure 1: Map of the Continent of Africa

Source: Britannica, 2023

The African continent is divided into four regions namely North Africa, including Algeria, Egypt, Libya, Morocco, Sudan, South Sudan, Tunisia, and Western Sahara; Central Africa includes Angola, Cameroon, Central African Republic, Chad, Congo, the Democratic Republic of the Congo, Equatorial Guinea, Gabon, Sao Tome, and Principe; West Africa includes Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo; East Africa includes Burundi, Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Mozambique, Rwanda, Seychelles, Somalia, Tanzania, Uganda and Zambia; and Southern Africa consists of Botswana, Lesotho, Zimbabwe, Namibia, South Africa and Swaziland. The total number of countries in the African continent is 55.

The climate on the African continent can be grouped into 6 (six) parts, namely: 1) Mediterranean climate, around the Mediterranean Sea and in the southeastern coastal areas of Africa. The temperature reaches 24 ^{o}C – 28 ^{o}C with rainfall levels of 250-1,000 mm per year; 2) Tropical Climate, with rainfall between 1,000-2,000 mm per year. The air temperature ranges from 23 ^{o}C – 27 ^{o}C; 3) Subtropical Climate, which is influenced by sea breezes with relatively high rainfall; 4) Desert Climate, found around the Sahara Desert, Chad Desert, and Kalahari

Desert which is in the latitude range of 23.50 LU-23.50 LS; 5) Warm Moderate Climate, found on the southeast coast of South Africa and south of the meridian line; and 6) Tropical Savanna Climate, found south and west of the meridian line (equator). The following is a map of the climate on the African continent.

Sub-Saharan Africa is a term that describes countries that are not part of the North African region. Countries in sub-Saharan Africa and North Africa are separated by the Sahara desert. While countries in northern Africa are dominated by Arabic-speaking countries. North Africa and Sub-Saharan Africa have been separated by an extremely harsh climate. The sparsely inhabited Sahara Desert has formed a natural barrier through which only the Nile River passes. The term "sub-Saharan" is used to give a general idea of northern Africa as the top and southern Africa as the bottom. The term Horn of Africa describes the poor countries in East Africa which include Ethiopia, Somalia, Djibouti, and Eritrea which are located at the eastern end and have a very extremely hot climate.

In general, countries in Sub-Saharan Africa are the poorest regions in the world. This is due to a legacy of colonialism, neocolonialism, inter-ethnic conflicts, and endless political strife. The region comprises many of the world's most underdeveloped countries. The most dominant natural factor is extreme climate change. As a result, the majority of countries in sub-Saharan Africa are experiencing prolonged food crises. Food crises and famine are real threats to the survival of the African people.

Food crises and famine are very complex and closely related to poverty. The majority of people are unable to meet their food needs because they do not have the purchasing power. To address hunger, many programs from international agencies have provided food aid, but these are short-term and emergency in nature. Development programs are most desirable because they are long-term and sustainable, such as the development of clean water facilities (Ndaru and Defrina, 2005).

Water is a crucial issue on the African continent. Water, which is used as the main commodity to fulfill the needs of daily life, is very limited in this region. Apart from the extreme climate, it is also influenced by the need for water which is increasing from year to year due to the increasing population, and the increasing agricultural production (Ruslin, 2013).

One of the water sources on the African continent is the Nile River. This river flows along 6,650 km or 4,132 miles across nine countries namely: Egypt, Ethiopia, the Democratic Republic of Congo, Kenya, Uganda, Tanzania, Rwanda, Burundi, Sudan, and South Sudan. The Nile has an important role in providing water for the countries it passes through but remains under Egyptian control. Other rivers include the Zambesi River, Mozambique River, Orange River, Niger River, and Congo River. These rivers have a very large role in providing water for the population. However, the people of Africa cannot do much because of the lack of adequate infrastructure to reach their homes.

Globally, 785 million people do not have access to clean water close to home. Many of them have to walk for several hours to find potable water. As climate extremes begin to occur, these conditions worsen, and water becomes harder to find. According to data from the World Health Organisation (WHO) in 2017, 2 billion people still lack basic sanitation. 7 out of 10 are rural and a third are from less developed countries.

That region includes Africa. In Africa alone, less than one in three people have access to clean water. Only about 63% of citizens have access to clean water. Research from Afrobarometer in 2014-2015 also revealed that only 30% of citizens have access to sewerage. Some countries in Sub-Saharan Africa actually have fertile soil. However, due to inadequate access to irrigation, agricultural land and livestock are neglected.

The lack of access to clean water and sanitation services, as in Uganda and Somalia, has led to cholera outbreaks and a high risk of diseases such as diarrhea, acute diarrhea, and respiratory infections. Over the past three years, more than 900 people have died from cholera in Somalia, and most of them are children under the age of 5. When women give birth in such conditions, the lives of mothers and babies are at risk, and inadequate or poorly managed sanitation and water services leave people facing serious health problems and preventable health risks.

This is especially true in healthcare settings, where patients and staff are at additional risk of infection and illness when there is a lack of water, sanitation, and hygiene services (ACT, 2021).

Figure 2: A Resident Drinking Water from a Rainwater Puddle in Africa
Source: Greening Afrika, 2020

The problem of clean water in Africa is not just a sanitation problem, but also a complex social, economic and political problem. There are 12.5 million people and 50% of them need humanitarian assistance in the form of food, medical and educational aid. The source of water they use sometimes comes from rainwater puddles about 3 kilometer from their homes. They collect it using jerry cans and travel long distances to collect it. Often the water is also shared for irrigation of farms and livestock, where their income comes from. Meanwhile, shallow wells are unreliable. Wells only flow during the rainy season when the dry season arrives, there is no water. Wells in Africa are on average 20 meter deep and can only last up to 10 years (Aksi Cepat Tanggap, 2021).

3.3 ACT Institution's Waqf Well Assistance Program

Aksi Cepat Tanggap (ACT) is one of the professional non-profit organizations in Indonesia that focuses its humanitarian work on disaster management from the emergency phase to the post-disaster recovery phase. This institution first took action in 1994 in Liwa, West Lampung to contribute to the earthquake disaster. The milestone of the institution's independence since officially becoming the Aksi Cepat Tanggap Foundation on 21 April 2005 (ACT, 2021).

ACT has expanded its activities with various works, such as emergency response activities, post-disaster recovery program, community empowerment and development, as well as spiritual-based program such as qurban, zakat and waqf. ACT is supported by public donors from the community who have high concern for humanitarian issues. In addition, ACT is also supported by companies through collaboration and Corporate Social Responsibility (CSR) program. As part of its financial accountability, ACT regularly produces annual financial reports that have been audited by the Public Accounting Firm to donors, stakeholders, and published through mass and electronic media.

One of ACT's flagship program is waqf wells for areas experiencing drought and clean water scarcity. This program has reached hundreds of areas both at home and abroad. By conducting surveys and analys the needs of the community, the ACT team then builds waqf wells along with supporting facilities. Meanwhile, donors can contribute their donations in the form of money transferred through an account that has been prepared on the crowdfunding website. The following are some of the waqf well programs that have been carried out by ACT in order to realise the donations that have been collected from waqifs. Waqf Well Program in Uganda.

ACT built waqf wells in five mosques in Mbale District and Pallisa District, located in the eastern region of the Republic of Uganda. This country, nicknamed the Pearl of Africa, is notorious for suffering from a severe clean water crisis. Temperatures reach 33-34°C, causing the soil to become arid and unable to grow crops. During this

time, 40% of its citizens have to walk as far as 3 km every day to fetch clean water that is suitable for consumption.

The water they have access to is not fit for consumption. Apart from the colour and smell, it also has a high level of contamination with certain chemicals. This makes it easy for diseases to spread among them. Such as skin diseases, diarrhoea, and malnutrition. Therefore, the community is in dire need of access to clean water.

The people of Mbale and Pallisa Districts are very grateful for the assistance initiated by ACT. The waqf well that was built has a huge impact on the surrounding community. They no longer have difficulty in getting clean water for consumption, they can also pray in congregation and clean themselves regularly. Children who dropped out of school because they had to fetch water every day can also go back to school.

3.4 Waqf Well Program in Mali

ACT built a waqf well pump in Farako Village, Nangola - a small town in Koulikoro, Southern Mali. This village is inhabited by 700 residents who suffer from clean water crisis. With the waqf well, parents can focus on maximising their efforts in working and earning income for their children's daily needs and future. The majority of regions in Africa suffer from severe drought. It is also a scourge that haunts the people of Mali.

As reported by UNICEF, a healthy country is one in which the population has access to clean water. However, only 58% of health centres have clean water sources and only 64% have good hygiene services in sub-saharan African countries, including West Africa, where Mali is located. Waqf Well Program in Somalia.

Marka is a port city on the coast of Somalia. It is located about 90 kilometers southwest of the capital, Mogadishu. Lack of clean drinking water is a problem for residents and refugees in this region. A total of five Waqf Wells were built in Marka City in four villages, consisting of two wells in Celmunye Village, and one well each in Xaji Cise Village, Cagaran Village, and Dalugta Village. These Waqf Wells will be utilized by 250 families. The wells are shallow and 15 to 20 meters deep, with hand pumps installed to facilitate the villagers to draw water. Lack of access to clean and safe drinking water is a major concern in Somalia. The south-central region is the most affected by the drought and at the same time hosts a growing number of refugees.

Clean water is not just for daily life, but it has a far-reaching impact on the lives of the Somali people. Access to water leads to reduced child mortality, reduced hunger, and reduced mobility to find clean water. In most parts of Somalia, women and children have to travel long distances to collect water that is not hygienic for drinking and household use. Sometimes livestock or even human deaths occur due to thirst. Waqf Well Program in Ghana.

The Waqf Well was constructed in the area of the Uthman bin Affan Mosque in the Old Tafo area, Abuakwa Utaa Municipality, Ghana. The construction was carried out on 11 - 23 November 2020. The Waqf Well is used by around 1,000 Muslim and non-Muslim communities living around the mosque. Apart from being a source of water for worshipers in the mosque, the borehole well that was built is also a source of water for the community's daily needs, such as bathing, washing, and cooking.

Most of the beneficiaries in the community are people with lower middle class economy, including women and children. They live in harmony with each other regardless of religious and ethnic differences. People depend on each other when it comes to public facilities. The construction of waqf wells for the local community resulted in free and convenient access to water. It also provides safety and comfort for women and children who are usually forced to travel long distances to fetch water.

The provision of a water source is the most important assistance. The community around the mosque, which is not all Muslim, was also helped. The community had been relying on a few wells for water. But most of the existing wells do not have good water. Also, they do not have to spend more money to get a clean water source.

4. Conclusion

The water crisis in African countries is the biggest threat to survival that must be addressed immediately. The root of the problem is the absence of clean water sources. One of the efforts that can be made is to make wells with a depth of 150-200 meters that can last for decades. This can only be realized with the help of humanitarian agencies, such as Aksi Tanggap Cepat, which is quite active in providing waqf wells for countries in Africa. The impact felt by the beneficiaries is the availability of access to clean water, improved health, the ability to wash and worship, and economic activities can resume.

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Oil and Gas Extraction in Nigeria and its Impacts on Environment: Radical Measures to Deep-Seated Challenges of Environmental Sustainability

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Abstract
Environmental Law is a contemporary issue and this invasive subject houses number of other disciplines like economics, sociology, social sciences, oil and gas law, law of the sea, international law and many others. These disciplines have made some efforts to understand the best way to approach the environment with divergent views through interdisciplinary approach in assessing their choice of policy and ideas. As a result, this work will delve into a qualitative approach in exploring the perspectives that influence ways of thinking and making policies that are reflected in Nigerian environmental laws and policies and judicial processes in maintaining a sustaining environmental development and conserving its bio-diversity.

Keywords: Oil and Gas, Extraction, Environment, Impacts

1. Introduction

Globally, there is a growing concern on issues of land and environmental challenges such as global warming, ozone layer depletion, oil and other industrial pollutions, gas flaring, volcanic eruption, acid rain and others. Nigeria is not foreclosed from these challenges especially with her policy and level of land compulsory acquisition and industrialization. Therefore, there is the need to examine the approach or efforts of the national laws, government and other stakeholders of Nigeria towards addressing these protruding issues of land and environment alongside the global best practice or perception. The character, capacity, pedigree and development of Nigerian land and environmental Laws in securing and sustaining the future of Nigeria is the cardinal aim of this work. It will also focus generally on the administration and management of Nigerian land and environment with reference to global best practices in solving the maladies in land administration and environmental

management in the country. It will also examine the land and environmental problems in Nigeria alongside her various domestic and transnational laws in concluding this work.

2. Implications on Oil and Gas Production and Critical Pursuits of Environmental Sustainability: A Check on Canadian and Nigerian Experiences

The effects of production of oil and gas in Nigeria have at recent time triggered off serious questions on the soundness of her environmental law and effective adjudication of judicial processes. Nigeria has been reported as the largest oil producing nation in Africa and the sixth in the world with average 2.7 million barrels per day. The effects of these activities have been of a great concern to the government, environmentalist and stakeholders in the oil and gas industries and the Niger Delta region where these hydrocarbons are produced. Nigeria is also seen as one of the world's largest sites of biological diversity with enormous natural resources. Conservation of this natural bio-diversity is been threatened by environmental degradation. These challenges are demanding a review of the national legislative and judicial processes.

Though, there exist various Nigerian environmental and petroleum laws and domesticated international instruments, the borderline had remained on how these laws are been enforced in Nigeria. To tackle these rising challenges, a comparative course on the Nigerian environmental and petroleum laws and her judicial processes to that of Canada became imperative. An academic harvest on comparative study on how a developed nation implements her laws or how her courts adjudicate its environmental laws could assist Nigeria and other developing world from the centurial environmental challenges. Also of interest is the international environmental law to which the country domesticates whether it employs international model bearing in mind the momentous hurdles of sovereign immunity of *locus standi* and *forum non conviniens*.

Indeed, Nigerian's recent experiences in oil and gas sector and status of her environmental laws seem to have underscored the enormity of the impediments to fundamental environmental changes in the country. This very principle forms component of background that the society seeks to coordinate, reconcile and optimize long-standing environmental concerns and short term economic interests to avoid its associated waste and pollution on the inhabitants. With the increase in the oil activities and the affiliated consequences, it became gradually clearer that the common law remedies were not easily available to the victims of the pollution from the oil industry and there is the need to study the Canadian position on this stand in relation to the Nigerian's view pursuant to the sections 6 and 20 of her constitution. Although, there may be no binding international regulations between the multinational oil companies and the state or its citizenry but internationally recognized practices exist and could be resorted to in answering this question. Unfortunately, unlike in the developed countries, there exist none or viable Non- governmental organizations (NGOs) in the league of Green Peace or Friends of the Earth which command the requisite resources and reputation to effectively pursue public interest environmental litigations at the moment in Nigeria as widely seen in the United States, New Zealand or United Kingdom.

Also, it seems there is a remarkable rarity of public curiosity to institute environmental related suits in Nigeria. Former Chief Justice Mohamed Uwais observed that its absence could be associated with a number of factors thus; "*that some of them are because the greater proportions of the citizenry are ignorant of the environmental damages surrounding them especially if it is caused by subtle process"*. It will be important if a comparative study of the Nigerian environmental legal regime will be made with the Canadian environmental laws and judicial processes to uncover the lacunas and possibly fix them. Such Canadian laws, programs and policies made towards protecting and sustaining its national environment particularly in Alberta region became necessary to be studied in relationship with the Nigerian's legal method as it relates to the Niger Delta region.

The question then may go on the root of the effectiveness or otherwise of the Nigerian environmental law processes and implementations thereof. The answer, the work seeks in the Canadian environmental legislations and judicial processes and in extension their environmental policies and implementations. Alberta region tackles its environment through education, prevention and enforcement to ensure all Albertans keep enjoying a clean, serene and healthy environment. Where individuals or companies fail in compliance with her legislation, Alberta

Environment Agency device ranges of options to embark upon any default. This depends on the offence to ensuring that companies and individuals comply with the environmental regulations.

It is noteworthy to state that the interplay between the Nigerian social-economic, socio-cultural and socio-political stands remained at the heart of her environmental sustainable development which makes a comparative study of the Nigerian position with Canada veritable especially in the Alberta region.
It needs to be re-emphasised that the recent appalling environmental trends in Nigeria had left the nation with option of moving towards sustaining her environment particularly in the oil and gas sector with encompassing legislative and judicial processes. There is however a catalogue of arguments by varied scholars, experts and environmental policy-makers about the environmental sustainable development dilemmas and on why such have not impacted prominently by the Nigerian laws but a lot issues were left untouched which makes this work important because it proposes an academic surgery on how Alberta region of Canada to a great extent triumphed its environmental challenges similar to Nigerian cases. There exist some imperative factors for a virile environmental stability, sagacious legislative and judicial processes embedded on rule of law and which;

1. seeks to understand and integrate community perceptions in the CSR policies and practice and or looking into maintaining enabling environment and detriments of negative injunction duties;
2. implores on how government can prioritise environmental sustainability and importance of the multinational oil and gas companies' strict adherence to the international environmental standard in limiting pollution, flaring, spillages etc and how Nigerian laws deal with these issues including resources management, natural environmental standard, regulatory enforcement regime and national oil spillage detection etc and;
3. peruses into the Nigerian petroleum and environmental laws in comparisons with the international environmental laws and other developed nations like the Unite States, Great Britain and New Zealand with particular attention to Canada.

However, the prevalent approach towards environmental regulation in Nigeria appears to remain that of command and control, a regime and standard for the protection of environment which seems to have been obsolete. A more realistic approaches and model principle will be considered by the researcher towards upholding the national and international environmental sustainability pursuits to Section 20 of the Nigerian Constitution which states; *"the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria"* and Section 17(2) (d) of the Constitution that complemented the above provision by affirming that; *"Exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented"*.

3. Petroleum Production and Challenges of Environmental Degradation in Nigeria

The activities of oil and gas production in Nigerian Niger Delta and its further incidences which include oil spillage, gas flaring, pipe linkages, vandalization etc threaten the coastal vegetation, environmental serenity, oil and gas exploration, drinkable water, farmland, livelihood etc. Although, there have been several literatures and approaches on this matter both in Canada as much as in Nigeria to reducing these menaces. However, this work is to give a comparative study of the Canadian and Nigerian environmental laws and judicial processes and how this the result could give a more broaden approach towards tackling environmental degradation in Nigeria and reviewing practicable ways for both nations and world at large to ensuring environmental serenity in course of petroleum production. Most of these literatures have focused on the detection of oil spills along the Nigerian Coast but the appropriate execution of the findings seemed contentious and has been left the process bare if compared with the Canadian approaches.

Available information has shown that Nigeria has in the past experienced series of oil spill incidents in different parts and at different times and the question has been the viability of the present environmental laws which could quiver a pragmatic and independence of her Judiciary for a proper adjudication. Just recently, the Nigerian Minister of Environment asked the Multinational Petroleum Corporations in Nigeria to comply with proposed plan to clean up oil sites in Niger Delta. But, are there pragmatic policies to gear up this statement?
More importantly, over ten decades of petroleum production in Nigeria, there is just eleven years of the Nigerian

undisturbed democratic experience. This gives concerns for a deep rooted research which may invigorate her legal system in general and environmental and petroleum sectors in particular.

Stuart Bell and Donald McGillivray, noted how important environment is and stated that efforts should be made to protect and safeguard it for the benefit and interest of its inhabitants. This goes beyond just law making but centers more in adjudication and execution of the laws made. Thus, a call that propelled Bell and Donald to submit that *environmental considerations have become central to policy making and decision making across the wide range of issues and it is increasingly perceived that it is integral to all aspects of life*. This is an interesting opinion considering the 21st century environmental threats on the global atmosphere and economy.

However, some of the issues examined above were of particular jurisdictions and few that looked at Nigeria's situation could not offer specific hypothetical epitome that could proffer some workable solutions for the Nigerian environmental dilemma. It will interest the researcher to examine the provisions of Sections 6 and 20 of Nigerian constitution in great detail.

No doubt, the Nigerian environmental laws were inheritance of the military junta. Although these laws exist, yet they seemed to have failed sufficiently in protecting the environment and the victims from the injurious consequences of oil and gas pollution in the Niger Delta region as envisaged which makes the Canadian Nigerian comparison crucial. This and what has been the environmental set standard in Canada and other developed nations is the benchmark of this work.

Though, there is no hard and fast distinction between what the law is and how it is used however, the Nigerian Constitution has given the Nigerian judiciary an unlimited role to interpret and adjudicate the law as law is practiced upon the value and culture, policy as much as law and practice as much as principle leading to compare this proviso with what is obtainable in Alberta Canada. As one part of the tripod in the governance of Nigeria, the judiciary being the last hope of the common man has to take giant step in the restoration of confidence in the courts and consolidation of the national environmental standard in conformity with the international environmental practice.

This is the one of the ways it can take a great leap and ensure as the third arm of government to be assessed and be put in proper perspective. After all, a legal Icon, Lord Denning had stated it when he said; *"In theory the judges do not make law, they merely expound it. But as no one knows what the law is until the judges expound it, it follows that they make it"*. Also, the goal of the judiciary should be aimed at not only interpreting the law, but to ensuring that it achieves social justice which must be realized *not by lawlessness process, but by legally tuned affirmative action, activist justicing and benign interpretation within the parameters of Corpus Juris",* and its decisions should be respected to the later. The opposite seen in Nigeria forms the benchmark of this work.

Any functioning government, its agency or corporations howsoever placed, is duty bound not only to observe but also to enforce any judgment of a court of competent jurisdiction. As the primary role of the judiciary under the Constitution, the power to interpret and expound the law vested on it includes the letter and spirit of the law. The importance of this role is that, *"it is not the words of law but the internal sense of it that makes the law. Letter of law is nobody, sense and reason of law is the soul".*

The above gives the opportunity to explore more probable ways the Nigerian judiciary may take to set standard on which its role could operate in one hand and enforce these roles on its subjects at the other hand as seen in the developed world especially as Nigeria approaches the era of offshore platform decommissioning. More importantly, the ongoing United States Mexico Gulf oil spill impasse is a case to note and should be of great concern to oil producing states and oil multinational corporations across the globe. Unfortunately, most of these literatures cited above are alien to the Nigerian legal theory and some of them only examined particular jurisdictions and those that looked at international circle did not consider in great extent the Nigerian situation thus failed to offer specific judicial and academic prototypes that could proffer some practicable results for the Nigerian environmental predicaments. Also, the majority of the literatures in this field have not distinctively considered the judicial roles and goal setting approach as being such veritable principles of sustainable

development and strengthening the court focus to achieving bio-diversity preservation of the nation's natural resources for the benefits of the present and the future. Therefore, a scholarly comparative review on these issues gives a more pragmatic result to arresting environmental menaces. This perceptible fissure, is the reason this work seeks to fill up as an original input to the available literatures.

4. Legislative Framework and Contractual Obligations of Government and the Industry on Oil Pollution Control: The Precepts and Prospects

This work seeks to examine and make a comparative study of Canadian and Nigerian environmental laws and judicial processes with respect to oil and gas production and its environmental impasse; To evaluate how the rule of law will become effective and x-ray the bottlenecks facing the Nigerian environments as a result of petroleum extraction and how Alberta region tackles its environmental challenges; To review factors that affect the effectiveness of the Nigerian environmental laws, policies and judicial pronouncements and make a case study of Canadian position on this case in ensuring that the devastating environmental cases are put to a stop.

In order to achieve its set objectives, this work raises thought-provoking questions and shall make in-depth efforts of giving prudent answers to them: What is the nature of Nigerian environmental and petroleum laws? What is the effect of international environmental practice on Nigerian environmental law and policies? What are the implications of the non adaption and adherence of International Environmental Standard and to what extent could its non adoption affect the Nigerian judicial decisions in maintaining good environmental stability? How can Nigerian government and its environmental agencies prioritize environmental sustainability in its policies? What effect does the Nigerian judicial order have on International Law with respect to transnational oil and gas industries? What features of the Canadian environmental legislative theories need to be suggested for adoption by the Nigerian legal system? How will sound legislative and judicial processes impact on resource sustainability, environmental and developmental regime in Nigeria and Canada?

5. Summary

This work is aimed towards deepening knowledge and understanding of the Canadian and Nigerian environmental laws and the best way of maintaining global environmental stability from derailing. A principle which seeks to espouse social justice by settling the multifaceted issues contiguous with legislative and judicial roles amid to sustaining enabling environment in Canada and Nigeria.

It is on this platform that the work highlighted some ways by which the Nigerian legislature and judiciary can be strengthened in the area of law making and enforcement of environmental laws. One of the challenges of weak or non effective legislative and judicial set up is that it renders the society unproductive and lawless. Thus, to ensure social justice and sustainable environment, the thesis will present a shape of legislative and judicial roles on encompassing environmental laws through a comparative study of Canadian and Nigerian environmental laws stand. It intends to make a change in their thinking, choices of law and impartial rulings as it affects the environment. This is how the operations of oil and gas industries and good governance can be felt by the environment and the citizenry in an impeccable atmosphere.

The work presented a spotlight which enlightened the stakeholders in oil and gas industries and the government on the way environmental threats as result of petroleum production could be curtailed. This work will assist oil and gas industries, lecturers, judges, scholars, students of environmental and oil and gas law, Non-governmental Organization (NGOs), and indeed those interested in environmental matters.

5.1. Conclusion

The pertinent aim of this work is to embark on an harvest of deep, penetrating and thought provoking research in tackling identified issues. In taking this voyage with prudent and scholastic apparatus set above, the noted sticky situation of judicial processes and bewilderment surrounding them thereof were discussed.

5.2 Recommendations

It is recommended that government should take a more pro-active step in seeing that environmental Impact Assessment report is produced and implemented on the issue of oil and Gas extraction in Nigeria to minimize the effect of same on the Nigeria environment and its people. It is also recommended that there should be more seminars, symposia's and public lectures on the issue of oil and gas extraction in Nigeria in order to minimize its effect on the environment and the Nigerian people. There should also be a comparative course to be introduced to the study of Nigerian environmental and petroleum laws and the judicial processes, which will compare same as to the Canadian situation on the same issue. There should be viable non-governmental organizations (NGOs) in the League of Green Peace or Friends of the Earth which commands the requisite resources and reputation to effectively pursue public interest environmental litigations. This is not common as we can find in Canada, U.S, New Zealand, United Kingdom and other countries. It is further recommended that there should be strict adherence to International environmental standards in limiting pollution, flaring, spillages.

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The Urgency of Regulating Payment for Environmental Services as an Environmental Economic Instrument at The Regional Level in Central Sulawesi

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Abstract
Governments at the regional level are mandated to strike a balance between economic development and ecological interests. One approach to achieving this balance is the introduction of the Payment for Environmental Services (PES), which acts as an Environmental Economic Instrument (IELH). Given the importance of ensuring prosperity through the use of natural resources, the role of PES becomes increasingly crucial. Central Sulawesi boasts a wealth of natural resources, yet it's also marked by significant community poverty. This article aims to address the pressing need for PES in enhancing the well-being of Central Sulawesi's residents. Additionally, we will put forth several policy suggestions related to PES that could bolster the welfare of the Central Sulawesi populace.

Keywords: Payment for Environmental Services, Central Sulawesi, Welfare

1. Introduction

The Constitution of Indonesia emphasises the direction of regional autonomy, aiming "to accelerate the realisation of community welfare by enhancing services, empowerment, and community participation, and increasing regional competitiveness, all while adhering to the principles of democracy, equality, justice, and the distinctiveness of each region within the framework of the Unitary State of the Republic of Indonesia"(UU PEMDA, 2014). This constitutional guidance encompasses several objectives: Enhancing the governance of regional governments to bolster the efficacy and outcomes of administrative efforts, Channelling and integrating community aspirations, Rolling out development programmes aimed at achieving prosperity, Augmenting participation and fostering community autonomy, Granting regions comprehensive, tangible, and accountable authority in handling government matters.

When it comes to environmental protection and management (PPLH), these constitutional directions are foundational for PPLH's success. As a result, regional governments have the jurisdiction over environmental protection and oversight. PPLH is characterised as a concerted and cohesive effort by regional governments to maintain environmental functions and thwart pollution and/or environmental degradation. This effort covers planning, utilisation, regulation, conservation, supervision, and law enforcement. The Constitution delineates the regional authority to manage PPLH. Two pivotal mandates for regional governments in their environmental oversight include: Ensuring the right to a wholesome and healthy environment. This mandate, emphasised in the 1945 Constitution of the Republic of Indonesia, is recognised as both a human and constitutional right for every Indonesian citizen, Acknowledging the direct impact of environmental management, as a facet of PPLH, on the economic well-being of the population. These mandates dictate that regional governments are duty-bound to protect and oversee the environment as they pursue sustainable development. Yet, local governments grapple with challenges, such as the disparate and finite availability of natural resources, the mounting pace of development, and an escalating demand for vast natural resources. This scenario heightens the risk of environmental degradation, affecting the environment's carrying capacity and productivity.

Under the given context, Article 42, paragraph (1) stipulates: "To maintain environmental functions, local governments are mandated to develop and enforce Environmental Economic Instruments (UU PPLH, 2009). One embodiment of these instruments is a management system and mechanism where funds are allocated for the protection and management of the environment (PP IELH, 2017). Via this mechanism, governmental bodies, businesses, and other entities benefiting from the environment are required to make payments to environmental management communities, either through direct payment systems or compensatory measures. Central Sulawesi, abundant in natural resources, should not exploit this wealth through conventional and harmful methods. Instead, there's an opportunity to derive economic value from existing environmental services. The belief is that managing and utilising environmental services in Central Sulawesi won't just ensure economic sustainability. The local environment, in turn, will confer substantial fiscal benefits to both the local government and its residents. The Regional Government and the citizens of Central Sulawesi have the potential to negotiate environmental conservation efforts with the national government and the corporate sector, in exchange for a specified budget allocation to the regional treasury, dedicated to its preservation. Similarly, coastal and forest communities are poised to receive payments from both the government and the private sector, recognising their efforts in environmental preservation. The current legal void concerning the employment of environmental services in Central Sulawesi not only jeopardises environmental sustainability but also overlooks regional and community economic potential. Hence, this research is of paramount importance. Consequently, this article will address the following issues: How can the pressing need to implement Payment for Environmental Services as a regional environmental economic tool enhance the welfare of Central Sulawesi's residents and In what ways might the development of payment policies for environmental services, when viewed as regional environmental economic instruments in Central Sulawesi, elevate community welfare.

2. Results and Discussion

2.1. The Role of Environmental Services in Central Sulawesi

Experts define environmental services as benefits ecosystems offer to human life (Prokofieva, 2016), as well as direct and indirect contributions of ecosystems to human well-being (Amaruzaman, Tanika, et al., 2018). The Indonesian government characterises environmental services as the advantages of ecosystems and the environment for human existence and life's sustainability. This includes the supply of natural resources, environmental regulation, support of natural processes, and preservation of cultural values (PP IELH, 2017). Experts have identified 23 kinds of environmental services, categorised into provisioning services, regulatory services, cultural and supporting services (Nantiya Tang isujit, 2009). A crucial point of agreement among these definitions is that "The environment serves a role when it benefits humans or contributes to health and welfare (Kementrian lingkungan Hidup, 2018)." Environmental services underscore nature's value to humans and warrant sustainable protection and management. It's evident that human life's sustainability hinges upon well-maintained ecosystems and natural resources those capable of consistently delivering environmental services. As such, they demand sustainable protection and management (Burkhard & Maes, 2017)

Rapid population growth undoubtedly impacts the utilisation of finite natural resources. Furthermore, the constant provision of goods/services derived from these resources isn't always feasible. This underscores the paramount importance of sustainable development. Hence, focusing on sustainability is essential in PPLH (Chairil Ichsan, 2021). The ecosystem services concept advanced by Schneiders and Muller (Purba et al., 2022) is illustrative. It correlates ecosystem interactions with their functions and benefits to humans. This interaction is defined by natural landscape features as abiotic drivers and types of natural vegetation as biotic drivers. Together, they shape an ecoregion, wherein humans, as integral parts of an ecosystem, harmoniously engage to establish equilibrium and productivity. The above underscores that managing the environment is a pivotal facet of the socio-economic framework. In the absence of a conducive environment, economic advancement would be stymied. Overutilisation that breaches the environment's threshold and capacity will inevitably stifle the economy's growth potential. Achieving this delicate balance necessitates policies encapsulating the interplay between environmental, societal, and economic systems (Burhanuddin, 2016).

The aforementioned policies warrant examination through the lens of ecosystem services, which are intrinsically linked and play a role in producing environmental services (Heyde et al., 2017) Such analysis is vital to understand the risks posed by the current state of ecosystems. The unsustainable exploitation of potential environmental services is likely to precipitate grave repercussions. Policies centred around environmental services must guarantee the sustainability of providers of these services, with a particular emphasis on conserving natural resources and biodiversity. In the province of Central Sulawesi, environmental services are categorised as follows: Providing Services encompass Water, Food, and Fibre provisions, Regulatory Services include Air Quality Regulation, Climate Regulation, Landslide Disaster Mitigation, Flood Disaster Mitigation, Forest and Land Fire Disaster Mitigation, Water Purification, Natural Pollination, and Pest Control, Supporting Services cover Habitat & Biodiversity support and Soil Formation & Regeneration. (Pemerintah Daerah Propinsi Sulawesi Tengah, 2023)

In general terms, Central Sulawesi's environmental services are perceived to be in a robust condition, as evidenced by the interdependence of the three aforementioned components of environmental services. An area can be deemed to possess healthy environmental conditions if its regulatory capacity is stellar. Similarly, an area with excellent provision capabilities likely has high supporting capabilities as well. (Pemerintah Daerah Propinsi Sulawesi Tengah, 2023). Concerning the environmental service index values for Central Sulawesi, there is a consistent interplay between various service components. These components are uniformly distributed across the thirteen districts and cities in Central Sulawesi. The average values are 2.95 for provider services, 3.27 for regulatory services, and 3.20 for supporting services. A more comprehensive breakdown of Central Sulawesi's environmental services index can be found in the subsequent table.

Table 1. Average environmental services index in Central Sulawesi province.

1	Banggai	3,22	2,62	2,92	**2,92**	3,30	3,43	3,21	3,32	2,87	3,22	2,33	3,15	3,41	**3,14**	3,29	3,03	**3,08**
2	Banggai Kepulauan	3,13	2,58	2,65	**2,79**	2,80	3,21	3,00	2,54	2,29	2,62	1,92	2,37	2,65	**2,60**	2,59	2,23	**2,42**
3	Banggai Laut	3,21	2,48	3,17	**2,95**	3,43	3,53	3,43	3,53	3,04	3,37	2,22	3,40	3,39	**3,26**	3,34	3,10	**3,18**
4	Buol	3,34	2,90	2,97	**3,07**	3,72	3,83	3,61	3,89	3,40	3,55	2,76	3,51	3,64	**3,55**	3,57	3,31	**3,46**
5	Donggala	3,21	2,83	2,92	**2,98**	3,59	3,73	3,49	3,75	3,26	3,38	2,88	3,42	3,60	**3,46**	3,59	3,09	**3,38**
6	Kota Palu	3,11	2,66	2,53	**2,77**	2,86	3,12	2,89	2,69	2,52	2,70	2,47	2,50	2,93	**2,74**	2,93	2,50	**2,66**
7	Morowali	3,19	2,71	2,93	**2,94**	3,63	3,69	3,45	3,81	3,23	3,49	2,56	3,60	3,86	**3,48**	3,75	3,46	**3,47**
8	Morowali Utara	3,19	2,64	2,94	**2,92**	3,49	3,63	3,37	3,67	3,11	3,37	2,49	3,43	3,68	**3,36**	3,61	3,28	**3,33**
9	Parigi Moutong	3,21	2,87	2,78	**2,95**	3,48	3,58	3,40	3,49	3,13	3,23	2,78	3,18	3,34	**3,29**	3,31	2,82	**3,18**
10	Poso	3,20	2,94	2,83	**2,99**	3,61	3,67	3,45	3,70	3,24	3,50	2,72	3,51	3,61	**3,45**	3,71	3,15	**3,40**
11	Sigi	3,20	3,06	2,90	**3,05**	3,83	3,81	3,57	3,87	3,38	3,64	2,99	3,77	3,83	**3,63**	3,89	3,40	**3,60**
12	Tojo Una-Una	3,27	2,59	3,03	**2,97**	3,38	3,54	3,27	3,51	2,98	3,21	2,50	3,25	3,52	**3,24**	3,39	3,17	**3,20**
13	Toli Toli	3,22	2,90	2,87	**3,00**	3,57	3,65	3,47	3,58	3,21	3,37	2,76	3,29	3,40	**3,37**	3,38	2,94	**3,25**

Secondly, broadly speaking, the effectiveness of environmental services in supplying ecosystem services – food provision at 77.70%, water at 71.49%, and fibre at 41.31% – falls within the 'Medium Potential' category in the

province of Central Sulawesi. This medium potential for providing ecosystem services spans all districts and cities. Analysing based on the performance indicators for provisioning services in relation to the availability of species or abiotic components with potential uses for water, food types, wood, fuel or raw materials reveals that, according to vegetation and land cover data, Central Sulawesi holds a rather favourable potential for fibre supply (Pemerintah Daerah Propinsi Sulawesi Tengah, 2020). In contrast to the aforementioned provisioning services, regulatory services perform at a more commendable level. The average index across nine regulatory services in Central Sulawesi is situated between the medium to very high range. Indices signifying high performance are observed in services like air quality control (40.53), Landslide Disaster Mitigation (41.22), Karlahut Disaster Mitigation (41.89), and Water Flow Management (49.79). Services like Flood Disaster Mitigation management (44.59) and Pest Control (37.87) exhibit a very high-performance index. On the other hand, services like Water Purification (41.18) and Climate Regulation (38.77) fall under the medium criterion index. A similar trend is observed for Supportive Environmental Services, with high to very high indices noted for Habitat & Biodiversity (37.10) and Soil Formation & Regeneration (48.24). A detailed representation of this data can be found in the subsequent table:

Table 2. The effectiveness of environmental services in supplying ecosystem services

NO	ENVIRONMENTAL SERVICES IN CENTRAL SULAWESI	VERY HIGH		LOW		MEDIUM		HIGH		VERY HIGH		TOTAL	
		(Ha)	(%)	(Ha)	(%)	(Ha)	(%)	(Ha)	(%)	(Ha)	(%)	(Ha)	(%)
PROVIDER SERVICES													
1	Food	30.486,74	0,50	275.854,77	4,50	4.761.811,63	77,70	961.476,79	15,69	98.778,08	1,61	6.128.408,01	100
2	Water	158.810,45	2,59	1.525.457,26	24,89	4.381.255,31	71,49	11.094,10	0,18	51.790,90	0,85	6.128.408,01	100
3	Fiber	171.612,90	2,80	2.037.890,04	33,25	2.531.784,87	41,31	1.387.120,20	22,63	-		6.128.408,01	100
REGULATION SERVICES													
1	Air Quality	47.207,70	0,77	1.081.496,17	17,65	1.133.307,42	18,49	2.484.064,68	40,53	1.382.332,04	22,56	6.128.408,01	100
2	Climate	58.308,66	0,95	186.681,36	3,05	2.375.752,62	38,77	1.825.472,64	29,79	1.682.192,73	27,45	6.128.408,01	100
3	Landslide Disaster Mitigation	19.588,96	0,32	675.269,99	11,02	2.406.805,34	39,27	2.525.997,16	41,22	500.746,55	8,17	6.128.408,01	100
4	Flood Disaster Mitigation	313.396,25	5,11	1.805.320,98	29,46	143.761,74	2,35	1.133.031,51	18,49	2.732.897,53	44,59	6.128.408,01	100
5	Forest fire disaster Mitigation	648.797,37	10,59	1.502.699,39	24,52	1.011.199,51	16,50	2.567.434,43	41,89	398.277,31	6,50	6.128.408,01	100
6	Water (Water Flow System)	80.877,58	1,32	1.869.118,55	30,50	593.013,66	9,68	3.051.056,27	49,79	534.341,94	8,72	6.128.408,01	100
7	Water Purification	814.259,52	13,29	2.023.396,87	33,02	2.523.728,55	41,18	767.023,06	12,52	-		6.128.408,01	100
8	Natural Pollination	629.912,42	10,28	1.606.238,41	26,21	85.109,18	1,39	2.107.560,82	34,39	1.699.587,18	27,73	6.128.408,01	100
9	Pest Control	110.095,72	1,80	1.489.741,04	24,31	730.186,84	11,91	1.477.766,96	24,11	2.320.617,45	37,87	6.128.408,01	100
SUPPORT SERVICES													
1	Habitat & Biodiversity	284.631,42	4,64	1.579.321,87	25,77	369.101,53	6,02	1.621.786,08	26,46	2.273.567,11	37,10	6.128.408,01	100
2	Soil Formation and Regeneration	1.430.824,07	23,35	867.934,21	14,16	591.375,18	9,65	2.956.533,62	48,24	281.740,93	4,60	6.128.408,01	100

The aforementioned environmental services have intrinsic value not just as life support systems, but they can also be leveraged to bolster the local economy. As evident from the data, services like provisioning, regulating, and supporting can be harnessed economically, provided they are managed sustainably. Sustainable management isn't only about preventing deforestation; it's equally about ensuring the well-being of communities residing in and around these ecosystems.

2.2. Payment for Environmental Services in Central Sulawesi Province

Given the significant benefits these environmental services confer upon the community, particularly the residents of Central Sulawesi, it's imperative that the regional government's policies rectify any ecosystem imbalances, thus positively influencing the ecosystem. Local governments should begin to duly recognise these ecosystem services, offering appropriate incentives for their sustainable delivery. They should drive individuals, businesses, and other institutional bodies to be cognizant of the repercussions of their actions on these services (Nabangchang, 2014). ssentially, this could involve offering incentives to service providers, implementing programmes that ensure payments for ecosystem services, imposing taxes on environmentally detrimental activities, or direct regulation of activities that impact the provision of such services.

Three core responsibilities for local governments in mainstreaming these services include:(Polasky Seminar & Polasky, 2011) :

1) Linking Actions with Impacts: Deepening the understanding of how human actions influence ecosystem processes and their subsequent impact on the natural capital underpinning these services.
2) Valuing Services: Amplifying understanding of the role ecosystem services play in enhancing human welfare.
3) Offering Incentives: Embedding the appreciation of the value of ecosystem services into policy and management structures to foster the sustainable delivery of valuable services.

In Indonesia's environmental management, this approach is bifurcated into two concepts: payment for environmental services and compensation/benefit for environmental services. The latter is characterised as the transfer of resources (or their monetary equivalent) in the context of environmental conservation. Both concepts are integral components of Indonesia's environmental economic instrument (PP IELH, 2017) designed to spur a collective commitment to environmental preservation.

Payment for Environmental Services (PES) operates as a market-based conservation instrument grounded in the principle that beneficiaries of environmental services should compensate those who facilitate their provision. Under the PES framework, providers are remunerated based on their ability to deliver the desired services or execute activities that produce these services (Didik et al., 2020). The PES is conceived as a mechanism where the service recipient compensates the provider (FAO UN, 2004) It's a transaction where, per business principles, payment is made upon service receipt, and the provider ensures its continuous delivery (Fauzi & Anna, 2013). At its core, PES insists that those delivering environmental services are recompensed for their conservation efforts, while beneficiaries bear the cost. To execute these payment and compensation mechanisms effectively, there's an emphasis on a grassroots, or bottom-up, approach across all development facets. Emil Salim articulated this mechanism as a balance between the 'willingness to accept rewards' from environmental service providers and the 'ability to pay rewards' of its user.(AUNUL FAUZI et al., 2005)

The fundamental economic theory of PJL is straightforward: it operates on the "beneficiary pays" principle, where those who benefit pay the costs (DANIEL BUTT, 2014). At its core, PES is a scheme designed to offer environmental services, which are perceived to be deteriorating due to an insufficient societal appreciation of their value and an absence of compensatory mechanisms. The PES framework seeks to render the provision of these services more cost-effective in the long run (H. ROSA, n.d.), the traditional PJL approach deploys economic tools aimed at optimisation, striving to minimise costs while fulfilling environmental management objectives.

Indonesia has integrated the PJL model to address concerns surrounding deforestation and community welfare. Within the Indonesian legal context, PJL is perceived as an Environmental Economics (IELH) tool. Article 42, Paragraph 1 of Law 32/2009 on PPLH highlights the mandate for both the government and regional administrations to cultivate and enact environmental economic instruments (IELH). Defined in this context, IELH encompasses: (a) economic activity and development planning; (b) environmental funding; and (c) the use of incentives and/or disincentives. The payment for environmental services concept lies within the development planning and economic activities domain, centred on an environmental services compensation/reward mechanism, along with the introduction of a payment system as an incentive and/or disincentive instrument. PP 47/2017 further elucidates the intricacies of payments for environmental services. Two crucial aspects highlighted in this regulation are: First, promoting public engagement in conserving natural resources and upholding environmental integrity. Second, regional governments bear the responsibility of bolstering the delivery of Inter-Regional Environmental Services Compensation/Indemnity.

Interestingly, the Central Sulawesi Regional Government pioneered the PES initiative, (Pemda Sulteng, 2014). This legislation underscores several facets: integrating environmental services management into government planning; ensuring regional authority spans districts/cities; delineating the categories of payable environmental services; establishing the legal interplay between service providers and users; conflict resolution, and the

introduction of a multi-party institution to oversee environmental services. In this regional legislation, Payment for Environmental Services is described as a compensation for maintaining environmental service objects managed by providers. However, this definition seems rather broad and lacks specificity for practical application. This contrasts sharply with the definition as per PP 47/2017, which explicitly mentions the transfer of a monetary sum or its equivalent in managing these services.

Furthermore, while Law 32/2009 established the two typologies of environmental services economic instruments - Compensation/Reward and Payment for Environmental Services - the nuanced guidance for practitioners came about eight years later with PP 46/2017. This significant temporal gap has led to varied regional interpretations and standards of environmental services. Moreover, PP 46/2017 doesn't adequately distinguish between Compensation for Environmental Services and Remuneration for Environmental Services. Various regional regulations have evinced multiple misconceptions concerning the concept and realisation of environmental services. These ambiguities, found in regional regulations' definitions of environmental services, their scope, the meaning of the PES scheme in the context of levies and regional revenue, among others, mean that the implementation of PJL could be potentially fraught with confusion (Leimona Beri et al., 2019).

Several factors hinder the implementation of this regional regulation. First and foremost, the regulation itself is challenging to enforce as it necessitates comprehensive and detailed technical regulations for support. Secondly, there's a palpable lack of political and bureaucratic drive to utilise PJLH instruments as regional economic tools. These first two regional regulations demand reconciliation with government regulations concerning environmental economic instruments. Lastly, the existing bureaucratic entities are not well-acquainted with the processes surrounding payments for environmental services.

2.3. The Imperative of Payment for Environmental Services in Central Sulawesi

Central Sulawesi presents a unique situation when considering the importance of Payment for Environmental Services (PJLH). Three salient aspects define the situation: Economic Vulnerability Amidst Rich Natural Resources: Central Sulawesi has a notable concentration of impoverished individuals, predominantly located in rural regions adjacent to forests and zones abundant in environmental economic assets. This significant impoverished demographic arises from several reasons: primarily, these forested and resource-rich areas are largely dominated by corporations. Additionally, the local communities face restricted economic access to these assets. Tenure disputes further complicate the situation, and the centralized policies on resource management significantly limit both the local community and government's capability to capitalise on these resources.(Herman Supriyanto et al., 2017) Up to now, the percentage of poor people in Central Sulawesi province in March 2023 is 12.41 percent, an increase of 0.11 percentage points compared to September 2022, and an increase of 0.08 percentage points compared to March 2022. The number of poor people in March 2023 is 395.66 thousand people, an increase of 5.95 thousand people compared to conditions in September 2022, and an increase of 7.31 thousand people compared to conditions in March 2022. The percentage of poor people in urban areas in September 2022 was 9.13 percent, decreasing to 8.90 percent in March 2023. Meanwhile, the percentage of poor people in rural areas in September 2022 was 13.79 percent, rising to 14.09 percent in March 2023. Compared to September 2022, the number of poor people in March 2023 in urban areas fell by 0.82 thousand people (from 92.93 thousand people in September 2022 to 92.11 thousand people in March 2023). Meanwhile, in the same period the number of poor people in rural areas increased by 6.78 thousand people (from 296.77 thousand people in September 2022 to 303.55 thousand people in March 2023).(*BPS Prov Sulawesi Tengah*, n.d.)

The PES (Payment for Environmental Services) Scheme is widely regarded as an effective, transparent, and cost-efficient tool (Nugroho et al., 2019)(Timer Manurung, 2019). The scheme operates on a voluntary basis between both involved parties (direktorat Kehutanan dan Konservasi Sumber Daya Air Kementerian PPN/Bappenas, 2021). Numerous studies highlight that economic incentives via PES schemes can create economic, social, and environmental impacts (Harahap, Yuerlita, et al., 2021). ighlight that economic incentives via PES schemes can create economic, social, and environmental impacts. Furthermore, other research indicates that PES schemes can influence physical and financial capital, human capital, social capital, and natural capital

to varying extents. In various locales, the PES scheme has demonstrated its ability to indirectly enhance community well-being through community empowerment activities (Leimona et al., 2015). Turning to the environmental index data for Central Sulawesi, it predominantly indicates that the region's environmental services are either 'good' or 'very good'. The Provider's Environmental Services Index sits at an average value of 2.95. Specifically, the food provider index is rated as 'good', with a score of 3.21. Moreover, the index for environmental regulatory services in Central Sulawesi is slightly higher at 3.27. The supporting services index also received a commendable score of 3.20.

The favourable condition of environmental services in Central Sulawesi underscores the pressing need for the local community, inclusive of local governments, to leverage payments for environmental services (PES). This not only aims to bolster the local economy but also serves as a policy mechanism to ensure the sustainable management of the region's natural ecosystems. By employing payment mechanisms for environmental services, it becomes possible to guarantee that both the local community and government can derive economic value from these services. Furthermore, such payment mechanisms can be utilised as a tool to maintain, and even enhance, the environmental quality and index in Central Sulawesi. For landowners, this translates to an opportunity to transform natural capital into financial streams. By introducing PES, local communities can attain enhanced financial flexibility, allowing them to diversify their income sources and, as a result, mitigate their vulnerabilities. Thirdly, the adoption of payment mechanisms for environmental services will lead to a reinforced application of environmental law in Central Sulawesi, particularly concerning environmental economic law. This encompasses both state administrative law and civil law. Enforcing environmental law in this context signifies affording legal rights to entities such as forests, oceans, and rivers. These are termed 'natural objects in the environment'. It even extends to the broader environment. In this scenario, the Central Sulawesi provincial government is proactively engaging in payments for environmental services as a representation of the environment as a legal entity. This initiative is crucial to ensuring the long-term sustainability of environmental functions and the broader life it supports.

2.4. Policy Formulation for Payment of Environmental Services in Central Sulawesi Province

Economic instruments for the environment are designed as a collection of policies, aiming to incentivise the Central Government, Regional Governments, and individuals to preserve environmental functions. As expressed in the provisions of Article 43 paragraph (4) and Article 55 paragraph (41) of the 2009 Law Number 32 concerning Environmental Protection and Management, there exists a binding duty on the state, specifically the central and regional governments. Within this context, payment for environmental services remains a pivotal component of the environmental economic instrument. It's noteworthy that, in a bid to maintain environmental equilibrium, the Central Sulawesi government had enacted the regional regulation number 15 of 2014, addressing the management of payments for environmental services. However, due to reasons previously detailed, the regulation has remained unimplemented. This underscores the need for renewed commitment from the Central Sulawesi government in regulating payments for environmental services, reflecting their responsibility as regional governments to champion and evolve environmental economic tools. The author believes there are four crucial facets to consider when drafting policies for payment of environmental services in Central Sulawesi:

1) Accountability & Legal Adherence: Payment policies for environmental services must advocate for and enforce responsibility and legal compliance in environmental preservation and management. Besides forthcoming regional regulations tailored to regional competencies, policymakers too need to be held accountable. Specifically, Central Sulawesi's regional government should ensure that these policies are unequivocally designed to strike a balance between economic and environmental needs. It is imperative for regional governments to operate transparently, report consistently, and be held accountable for the consequences of their environmental economic pursuits. Having planning and accountability documentation regarding the success or failure of environmental economic instrument management is essential.
2) Cultural & Behavioural Shift: In rolling out PES, it's paramount for the Central Sulawesi Regional Government to influence a change in the attitudes and behaviours of stakeholders within development and economic ventures. An integrated approach, weaving environmental concerns into the broader

regional economic development strategy, is essential. This ensures that both sustainability and conservation are integral to the regional government's plans, which are directly linked to Central Sulawesi's economic prosperity and growth. Payment for environmental services is aptly suited as an instrument for these challenges. Such approaches, known as PJL, have been previously executed in various regions, including but not limited to: PJL in the watershed Cidanau, Banten Regency (Febrima Napitupulu & Asdak, 2013) compensation funds between Kuningan Regency and Cirebon City (Ramdan, 2006); and the Latuppa Watershed in Palopo City (Jibria Ratna Yasir et al., 2018) River in the Way Besai Watershed (Rachman Pasha et al., 2010); River flow in Aceh (Wardah et al., 2013)

3) There is a pressing need to develop PJL regulations and policies that are coherent, orderly, structured, and quantifiable. The essence of this aspect is to ascertain a valuation for one or more of the accessible environmental services. Such a move ensures that the extent of these services can be lucidly comprehended and disseminated to the general populace. The primary objective behind these calculations is not to serve as the ultimate metric or central tool in policy-making or setting the payment value for environmental services. Instead, it is to amplify public awareness and concern about the significance of preserving these vital environmental services.
4) Fostering and bolstering public confidence in the administration of Environmental Funding is crucial. Trust in PJL is anchored in two core beliefs. Firstly, the conviction that certain natural resources cannot be equitably and effectively managed by private proprietors. Secondly, these resources should, instead, be vested in the hands of the government. The responsibility then rests with the government to oversee their consumption and conservation, safeguarding the interests of both the present and future generations (Sagarin & Turnipseed, 2012).

However, when implementing the second factor mentioned above, the regional government's policy confronts a scenario where public trust significantly impacts three aspects: the regional government in its role as regulator, the community, and entrepreneurs. The crux is that policy can augment and shape public trust in the local government (Andhika, 2018). This trust is pivotal in assuring environmental sustainability and the welfare of the community. Cultivating public trust in PES can be achieved by promoting extensive community participation, ensuring the provision of accurate information about environmental services, and endorsing transparent, accountable, and sustainable PES practices. Moreover, it's essential to advocate for prices that are equitable for payments for environmental services, always bearing in mind and prioritising the needs of each group – both the providers and users of environmental services. This aspect of public trust presents a significant challenge for the residents of Central Sulawesi. Indeed, it's this very factor of trust that has rendered the previously established PJLH policy ineffective.

3. Conclusion

Drawing from the preceding discussion, several conclusions can be drawn. The Urgency of Payments for Environmental Services in Central Sulawesi: Three significant points highlight the necessity of these payments as instruments for environmental economics in Central Sulawesi. First, Central Sulawesi has a significant rural population living in poverty, despite possessing rich environmental economic resources. Second, Data regarding the environmental index in Central Sulawesi indicates commendable performance, with an average Environmental Services Index score of 2.95. The food provider index stands in a healthy position at 3.21, while the environmental regulatory services index is even more impressive at 3.27. Additionally, the supporting services index boasts a good score of 3.20. Third, Implementing payments for environmental services is expected to bolster the enforcement of environmental laws in Central Sulawesi, particularly those related to environmental economics encompassing state administrative and civil laws. The provincial government of Central Sulawesi is now proactively engaging with these payments, positioning the environment as a legal entity. This ensures the ongoing sustainability of environmental functions and broader life systems. Recognising and embedding these three elements within the PPLH policy can significantly enhance the welfare of Central Sulawesi's residents. Policy Formulations for Enhancing Community Welfare: There are four essential policy formulations concerning payments for environmental services in Central Sulawesi, all aimed at elevating community well-being: First, Payment systems for environmental services must promote and ensure legal compliance and accountability in the realms of environmental conservation and management. Second, The

Central Sulawesi Regional Government must initiate cultural and behavioural shifts among stakeholders, fostering a more environment-conscious approach in both development and economic spheres. Third, It's crucial for PJL policies and regulations to be systematic, structured, and quantifiable. The goal is to appraise the value of one or several environmental services, making this information transparent and accessible to the general populace. Fourth, It is of utmost importance to nurture and solidify public trust in the administration of environmental funds.

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