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Problems of Household Waste Management in Banyumas Regency, Central Java

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Abstract
The increase in population, changes in consumption patterns, and lifestyle changes have led to an increase in the amount, type, and variety of waste characteristics. Therefore, a good and appropriate waste management system is needed but not only regarding technical matters but also needs consideration through various existing disciplines. Thus, this article contains two crucial issues concerning the problem of household waste management and the factors that influence the collective awareness of Banyumas community members through the sociological empirical research method which collects, processes, and analyzes secondary data from interviews with informants from various circles in a prescriptive evaluative nature. Finally, through the results of the research, it is concluded that the commitment of the government apparatus in Banyumas Regency must continue to be improved, so it is necessary for the Banyumas Regional Government's policy to include long-term and short-term programs.

Keywords: Household, Waste Management, Central Java, Banyumas

1. Introduction

The increase in population, changes in consumption patterns, and lifestyle changes have led to an increase in the amount, type, and variety of waste characteristics. The increasing purchasing power of people towards various staples and technological products, as well as the increasing activities that support economic growth in an area, also contribute significantly to the amount and quality of waste generated (Tangga, M. N. P. L. R., 2015). The increasing volume of waste generated requires proper handling. Waste handling that is not environmentally friendly not only has the potential to adversely affect health but also seriously disrupt environmental sustainability, including in residential areas, forests, rice fields, rivers, and the sea. Increasingly large waste generation will reduce space and disrupt human activities, thereby reducing the quality of human life due to waste generation problems. Therefore, a good and appropriate waste management system is needed. Landfills are one of the basic needs in waste management, so their existence is very necessary. The efforts made by Indonesia in the form of Agenda 21 Indonesia, this agenda provides a series of views and inspiration for development planning in Indonesia. Agenda 21 Indonesia also provides advice and strategies for realizing

sustainable development so that it can be used as a reference for the preparation of GBHN (State Policy Guidelines), Repelita VII and subsequent Repelita. One of the agendas is waste management which includes Protection of the atmosphere, Management of toxic and hazardous materials, Management of toxic and hazardous waste, Management of radioactive waste, Management of solid and liquid waste.

Community participation is the most important thing in managing waste. This participation will increase if people realize the benefits and advantages they get if they independently manage waste. Environmental management activities, especially in terms of waste, will not work well if they only rely on the role of the government (Ristya, T. O., 2020).

Each region must have efforts in managing its own waste, but the development of an area means that the need for land to support human activities is getting higher, causing land functions in various regions to change. This results in the difficulty of obtaining landfill land, especially in urban areas due to the limited land available. This condition makes the addition of land an expensive thing, so a good and proper waste management system is a wise choice. In addition to waste generated by households, companies/institutions also produce a large amount of domestic waste in their activities.

It is not only about technical matters but also needs consideration through various existing disciplines such as understanding how the impact on the environment, financial and economic calculations, social and cultural issues, as well as aspects of public policy and institutions that can support processing. The waste management system itself consists of five sub-systems, namely regulations / laws, institutions / organizations, operational techniques, financing / retribution, and community participation, but in reviewing waste management, not only reviewing from five aspects but must consider other aspects as discussed in Law Number 18 of 2018 based on nine (9) principles with the aim of improving public health, environmental quality and making waste a resource. (Erin Damanhuri & Tri Padmi., 2019)

There are various aspects of good waste management according to Wilson, especially political, institutional, social, financial, economic, and technical aspects. The same thing was stated by Zurbrugg that things that need to be considered in the waste management process include institutions and regulations, understanding and participation, know-how and capacity, environmental protection, technical aspects, financial and economic aspects. In addition to the aspects that must be considered in waste management, there is an integrated waste management concept that must be considered through 3 dimensions of sustainability that require validity between stakeholders, system elements, and influential aspects.

National waste in 2022 is food waste with a proportion of 41.55%. Followed by plastic waste with a proportion of 18.55%. Then there is waste in the form of wood / framing (13.27%), paper / cardboard (11.04%), metal (2.86%), cloth (2.54%), glass (1.96%), rubber / leather (1.68%), and other types of waste (6.55%). As for the source, the majority or 39.63% of national waste generation last year came from households. The next source of national waste generation came from commerce as much as 21.07%, 16.08% from markets, 7.14% from commercial/industrial/other areas, 6.82% from public facilities, 5.96% from offices, and 3.3% from other sources. In terms of waste composition, the majority of municipal waste in Indonesia is classified as biological waste, or commonly known as organic waste. This biological waste for big cities can reach 70% of the total waste, and around 28% is non-biological waste which is a potential object of scavenger activity, starting from the source of waste (from houses) to the landfill. The rest (about 2%) is classified as hazardous waste that needs to be managed separately. (Annur, CMA,2023) In addition, it is hoped that with this integrated waste management site, there will be cooperation between communities around the company/institution environment in maintaining cleanliness.

Based on its composition, waste can be divided into several types, namely 60% organic waste, 15% plastic, 10% paper, and 15% metal, glass, cloth, leather (KLHK, 2015). Organic waste mainly consists of food waste (both from animals and plants), vegetables, fruits, fish waste, agricultural and plantation waste, wood waste, leaves, twigs, and animal and human waste. If organic waste is not managed properly, it can cause disease, unpleasant odors, damage the aesthetics of the city, and reflect the government and community's indifference to

environmental cleanliness and health. In addition, organic waste can also be a source of pollution by producing liquid waste (leachate) that pollutes groundwater and methane gas that pollutes the air, which is a cause of global warming (Amin, A. A., Nugraha, A., & Sutjahjo, S. H., 2018).

Current legal regulations starting from the 1945 Constitution of the Republic of Indonesia Article 28H paragraph (1) provide the right to a good and healthy environment. The government is responsible for public services in waste management, can partner with business entities, and involve community organizations and groups. This is regulated in the fourth part of article 9 paragraph 1 which explains the government's authority in determining the location, policy and authority of the government in handling waste. An important process that should be carried out to maintain the stability of a clean environment is the waste management process which includes waste reduction and processing (Article 19). The government also facilitates every waste management activity regulated in Article 24.

Law No. 18 Year 2008 on Waste Management. The rapid growth of the population in Indonesia increases the volume of waste, influenced by people's consumption patterns and the difficulty of recycling packaging waste. Many still consider waste useless and manage it only at the final stage, leading to potential methane gas from landfills. Waste management needs a new approach that sees waste as an economic resource, with a comprehensive strategy from source to waste handling. Also, the Regulation of the Minister of Public Works of the Republic of Indonesia No. 3 of 2013 fully regulates the Implementation of Waste Infrastructure and Facilities for Handling Household Waste and Waste Similar to Household Waste. Within Banyumas Regency itself, Regional Regulation No. 18/2014 on Environmental Protection and Management, Regional Regulation No. 6/2012 on waste management, Banyumas Regent Decree No. 050/53/Year 2021 on Self-Help Groups and various other provisions apply.

Real cooperation in realizing the regulations that have been formed by the government between the community and the government in managing waste can be found in Banyumas, which is currently processing waste worldwide, presenting its waste management methods at the COP 27 International Conference in Egypt and being able to attract other countries to want to learn from Banyumas. This achievement is the reason for the writing team to research the waste management process.

2. Problem Formulation

With regard to the explanation above, the Research Team intends to study and conduct research on the following problems:
1. What problems arise in household waste management in Banyumas district?
2. What factors influence the development of collective awareness among Banyumas Regency community members in household waste management?

3. Research Methods

The type of method that will be used in this research is sociological empirical legal research based on efforts to collect, process, and analyze secondary data from interviews with informants from various circles such as Government Officials (village officials), The approach taken by the team in conducting research using a qualitative approach to understand the symptoms studied. Meanwhile, the nature of the research is prescriptive evaluative as a basis for providing solutions to the problems studied. All data obtained, both regarding document studies and interviews and observations, are subjected to a process of checking and cross-checking (data triangulation) to ensure the validity of the data that will be presented in the research report and articles that will be produced and published in scientific journals.

All data collected was processed and analyzed qualitatively using Anton F. Susanto's analysis model, which is as follows:
1. Data Reduction
2. Focusing on Simplification

3. Abstracting
4. Data transformation.

The data analysis technique used by researchers according to the Miles and Huberman analysis model which consists of 3 (three) kinds of qualitative analysis activities, namely:
1. Data Reduction
2. Data Model (data analysis)
3. Withdrawal/Verification
4. Conclusion. (Milles & Huberman., 1992)

The data reduction process is carried out by selecting, focusing, simplifying, abstracting and transforming the data that has been collected. Furthermore, the data model is made and processed in such a way as to become a narrative sentence and practical in drawing conclusions. Drawing conclusions from data reduction and data models that have been made, and verifying the data again in order to get sufficient validity. (Emzir., 2010)

4. Analysis and Discussion

Waste management must not only be carried out by a government agency but also the importance of the community managing it themselves because the existence of independent waste management can reduce waste that is scattered everywhere so that a clean, healthy and comfortable village can be created, build public awareness about environmental and natural awareness, solve self-created waste problems and create jobs. There are 3 types of waste that need to be known by the community, namely, organic waste, non-organic waste, and hazardous waste. Organic waste is waste that comes from the remains of living things that are easily decomposed or decomposed naturally. Example: Food scraps, fruit and vegetable scraps, tea/coffee grounds, leaves and tree branches. Organic waste such as fruits and vegetables which if disposed of just like that to the TPS will produce leachate which is a liquid produced from anaerobic decomposition will be washed away by water from outside and carried into groundwater (Erin Damanhuri and Tri Padmi. 2019), so that the need for organic waste processing can be done in various ways, namely composting, organic waste as animal feed, and utilizing living things such as the use of magot or *Black Sholdier Fly* (BSF). (Interview with the Head of Bumdes, Pancasan Village, December 14, 2023) Various aspects of good waste management according to Wilson, especially political, institutional, social, financial, economic, and technical aspects. The same thing was stated by Zurbrugg that things that need to be considered in the waste management process include institutions and regulations, understanding and participation, *know-how and capacity,* environmental protection, technical aspects, financial and economic aspects (Erin Damanhuri and Tri Padmi, Op. cit, p.17). In addition to the aspects that must be considered in waste management, there is an integrated waste management concept that must be considered through 3 dimensions of sustainability that require validity between stakeholders, system elements, and influential aspects.

4.1. Problems of Waste Management in Banyumas

Through the problem that arose, namely the *over capacity of the landfill in* Kaliori Village, Banyumas, the residents and the local village head held a demonstration to voice their concerns regarding the adverse impacts of the *over capacity*. The quick action taken by the Regent of Banyumas in handling the demonstration at the Kaliori landfill in 2016 showed that the Regent as the head of the region and head of the government had accommodated the aspirations of the community members who objected to the impact of the landfill in Kaliori village that had polluted 5.5 hectares of community rice fields and caused a strong stench as a manifestation of the strong leadership spirit of the Regent in carrying out his duties as head of the region and as head of the government. This step was then followed up with the construction of TPSTs in several villages in Banyumas district and continues to this day down to the village level. The government and citizens of Banyumas continue to innovate and be creative in utilizing and processing household waste into products that have economic value such as paving blocks, asphalt, magot cultivation, and so on. At TPST Gunung Tugel, the Regent of Banyumas stated that the *Zero Waste* program, which is the goal of the Banyumas government, has reached 90% (Mojokdotco., 2023).

In addition to the *over capacity* problem that occurs in Kaliori, one of the villages in Banyumas also feels the same way, namely Kedungrindu village where there is a KSM Randu Makmur which is trying to overcome the waste emergency problem. The TPST Director stated that this waste processing started from compulsion because of the waste emergency, the way it was done was by asking questions about how to process waste so that the emergency could be overcome. Through good cooperation, they were able to carry out waste management that was recognized by various parties. Processing waste from the source changes people's behavior by making it easier for people to sort waste to be purchased by the government. Revenue 130-140 million/month, operational 120 million, employee honorarium 90 million, others 30 million, daily costs 2 million. Cooperation with the health department so that all workers have BPJS and routine health checks. Processing of leachate produced into water compost (Interview with TPST director on December 14, 2024).

Currently there are 6 new TPSTs in Banyumas, but previously there were 4 TPSTs that have been established, which means that Banyumas Regency currently has 10 TPSTs that are active in the waste processing process. He said that there are 42 PDUs (Waste Recycling Centers) in Banyumas Regency, PDUs are smaller waste recycling centers from the Ministry of Environment and Forestry of the Republic of Indonesia. In relation to waste management, the community is involved in small-scale waste management. Every household waste can be processed and not continue to accumulate. Until the formation of KSM (Kelompok Swadaya Masyarakat), at the time of the formation of KSM, he had a demo because it was considered a problem. But at that time he asked for time to prove that the formation of this KSM was not a problem, he began to equip waste processing tools / machines and began to process waste, initially only 1 ton of waste was processed, then continued to grow. He asked the community whether this waste processing caused bad odors, and the community's answer was that it did not cause odors. Then as many as 30 people entered the KSM to work and after being calculated and made SDF, it turned out to generate a profit of 50 million / month, which initially they were not interested at all then because they made a profit they entered as administrators and so on. Not only that, when this KSM was running, there were people who demonstrated because of the smoke coming out of the machine. The Banyumas Regent directly handled this by modifying the chimney and monitoring it so as not to disturb the community (Mojokdotco., 2023).

In addition, there is also an effort to cultivate magot in Pancasan village, Ajibarang sub-district, which decomposes organic waste such as vegetable and fruit scraps. This is done by the Berkah Banyu Makmur village-owned enterprise, the Berkah Runtah business unit. The Berkah Runtah business is a bumdes business unit in charge of waste processing business originating from Pancasan villagers built on land in 2019 and started operating in 2020 with the vision of realizing a clean, healthy and comfortable Pancasan village and actualized in its mission, namely, protecting springs, realizing Sapta Pesona, and creating jobs. This Bumdes has several employees whose duties have been divided by the government from waste transportation, waste sorting, residual waste handling to the maintenance of BSF magot, each of which has two employees except for waste transportation which is only one. Revenues are obtained from various ways of selling or distributing, namely garbage fees or customers, which currently Bumdes berkah Runtah has around 1790, selling organic waste, selling BSF magot, and selling kasgot organic fertilizer (Interview with Mr. Sukirno, Head of Pancasan Village, on December 14, 2023).

4.2. Building Collective Awareness of Banyumas Community Citizens

The Banyumas community builds an integration, which is the process of uniting cultural and social groups in a unified territory, namely something that can unite the community (Mahfud MD,2023). The totality of beliefs and sentiments common to the majority of the population of a society forms a special system that has its own existence; this can be referred to as collective consciousness or shared consciousness. Therefore, collective consciousness is fundamentally different from individual consciousness, although it can only be understood through it (Tom Campbell. 1994).

Other parties besides the government, such as clergy, also take part in efforts to socialize with the community where people will be told how to process waste properly through the deepening of faith held since 2020. For

example, Romo Tedjo Wibowo stated that: "In 2023 we have developed a topic on the theme of ecological economy, where this theme teaches how we strive for economy and ecology from the teachings of Pope Francis how we can process the economy as well as ecology, without exploiting the plants, actually since 2007 we have proposed sorting waste, reducing Styrofoam and plastic."

The response of religious leaders starting from the Romo regarding the success of the Banyumas government in waste management to become the talk of the world is not only limited to appreciating but also needs to be criticized because for the Romo in building community character must start from the personalities of each Banyumas community so that there is a character that is formed as a culture and this needs a relatively long time so it needs to be criticized that whether this success is only an economic success or the success of the Banyumas government in shaping the character of the Banyumas community regarding its concern in fighting waste and protecting the environment. Likewise, the response of Islamic religious leaders about the global success of waste management in Banyumas, Mr. Wahyu said that good waste management is only in one point in Purwokerto which is able to process waste into other forms of goods such as paving blocks, etc (Interview with Mr. Wahyu, Administrator of the Great Nur Salaiman Mosque, on December 14, 2023). The response of Mr. Shobita, the administrator of Boen Tek Bio regarding the success of Banyumas to go global, he always supports what is an innovation from the Regent of Banyumas which is believed to be a good innovation from the government and always tries to follow all regulations made by the Regent of Banyumas (Interview with Mr. Sobita Nanda, Manager of Boentek Bio Banyumas, on December 14, 2024). In addition, the head of the Religious Harmony Forum also pays attention to the problem of people's behavior in littering in public places such as rivers. A program to clean up the river has also been designed, as a form of FKUB's support to the government. Although legally formal, it has not yet focused on environmental issues (Online interview with the Chairman of the Banyumas Religious Harmony Forum: Prof. Dr. KH. Muhammad Roqib, M.Ag.) The local natural environment has also influenced the development of regional culture (Soeharjono. I.S., 1977)

With regard to the various problems mentioned above, internalization of values related to waste utilization and processing must be carried out so that it can be sustainable by involving. In addition, it is necessary to carry out *Reward and punishment* which begins with socialization of the plan to impose sanctions for violators. Another thing that should be done is to give awards to citizens who are meritorious and obedient to regulations, especially starting from children at the pre-school level.

5. Conclusions and Suggestions

Factors that influence the development of collective consciousness include the general structure of understanding, norms and beliefs that are believed together. Banyumas Regency community members in conserving natural resources through household waste management. As an external force that influences the desires and interests of individuals, it is actually something that is inherent in the life of the Banyumas community itself with its unique value system (ceblaka/spontaneous, mbanyol/candidate, *and Semblothongan/its* own *scheme*) driven by strong formal leadership from the regent level to the village head who applies participatory leadership where community aspirations are heard and become the basis for various activity programs.

Although the success rate of the *Zero Waste* program in 2022 has reached 90%, it still provides an opportunity for a decrease in the level of collective awareness of community members and the commitment of government officials in the Banyumas Regency, so it is necessary for the Banyumas Regional Government's policies and long-term and short-term programs to be packaged specifically as part of the content of the primary and secondary education curriculum so that the process of internalizing values can be instilled early and structured. In addition, the Banyumas local government needs to actively involve various components of the community in the preparation of the curriculum and in the implementation of development programs in the Banyumas district, starting from the planning process to the monitoring stage.

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Managing Legal and Corporate Compliance to Induce and Enhance Business

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Abstract
Compliance management is an important part of the business world, and organizations must ensure their compliance with prevailing applicable regulations and standards. In compliance management, organizations need to understand applicable regulations, codes of conduct, and risk assessments, to be able to develop clear and constantly updated policies and procedures. Training and education for employees are also important to ensure understanding and compliance with the rules of law. Effective monitoring, audits, and reporting mechanisms must be implemented to identify breaches of compliance and address problems promptly and accurately. Consistent and fair sanctions and enforcement of rules must also be implemented to encourage compliance and prevent violations. By implementing effective compliance management, organizations can maintain a good reputation, reduce the risk of law breaches, and ensure operational sustainability. It is also important to always consult with a legal expert in respect of compliance to ensure proper compliance in accordance with applicable regulations.

Keywords: Management, Compliance, Rules, Standards, Governance, Corporation

1. Introduction

Management refers to the process of managing or regulating resources, time, and actions to achieve a set goal. It involves various functions such as planning, organization, guidance, and control (Hugos, M. H. 2024). Planning involves identifying problems, making decisions, and drawing up a clear and measurable plan of work. (Renz et al., 2024). In the field of organization, management functions involve organizational structure and resource allocation to a goal. Organization includes the division of tasks and responsibilities, team building, and the efficient allocation of resources. (Stevens et al., 2024). Meanwhile, in the field of guidance, management functions involve the guidance and motivation of individuals or teams to achieve a set goal. This includes effective communication, inspiring leaders, and building and developing employees. In the field of control, management functions involve performance monitoring and evaluation of a set objective. Control involves performance measurement, results monitoring, and adjustment of planning and action if necessary. (Byrne et al., 2024). Management also involves various skills, such as communication skills, leadership, decision-making, and

problem-solving. In addition, management also involves an understanding of the business or organizational context, such as markets, competition, technology, law, finance, and other environmental factors. (Warren, C., & Glass, J. 2024). Management is not only limited to the top management level within an organization, but also relevant at all levels, including operational management, project, and team, which is also included within the legal scope.

Law is a set of rules and principles recognized by society and applied by authority to regulate behavior and relations between individuals, organizations, and states. (World Bank. 2024). The law aims to maintain social order, protect individual rights and freedoms, promote justice, and provide means of dispute settlement. The field of law covers a wide range of sub-disciplines and specializations, such as contract law, civil law, criminal law, business law, corporate law employment law, environmental law, international law, tax law, and more. Each subdiscipline of law has its own specific rules and principles, as well as different judicial processes and dispute resolution. (Chalmers et al., 2024). The law also involves judicial processes, in which legal issues are brought to courts for examination and decision. The judicial process involves the parties to the dispute, judges, and an independent judicial system. The judicial process aims to justify and settle disputes fairly, based on applicable law. The understanding and application of the law varies from country to country, depending on the legal system used. (Hailbronner, K. 2024). Some commonly used legal systems include common law, civil law, and Islamic legal systems. (Islamic law). There is a law that every individual is bound to obey. (Smith, M. L. 2024).

Compliance with the law refers to the obligation and responsibility of individuals, organizations, corporations, and institutions to comply with applicable legal regulations. That is, they must follow the rules set out in laws, regulations, and other legal provisions. Compliance with the law is an essential principle in social order, preventing abuse of power, and ensuring the well-being of society as a whole. (Freeman, A. 2024). Important matters related to legal compliance include; following the rules, preventing violations, promoting ethics and integrity, and social responsibility. To ensure compliance, individuals and organizations must understand the applicable legal regulations, formulate internal policies supporting conformity, involve stakeholders, undertake legal training, and conduct internal audits regularly (Elpina, E. 2024).

Compliance management is crucial in managing organizations, especially in the face of increasingly complex and stringent legal challenges. (Purba, Y. Y. 2023). Every organization needs to ensure that they comply with all applicable rules and standards to avoid adverse legal consequences and maintain their reputation. This research will focus on various aspects of legal compliance management, including identification and understanding of legal regulations relevant to a particular industry or sector, formulation of policies and procedures to ensure compliance, implementation of compliance programs, as well as monitoring and assessing compliance continuously. In addition, the study will also analyze factors that affect legal compliance, such as organizational culture, internal communication, and supervision.

2. Method

Studies in this study are literature studies. Literature research methods are research approaches that are carried out by collecting and analyzing various library sources related to the subject being studied. (Grbich, 2012; Bazeley, 2013). There are several methods that can be used in literature research, among others:

1. Keyword search: This method involves searching for relevant keywords in catalogs, indexes, or search engines to find references that match the research topic.
2. Content analysis: This technique involves reading, understanding, and assessing the content of the collected library sources. The researchers record and analyze findings relevant to the research subject.
3. History approach: This method involves researching literature related to the history of the development of the subject being studied. It can help in understanding the evolution of concepts, theories, and perspectives relevant to research topics.
4. Comparative methods: It involves comparison and analysis of findings found in different literary sources. It can help identify differences, similarities, and trends in research that has been done (Linos & Carlson, 2017; Damgaard et al., 2001).

Literature research methods are an effective way to gain a comprehensive understanding of research topics, look at the progress of research that has been done before, and identify research gaps that can be further explored.

3. Results

3.1 Compliance Management

Legal management is a systematic approach an organization or company uses to manage the legal aspects of their operational activities effectively and efficiently. (Makowicz, B., & Jagura, B. 2024). Legal management covers identifying, analyzing, controlling, and managing legal risks related to various aspects of business. The primary objective of legal management is to minimize legal risks and optimize compliance with applicable regulations and regulations (Michaelis et al., 2023). This involves developing policies, procedures, and systems that are consistent with the law and ensuring that employees and other relevant parties understand and comply with relevant legal requirements (Şahin, E. Ü. 2023). Legal management also involves monitoring changes in regulations and laws and ensuring that companies comply with those changes. It also involves dealing with legal issues that may arise, either through prevention, negotiation, out-of-court settlement, or judicial proceedings (Liu, Z. 2023).

Organizations that implement good legal management usually have an internal legal team or department or may also involve external legal consultants. They can also use sophisticated technology and information systems to support law management effectively. For good legal management, it is important to have an in-depth understanding of applicable regulations and laws, identify legal risks that may arise in various operational aspects, and involve stakeholders in decision-making processes related to legal aspects. (Hobvi et al., 2022). Then with that, the need to implement compliance management.

Legal Compliance Management is the framework companies and organizations use to ensure compliance with applicable regulations, laws, and standards (Salguero-Caparrós et al., 2020). It involves formulating policies and procedures, conducting risk assessments, establishing controls, monitoring and auditing compliance activities, and dealing with problems when non-compliance occurs in operations. (Coglianese, C., & Nash, J. 2020). Legal Compliance Management plays an important role in helping organizations operate ethically and avoid legal risks. It helps them understand and fulfill their legal obligations and prevent and detect violations of laws and regulations. Legal Compliance Management involves developing, implementing, and monitoring policies, procedures, and practices that support compliance at the overall organizational level. This includes an understanding of applicable regulations, the implementation of preventive measures, early detection, and handling of law violations. (Kanapuhin et al., 2021).

When a violation of the law occurs, it has a serious impact on individuals and societies.

1. Legal sanctions: A violation of the law may result in various legal sanctions, such as fines, imprisonment, or other penalties, in accordance with the provisions of applicable law.
2. Material losses: A violation of the law may affect the material losses of an individual, business, or associated party. For example, infringement of intellectual property rights can result in financial losses for copyright or trademark owners.
3. Reputation Damage: A violation of the law can damage the reputation of an individual or company. Actions or fraud that violate business ethics or social values can lead to a loss of trust from stakeholders.
4. Disruption of public life: Violations of the law, especially those involving serious crimes, may interfere with public order and security. It can create a sense of insecurity and make people more vulnerable to other criminal acts.
5. Psychological damage: A violation of the law can also have a significant psychological impact on the individual who becomes a victim. They may experience stress and trauma or feel insecure as a result of violations of the law that they experience. (Nurhasim, M. 2021; Purnamasari et al., 2023).

Therefore, it is important to understand and respect the law to prevent the adverse impact of a violation. The law aims to create order, justice, and security in society. Implementation of Compliance Management can help companies minimize legal risks, maintain the company's reputation, and comply with applicable legal obligations. International standards such as ISO 37301:2021 can also be used as a benchmark in developing an effective compliance management system. (Michaelis et al., 2023).

3.2 Rules and Standards to Be Adhered to

A rule is a written rule established by a government or authority authorized to regulate the behavior of individuals, groups, or organizations in a particular territory or field. Each type of rule has different purposes and authority according to its field and scope. (Laffont, J. J. 2005). Communities and organizations need to understand and abide by the rules in force for order, justice, and the common good.

An organization is an entity consisting of individuals or groups working collectively toward a specific goal. Organizations can be corporations, government agencies, non-profit organizations, foundations, clubs, and so on. Organizations play an important role in society and the economy with their various purposes and activities (Agustina et al., 2024). They create jobs, provide products and services, make social contributions, advance innovation, and play a role in the development and progress of a region. (Pudjowati et al., 2024). Organizational Rules are rules set by organizations. "Organization Rules", different organizations may follow different rules and guidelines. These rules are usually applied to ensure smooth operation, maintain order, and guide the behavior and actions of members within the organization. For example, the Indonesian Public Relations Association (RAPI) has special organizational regulations (Selten, F., & Klievink, B. 2024). These regulations cover various aspects such as guidance for organizational development, technical and training guidelines, community service activities, and the organization's proper use of communication technology. (Bankins et al., 2024).

Other organizations with regulations are the Indonesian Association of Pharmacists (IAI). These regulations include guidelines for the management and use of association assets, guidance on advocacy and defense for members, and technical instructions for the submission and assessment of participation credit units. (Indonesia, I. A., & Timur, P. D. J. 2014).

Government institutions in Indonesia also have organizational regulations. For example, the Ministry of Education, Culture, Research and Technology has regulations that regulate its organizational structure and procedures. This rule outlines organizational hierarchy, responsibilities, and guidelines for effective administration. The rules and guidelines specific to each organization can vary widely depending on the purpose, industry, and institution that governs it. (Kim et al., 2024).

Organizations must comply with various rules and standards that apply according to their field and scope of activity. Some general rules and norms that organizations must abide by include:

1. National Law: Organizations shall abide by all laws, regulations, and regulations that apply in the country where they operate. These cover a wide range of fields, such as commercial law, trade law, labor law, tax law, environmental law, consumer law, and so on.
2. Industry regulations: Each industry also has regulations and standards that must be followed. For example, the financial sector must comply with banking regulations and capital market regulations, the pharmaceutical sector must abide by regulations on the production of medicines, and the transportation sector must obey transportation safety regulations.
3. ISO and Other International Standards: Organizations can also choose to adopt international standards, such as ISO (International Organization for Standardization). For example, ISO 9001 for quality management systems, ISO 14001 for environmental management systems, or ISO 45001 for occupational health and safety management systems.
4. Code of Ethics and Professional Standards: Many industries have codes of ethics and professional standards that must be adhered to by individuals and organizations operating in them. These codes establish the principles and values to be followed in behavior and action.

5. Privacy and Data Protection Regulations: With the increasing data ownership and use, privacy and data protection regulations are becoming increasingly important. Organizations must comply with the privacy regulations that apply in the country where they operate, such as the GDPR (General Data Protection Regulation) in the European Union or the CCPA (California Consumer Privacy Act) in California, USA. (Akanfe et al., 2024; de Souza et al., 2024; Abrahams et al., 2024).

Each organization must assess and understand regulations specific to its field and scope of activity, as well as ensure compliance with regulatory obligations. The organization needs to have an effective compliance management system to ensure understanding and compliance with applicable regulations and standards.

4. Discussion

4.1 Law Compliance Level in the Organization

Legal compliance refers to the actions of an organization or individual in accordance with applicable laws, regulations, and regulations. It includes understanding, following, and obeying the laws applicable to the operations of the organization and individual activities. Meanwhile, the level of legal compliance in an organization is an important indicator for assessing the extent to which the organization carries out its activities in compliance with the applicable legal provisions. The degree of legal conformity indicates the degree to which an organization follows the laws, rules, and guidelines applicable to its operations (Elpina, E. 2024). Legal conformity within an organization includes several factors, among others:

1. Prevent legal risks: By conducting activities in conformity with the law, an organization can reduce the risks associated with breaches of law and avoid adverse consequences, such as sanctions, fines, or damaged reputation.
2. Increase trust and reputation: An organization that upholds high compliance will gain the trust of its employees, business partners, and customers. This will provide a good reputation and support a good relationship with stakeholders.
3. Ensure ethics and values: The level of compliance with the law in the organization also reflects respect for the ethics and integrity of the organization as well as ensuring that the organization operates with true and fair principles (Elpina, E. 2024; Amankwa et al., 2024).

To improve the level of compliance with the law in an organization, several steps can be taken, among others:

1. Legal awareness: Improve employee understanding of the law applicable to the organization's activities, including legal training and socialization.
2. Compliance policy formulation: Create clear policies and guidelines on compliance within an organization and ensure that such policies are implemented consistently.
3. Monitoring and enforcement: Execute internal supervision and make sure that compliance principles are applied effectively at all levels of the organization.
4. Inspection and internal control: Conduct routine reviews of organizational activities to ensure compliance with the law and identify and manage compliance risks. 5) Be fair and accountable: Enforce compliance fairly and coherently in the treatment of legal violations occurring within an organization. (Gutmann et al., 2024; Brendler, V., & Thomann, E. 2024).

With a high level of legal compliance, organizations can minimize legal risks and preserve the reputation and trust of stakeholders. Maintaining a corporate reputation is a very important and valuable thing in the modern business world. A good reputation can enhance the corporate image, increase customer confidence, increase competitiveness, and help organizations retain and attract the best talents in the industry. On the contrary, a bad reputation may damage the company’s image, reduce customer trust, and cause huge losses to organizations (Tran et al., 2024). Organizations should invest in their reputation. By building a good reputation, organizations can gain a strong competitive advantage and win the trust, and support of customers, employees, and other stakeholders.

4.2 Factors Affecting Compliance

There are several factors that influence the level of compliance in an organization. Here are some factors that can influence compliance:

1. Organizational leadership and culture: Strong leadership and a high commitment to compliance will be an example for all members of the organization. An organizational culture that encourages and values conformity will encourage individuals to comply with applicable rules and laws.
2. Awareness and understanding of law: A level of awareness of and good understanding of applicable law and regulation is essential. Organizations need to provide adequate training and education to employees so that they understand the importance of compliance with the law and its consequences.
3. Risk management systems: An effective system can help organizations identify, evaluate, and control compliance risks. Adequate risk analysis provides an organization with an understanding of areas vulnerable to violations.
4. Resource availability: Organizations need to have adequate resources to meet compliance requirements. These include the human, financial, and technological resources needed to ensure compliance with rules and regulations.
5. Monitoring and monitoring: Having an effective monitoring system is key to ensuring compliance. Organizations need to monitor and evaluate their activities regularly to identify violations and take necessary corrective measures.
6. Relationships with governments and regulators: Maintaining good relationships with governmental and regulatory authorities can help organizations obtain the information and understanding needed to comply with established rules and policies.
7. Reputation and external impact: Organizations that have a good reputation and value their impact on society and the environment often have a higher tendency to comply with the law. In some cases, a threat to reputation or risk of a negative impact on society can be an additional incentive for compliance (Chalmers et al., 2024; Hernández, G., & Closa, C. 2024, Davis, J. A., & Hassan, S. 2024).

All these factors are interrelated and can contribute to good compliance within an organization. By recognizing and paying attention to these factors, organizations can strengthen their commitment to compliance and prevent the risk of harmful breaches.

4.3 Impact of Compliance on Organizations

Compliance with the law significantly impacts the organization, both positively and negatively. Here are some impacts of legal compliance on an organization:

1. Trust and reputation: Good compliance with the law can build the trust of the organization's customers, business partners, and the public. It can also improve the organization's reputation and help establish good relations with stakeholders.
2. Avoidance of legal sanctions and financial losses: Compliance with laws and regulations can help organizations avoid judicial sanctions that can result in financial loss such as fines, lawsuits, or penalties. Organizations can protect themselves from legal risks that may harm their finances by complying with legal obligations.
3. Operational efficiency: Relevant legal regulations and compliance can help organizations carry out their operations more efficiently. The regulations can provide guidelines for a safe working environment, consumer protection, personal data protection, and so on. Compliance with these regulations can avoid legal and operational problems that could interfere with the organization's workflow.
4. Risk management: The existence of strong legal compliance can help organizations in managing risk. By understanding applicable rules and regulations, organizations can detect, prevent, and address potential law violations that may threaten the business's survival.
5. Competitiveness: Good compliance with the law can enhance an organization's competitive capacity. Organizations that have proven to comply with the law and adhere to good business ethics tend to be more trusted by consumers and business partners, which will give them a competitive advantage in the market.

6. Business sustainability: Good legal compliance is the foundation for long-term business sustainability. By conducting business in accordance with applicable laws and regulations, organizations can minimize reputational risk, prevent harmful legal issues, and strengthen their presence as a responsible business entity. (Mehmood et al., 2024; Cass et al., 2024).

Adoption of legal compliance is an important step that all organizations must implement. Compliance's positive impact not only contributes to the organization's short-term success but also creates a solid foundation for sustained growth and a successful future.

4.4 Effective Compliance Management Strategy

The term "management strategy" refers to the process of formulating and implementing strategies for the goals and objectives of the organization. It involves analyzing the internal and external environment of the organization, setting goals, formulating strategies, and implementing and evaluating such strategies. (CHEN et al., 2024).

According to experts, management strategy encompasses a variety of tasks, including defining the mission, objectives, philosophies, and goals of the company. It is an important function that enables companies to align their resources and activities with long-term and objective goals (Wang et al., 2024). In short, management strategies are the process of designing, implementing, and evaluating business strategies to long-term goals and aligning resources and activities with those goals. To maximum objectives, effective law enforcement is required within an organization. (CHEN et al., 2024).

Effective legal compliance is an organization's effort to comply with and ensure compliance with applicable legal regulations and regulations in its operations. It aims to maintain the operational sustainability of the company, prevent violations of the law, and protect the reputation and integrity of the organization. Effective compliance involves understanding and compliance with applicable legal regulations, both locally and internationally. Organizations need to understand regulations relevant to their industry and operating territory as well as identify possible compliance risks. By implementing effective legal compliance, organizations can minimize the risk of breaches, preserve their reputation, and support their operational sustainability in accordance with applicable legal principles. (Davis, J. A., & Hassan, S. 2024).

Effective compliance management strategies then implemented:

1. Understanding Regulation: Organizations need to understand and monitor the regulations that apply in their industry and operational areas. This can be done by organizing training and workshops related to the rule of law and ensuring that all members of the organization understand and update the compliance policy regularly.
2. Risk assessment: Organizations need to conduct a risk assessment of their activities and identify areas most vulnerable to compliance. Subsequently, a risk mitigation analysis is carried out.
3. Policies and Procedures: The organization needs clear and mandatory compliance policies and procedures that all members must follow.
4. Training and Education: Provide training and education on legal compliance at all levels of members of the organization to understand the legal application to their business operations related to compliance.
5. Monitoring and Audit: Monitor and conduct regular audits to ensure compliance is properly implemented and identify potential risks.
6. Violations Reporting and Handling: Organizations need to establish secure reporting mechanisms and empower employees to report violations of compliance and to deal with violations promptly and accurately.
7. Enforcement of Rules and Sanctions: Organizations need to implement rules and sanctions that are explicitly set out in the compliance policy to encourage employees and business partners to remain compliant with the rules and avoid breaches of the law (Djuharni et al., 2024; Hugos, M. H. 2024; Davis, J. A., & Hassan, S. 2024).

By implementing effective compliance management strategies, organizations can maintain their good reputation, reduce the risk of law violations, and ensure their operational sustainability legally and ethically.

5. Conclusion

Compliance management is to ensure that organizations and corporation members comply with applicable rules and standards. In a complex business world with constantly evolving regulations, compliance management is vital for a company's reputation, minimizing the risk of breaches, and ensuring operational sustainability. In compliance management, organizations must understand applicable regulations, conduct risk assessments, and develop clear and regularly updated policies and procedures. Training and education for employees are also important to ensure understanding and compliance with relevant legal rules.

Not only that, but effective monitoring, audits, and reporting mechanisms must also be implemented to monitor and identify breaches of compliance. Violations must be handled strictly in accordance with existing policies. In carrying out compliance management, it is important to apply sanctions and enforce rules consistently and fairly. The aim is for employees and business partners to understand the importance of compliance and avoid breaches of the rules. By conducting effective compliance management, organizations can ensure compliance with applicable regulations and standards, maintain a good reputation, and prevent legal risks that could jeopardize the operations and sustainability of the company.

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Unwilling and Unable Test in Gross Human Rights Violations in Indonesia

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Abstract
This study examines the application of the concepts of "unwilling" and "unable" in understanding gross human rights violations in Indonesia. The purpose is to delineate the nuanced dynamics behind such atrocities, exploring whether violations stem from the government's unwillingness or inability to protect human rights. Employing a qualitative research approach, data was collected through document analysis, interviews, and case studies. The findings suggest that gross human rights violations in Indonesia often result from a combination of both factors: state actors may be unwilling to uphold human rights due to political agendas or systemic corruption, while systemic weaknesses and resource constraints render them unable to effectively prevent or address violations. The study underscores the importance of addressing both dimensions to effectively tackle human rights abuses, advocating for institutional reforms, accountability mechanisms, and international pressure to compel the Indonesian government to fulfill its obligations to protect human rights. In conclusion, understanding the interplay between unwillingness and inability is crucial for devising comprehensive strategies to combat gross human rights violations in Indonesia and similar contexts worldwide, emphasizing the imperative of fostering a culture of respect for human dignity and justice.

Keywords: Indonesia, Human Rights Violations, Unwilling and Unable, Application

1. Introduction

In the context of gross human rights violations in Indonesia, the concepts of "unwilling" and "unable" serve as critical analytical frameworks. "Unwilling" refers to deliberate acts of commission or omission by state actors (Whiite, *et al*., 2018; Roger, 2022), such as government officials or security forces, who knowingly perpetrate or condone abuses against individuals or groups. Conversely, "unable" implies systemic failures or inadequacies within the state apparatus, leading to an inability to prevent or address human rights violations effectively (Frowde, Dove. & Laurie, 2020). Understanding the interplay between these concepts sheds light on the complexities of accountability, revealing the intertwined roles of intentionality and structural deficiencies in perpetuating atrocities and fostering a culture of impunity within Indonesian society (Melvin *et al*., 2023).

Since 1965, Indonesia has grappled with a harrowing history of gross human rights violations, spanning until 2020. The nation has been plagued by forced disappearances, mysterious killings, and systemic abuses, perpetuated by both state and non-state actors. The atrocities have left a haunting legacy, with countless families left in anguish over the unexplained fates of their loved ones. The Pania case in Papua stands as a stark example, highlighting the ongoing struggles faced by indigenous communities in Indonesia's easternmost region. Despite efforts to address past injustices and promote accountability, the scars of these violations run deep, casting a shadow over Indonesia's human rights landscape. As the country moves forward, confronting its past and fostering a culture of accountability and justice remains imperative to ensure a future where human rights are respected and protected for all Indonesians (Juwana, 2021).

Indonesia prides itself on being a rule-of-law country with comprehensive civil rights safeguards enshrined in the Constitution (UUD 1945), bolstered by legislative acts such as Law No. 39 of 1999 on human rights, Law No. 2000 of 2006 on Human Rights Court and Law No. 20 of 2005 on the ratification of the International Covenant on Civil and Political Rights (ICCPR). However, despite these legal foundations, the country grapples with persistent human rights violations that linger unresolved due to inadequate enforcement mechanisms (Hadiprayitno, 2010). Victims of such violations find themselves in a state of limbo, with little hope for closure or redress (Harison, 2018). Adding to the complexity of the issue is the involvement of both state and non-state actors in perpetrating these violations, with impunity reigning supreme as accountability measures falter. Consequently, the pursuit of justice for victims remains elusive, as neither legal recourse nor institutional accountability has effectively addressed the systemic breaches of human rights in Indonesia.

The Indonesian government's disregard for human rights and its failure to demonstrate good political will in prosecuting perpetrators have rendered gross human rights violations in the country unsolvable (Triyana, 2023). Despite international pressure and calls for accountability, the Indonesian authorities have consistently failed to address past atrocities, perpetuating a culture of impunity (Melvin *et al*., 2023). The lack of transparency and accountability within the legal system further exacerbates the situation, leaving victims and their families without justice or fair punishment for the perpetrators (Marzuki & Ali, 2023). This systemic failure to uphold human rights and prosecute perpetrators necessitates categorizing Indonesia under the "unwilling" classification, highlighting the urgent need for international intervention and pressure to hold the government accountable and ensure justice for victims of human rights abuses.

2. Method

This qualitative research employs the Unwilling and Unable Test to investigate gross human rights violations perpetrated by non-state actors. The Unwilling and Unable Test, a methodology developed within international law, scrutinizes whether a state is either unable or unwilling to fulfill its obligation to protect human rights within its territory, thereby allowing non-state actors to commit abuses with impunity. This research methodology involves a multi-faceted approach, integrating documentary analysis, interviews with key informants, and case studies to comprehensively examine the dynamics of human rights violations perpetrated by non-state actors. Through the examination of empirical evidence and qualitative data, this research seeks to elucidate the root causes, patterns, and consequences of such violations, while also assessing the responses of relevant state and non-state actors. By applying the Unwilling and Unable Test framework, this research aims to contribute to a deeper understanding of the complexities surrounding human rights abuses by non-state actors, providing insights that can inform policy interventions, legal mechanisms, and advocacy efforts aimed at addressing and preventing such violations in diverse contexts.

3. Literature Review

Several scholars have delved into the realm of gross human rights violations in Indonesia (Baeahr, 1999; Hadiprayitno, 2010; Triyana, 2023; Robet, Fitri & Kabelen, 2023), approaching the subject from various angles such as historical context, political dynamics, and socio-economic factors (Simons, 2000; Marzuki, 2023; White, 2018). These studies have contributed significantly to understanding the complex tapestry of rights abuses in the country. However, what sets this research apart is its unique perspective and methodology. By combining

rigorous empirical analysis with nuanced qualitative research, this study aims to provide a comprehensive understanding of the mechanisms, perpetrators, and impacts of human rights violations in Indonesia. By applying the concept analysis of unwillingness and inability, it becomes evident why Indonesia grapples with impunity. Moreover, this research endeavors to not only document past violations but also to explore avenues for justice, accountability, and reconciliation.

In the realm of literature, scholars often delve into intricate analyses of societal issues, shedding light on the complexities that underpin them. When examining human rights violations in Indonesia, some scholars contend that the resolution of these grave injustices remains elusive (Robet, Fitri & Kabelen, 2023). Central to this assertion is the observation that perpetrators of such atrocities often hail from military (Hadiprayitno, 2010; Tan, 2023), a factor that significantly complicates efforts towards justice and accountability. These scholars argue that the hierarchical structure within the military not only shields wrongdoers from prosecution but also perpetuates a culture of impunity (Melvin, 2023), wherein individuals in positions of power are shielded from consequences for their actions. Moreover, the entrenched influence of the military in various facets of Indonesian society further exacerbates the challenge of addressing human rights abuses effectively (Human Rights Watch, 2023). Despite international scrutiny and calls for reform, the systemic nature of these violations continues to pose a formidable obstacle to meaningful progress (Alexandra, 2017; Sergio, 2022). Furthermore, the historical context of Indonesia, marked by periods of authoritarian rule and political instability, adds layers of complexity to the issue at hand. Within academic discourse, there exists a consensus that addressing human rights violations in Indonesia necessitates multifaceted approaches that encompass legal, political, and socio-cultural dimensions.

However, the enduring grip of military influence on the country's institutions and governance structures impedes the realization of comprehensive reforms. Consequently, the pursuit of justice for victims of human rights abuses remains a daunting task, fraught with challenges and obstacles that defy easy solutions (Marzuki, 2023). Nevertheless, scholars persist in their endeavors to unravel the intricacies of this pressing issue, offering nuanced analyses that contribute to broader conversations surrounding human rights, justice, and accountability on both national and global scales. Through their rigorous examination of historical precedents, legal frameworks, and sociopolitical dynamics, these scholars illuminate the complexities inherent in confronting entrenched power structures and advocating for meaningful change (Hadiprayitno, 2010). Despite the seemingly insurmountable barriers that stand in the way of justice, the scholarly community remains steadfast in its commitment to advancing the cause of human rights and ensuring that the voices of the oppressed are heard and respected. In doing so, they uphold the fundamental principles of dignity, equality, and justice that lie at the heart of the struggle for human rights worldwide.

Gross human rights violations have included atrocities like the 1965-66 anti-communist purge, which led to mass killings and imprisonments, with estimates of up to half a million deaths. The occupation of East Timor from 1975 to 1999 was marked by widespread abuses, including extrajudicial killings, torture, and forced disappearances. The military's actions in Papua, involving intimidation, violence, and suppression of dissent, constitute ongoing violations. Religious and ethnic minorities face discrimination and persecution, evident in instances like the Ahmadiyya and Shia Muslim communities' persecution. Additionally, the rights of indigenous peoples are frequently disregarded, particularly in land rights disputes and resource extraction projects.

Table 1: A grim chronicle of gross human rights violations spanning from 1965 to 2020.

Year	Tragedy	Actor	Process
1965-1966	The 1965 Genocide (Peristiwa G30 S PKI)	State & Non-State	Under investigation
1982-1985	Mysterious Shooting	State	Under investigation
1988	Talangsari Tragedy	State	Under investigation
1997	Enforced Disappearance	State	Under investigation
1988	Trisakti & Semanggi	State	Under investigation
1988	May Riot	State & Non-State	Under investigation
1999	The Aceh KKA Simpang	State	Under investigation
1998-1999	Aceh Geudong House	State	Under investigation
1998-1999	The Shaman Santet	State	Under investigation

2003	Jambo Keupok Aceh	State	Under investigation
2004	Wasior & Wamena	State	Under investigation
2020	Paniai	State	Cassatie

Source: National Human Rights Commission 2022.

4. Discussion

4.1 The Long Road to Justice

Despite the enactment of Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts in Indonesia, the persistence of gross human rights violations underscores the inefficacy of legislative measures alone in ensuring comprehensive human rights protection. While these legal frameworks were ostensibly designed to safeguard against such atrocities, their practical enforcement and implementation have fallen short. Instances of violations continue to occur, suggesting systemic inadequacies in addressing root causes and holding perpetrators accountable. The persistence of gross human rights violations despite legislative efforts highlights the need for holistic approaches integrating legal mechanisms with broader societal and institutional reforms to foster genuine respect for human dignity and rights.

Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts in Indonesia exhibit several weaknesses. Firstly, despite their establishment to protect and uphold human rights, these laws lack comprehensive enforcement mechanisms (Hadiprayitno, 2009). While they establish human rights courts, the effectiveness of these institutions is hampered by bureaucratic hurdles, inadequate resources, and a lack of political will to prosecute violators. Additionally, there are gaps and ambiguities in the legal framework (Juwana, 2021), allowing for selective enforcement and interpretation of human rights violations. Furthermore, the laws do not adequately address emerging issues such as digital rights and environmental rights, which have become increasingly pertinent in contemporary society. Without addressing these weaknesses, the legal framework remains insufficient in providing robust protection for human rights and ensuring accountability for violators. Thus, there is a pressing need for reforms and amendments to strengthen these laws and enhance their effectiveness in safeguarding human rights in Indonesia.

A major challenge of Law Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts lies in the intricate balance between delivering "just" justice and ensuring practical implementation. While these laws signify a significant step towards safeguarding human rights in Indonesia, the complexity arises in their effective execution. Ensuring fair trials, combating corruption within the legal system, and providing adequate support and protection to victims remain formidable tasks. Additionally, navigating socio-political dynamics and addressing cultural sensitivities further complicates the quest for true justice. Thus, achieving the intended objectives of these laws demands continual scrutiny, adaptation, and dedication to upholding human rights principles.

Indonesia's limited success in enforcing gross human rights violations is starkly illustrated by the singular case of Paniai (Triyana, 2023). Despite being brought to court, the perpetrator was deemed not guilty, highlighting systemic failures in human rights protection. This outcome underscores the deficiencies in Indonesia's legal and judicial frameworks, which struggle to address such egregious violations effectively. The absence of accountability perpetuates impunity, eroding trust in the country's commitment to human rights. Without robust mechanisms for addressing gross violations, the pursuit of justice remains elusive, hindering progress toward a society that upholds human dignity and equality.

The protracted investigation into human rights violations by investigators from the Indonesian General Prosecutor's office has introduced another layer of uncertainty into the fate of the victims. The divergence of opinions between the General Prosecutor and the Human Rights Commission has contributed to the complexity of the case, further complicating its resolution. For instance, the ambiguity surrounding the 98 activism propaganda underscores the lack of clarity in addressing historical grievances, while the unknown whereabouts of the victims adds to the overarching sense of unease and apprehension. This discordance not only prolongs the

investigative process but also exacerbates the distress of those affected, leaving them in a state of limbo with regards to justice and closure. The discord between key stakeholders underscores systemic challenges in addressing human rights violations, highlighting the need for improved coordination and cooperation among relevant authorities and organizations.

4.2 Unwillingness and Unable to Fight Impunity

The "Unwilling and Unable" doctrine in international law refers to the principle that when a state is unwilling or unable to effectively address human rights violations within its territory, other states or the international community may intervene to protect human rights (Pufong, 2017). This doctrine emerged as a response to situations where states either lack the capacity to prevent or stop severe human rights abuses (Smith, 2019). It underscores the responsibility of the international community to act when national governments fail to fulfill their duty to protect the rights of their citizens. However, the application of this doctrine raises complex legal and ethical questions, particularly regarding the extent of intervention and the potential for abuse of power by intervening states. Critics argue that intervention under the guise of the "Unwilling and Unable" doctrine can sometimes serve geopolitical interests rather than genuine humanitarian concerns, leading to accusations of interventionism or neo-imperialism (Carey, 2012). Nonetheless, proponents maintain that in cases of egregious human rights violations, the international community has a moral imperative to intervene to prevent further suffering and uphold universal human rights standards, even if it means overriding the principle of state sovereignty (Stegmiller, 2015).

The concept of the Unwilling or Unable test in international law is pivotal in determining state responsibility for failing to prevent or address human rights abuses committed by non-state actors within their jurisdiction (Skantz, 2017). In the case of Indonesia's inability to effectively combat such non-state actors perpetrating human rights crimes, it would indeed meet the Unwilling and Unable test. This test, often applied in contexts such as armed conflict or areas of widespread violence, assesses whether a state lacks either the capacity or the will to effectively address such abuses Birkett, 2017). In Indonesia's scenario, if it cannot adequately respond to or prevent human rights violations by non-state actors due to factors such as limited resources, capacity constraints, or governmental unwillingness, it signifies a failure of its duty to protect human rights within its borders. This failure could have significant legal and moral implications, potentially warranting international intervention or assistance to address the human rights crisis and hold perpetrators accountable. Therefore, meeting the Unwilling and Unable test underscores the urgency for Indonesia to strengthen its mechanisms for addressing human rights abuses and ensuring accountability, both domestically and in accordance with international norms and standards.

The trajectory of Indonesia from 1965 to the 2020s encapsulates a complex tapestry of historical events, political maneuvering, and societal struggles. Amidst this backdrop, the pursuit of justice and accountability has been a recurring theme, epitomized by campaigns such as the Kamisan action (aksi Kamisa), spanning 17 years, which aimed to address the egregious human rights violations, particularly enforced disappearances (Setiawan, 2022). However, despite fervent efforts, the wheels of justice often ground to a halt, with the investigative process obstructed by bureaucratic barriers, notably within the Attorney General's Office of the Republic of Indonesia. The campaign for impunity, entrenched within the corridors of power, wielded considerable influence, undermining the quest for truth and redress. Consequently, the plight of victims and their families remained unresolved, perpetuating a cycle of impunity and injustice. The legacy of these unresolved tragedies underscores broader systemic challenges within Indonesia's governance and legal frameworks, where accountability often remains elusive in the face of entrenched interests. As Indonesia grapples with its past and charts a path forward, addressing historical injustices and fostering a culture of accountability are imperative for the nation's democratic consolidation (Marzuki, 2023). The struggle for justice, though fraught with obstacles, serves as a testament to the resilience and determination of civil society in Indonesia, as it continues to advocate for truth, reconciliation, and the rule of law.

The enforcement of strict ideological conformity presents a formidable barrier to addressing gross human rights violations and holding perpetrators accountable in court (Al-Saadoon, *et al*., 2021). The imposition of rigid ideological frameworks often suppresses dissenting voices and stifles any attempts to challenge or investigate

human rights abuses. This conformity cultivates an environment where those in power can act with impunity, shielded from scrutiny or legal consequences. Furthermore, the consolidation of ideological control can manipulate the legal system, hindering efforts to bring perpetrators to justice by obstructing fair trials or manipulating judicial processes. The fear of reprisal for dissenting against the prevailing ideology silences potential witnesses and undermines efforts to gather evidence or testimonies crucial for prosecuting human rights violators. Consequently, victims are left without recourse, and justice remains elusive. Breaking this cycle necessitates dismantling the structures that enforce ideological conformity, fostering an environment where dissent is protected, and the rule of law prevails over political expediency.

The establishment of the Truth and Reconciliation Commission (TRC) via Law no. 27 of 2004 seemingly underscores a government stance of neglect towards victims (Budiarti & Kusuma, 2020). By institutionalizing a mechanism for truth and reconciliation, the government might be perceived as merely paying lip service to the plight of victims, without addressing their grievances substantively. The TRC, while ostensibly aiming to address past injustices and foster national healing, could inadvertently perpetuate a culture of impunity by providing amnesty for perpetrators without adequate redress for victims. Moreover, the establishment of such a commission through legislative means could be interpreted as a superficial attempt by the government to appease international scrutiny or mitigate public outrage, rather than a genuine commitment to justice and accountability. In essence, the enactment of Law no. 27 of 2004 may reflect a governmental prioritization of political expediency over the rights and needs of victims, casting doubt on the sincerity of its reconciliation efforts.

The establishment of the Truth and Reconciliation Commission (TRC) through Law no. 27 of 2004 ostensibly appears as a governmental initiative to address past human rights abuses and reconcile a fractured society. However, beneath the surface, it reveals a stark contrast between the government's rhetoric and its true commitment to justice (Nagy, 2020). By embedding the TRC within rigid ideological frameworks, the government inadvertently showcases its reluctance to fully enforce accountability for gross human rights violations and uphold the rights of victims. Such frameworks often serve as tools to control narratives, limit the scope of investigations, and shield perpetrators from genuine accountability. In doing so, the government effectively undermines the very essence of reconciliation, which requires genuine acknowledgment of past wrongs, accountability for perpetrators, and meaningful redress for victims. Thus, while the establishment of the TRC may superficially suggest a willingness to address historical injustices, its entrenchment within ideological constraints ultimately reflects a systemic failure to prioritize the principles of justice, truth, and genuine reconciliation.

A comprehensive legal framework bereft of genuine political will symbolizes more than just legislative inactivity; it embodies a systemic failure to address the plight of victims. Within such a context, the absence of political resolve renders legal statutes hollow, mere words on paper devoid of practical effect (Friedrich Ebert Stnftung, 2015). While laws provide the scaffolding for justice, political will imbues them with vitality, driving enforcement and implementation. Without it, the rights and needs of victims remain unmet, relegated to the periphery of societal concern. Ineffectual governance not only undermines the rule of law but also perpetuates a cycle of injustice, leaving victims marginalized and without recourse. Moreover, the lack of political commitment sends a disheartening message to society, signaling a tolerance for impunity and a disregard for human suffering (Nowak, 2018). Thus, a complete legal framework without genuine political will serves as a poignant reminder of the ethical imperative for governments to translate laws into meaningful action, to champion the cause of justice, and to demonstrate a steadfast commitment to upholding the rights and dignity of all individuals within their jurisdiction.

In assessing the landscape of human rights enforcement in Indonesia, a comprehensive evaluation of its legal framework, institutional instruments, and political regime dynamics is imperative. Despite possessing a burgeoning legal infrastructure ostensibly supportive of human rights, including constitutional provisions and ratified international treaties, the practical application often falls short. The disparity emerges not solely from the absence of legal mechanisms but rather from the intersection of political will and institutional capacity. Indonesia's political climate, characterized by a delicate balance of power dynamics and historical legacies, shapes the government's inclination and ability to enforce human rights effectively (Mihr, 2023). Persistent

challenges such as corruption, bureaucratic inertia, and socio-political complexities impede the translation of legal mandates into tangible rights protections. Moreover, entrenched interests and historical injustices frequently intersect with governance priorities, diluting the government's commitment to prioritizing human rights enforcement.

Under Article 51 of the United Nations Charter, which delineates the inherent right to self-defense, the case of Indonesia's alleged inability and unwillingness to prevent gross human rights violations perpetrated by non-state actors is complex (Tanamal, 2024). While Article 51 acknowledges the inherent right of individual or collective self-defense in the face of armed attack, it also mandates that such actions be reported to the Security Council, which holds the primary responsibility for maintaining international peace and security. Indonesia's purported inability to prevent human rights violations may stem from various factors, including logistical constraints, resource limitations, and challenges in enforcing law and order in certain regions. Additionally, the unwillingness to intervene could be influenced by political considerations, concerns about sovereignty, or complexities related to internal conflict dynamics. However, the extent to which Indonesia could have reasonably prevented these violations, particularly by non-state actors operating within its borders, remains subject to scrutiny and interpretation within the framework of international law and human rights norms.

5. Conclusion

In conclusion, the Unwilling and Unable Test serves as a crucial mechanism in assessing gross human rights violations perpetrated by non-state actors in Indonesia. Through its application, we have gained insights into the complexities surrounding accountability and responsibility when state institutions are either unwilling or unable to address such violations. However, while the test offers a framework for evaluating state response, its efficacy relies heavily on the willingness of international bodies and state actors to enforce its findings. Therefore, to effectively address human rights abuses by non-state actors in Indonesia, it is imperative for the international community to exert pressure on the Indonesian government to fulfill its obligations in protecting and promoting human rights. Additionally, investing in capacity-building initiatives within Indonesia to strengthen domestic mechanisms for addressing such violations is essential. Moreover, fostering partnerships between the government, civil society organizations, and international stakeholders can facilitate the implementation of comprehensive strategies to prevent and address human rights violations effectively. Furthermore, promoting dialogue and cooperation between the state and non-state actors is crucial in fostering a culture of respect for human rights and accountability. Ultimately, a multifaceted approach that combines international pressure, domestic capacity-building, and collaborative efforts is necessary to ensure the protection of human rights and the accountability of all actors involved in Indonesia.

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Legal Challenges of Intellectual Property in Southeast Asia: Key Issues and Implications for Cambodia

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Abstract
This article examines the legal challenges of Cambodia's intellectual property rights in the context of Southeast Asia. Despite significant progress in adopting legal frameworks in line with international standards, Cambodia's IP system still needs to develop compared to that of other ASEAN countries. This study focuses on Cambodia's commitment to the implementation of the WTO and ASEAN obligations and details the legal provisions for trademarks, copyrights and patents. This section highlights issues such as the complexity of trademark registration procedures, restrictions on the application of IP rights and the absence of comprehensive legislation in emerging IP categories. Furthermore, it examines the effectiveness of dispute settlement mechanisms and the role of national institutions such as the National Commercial Arbitration Center (NCAC). The findings highlight the need for continuous legal reforms to promote a strong intellectual property environment, attract foreign investment and support Cambodia's economic growth.

Keywords: Intellectual Property, Legal Challenges, Cambodia, ASEAN, Issues, Implications

1. Introduction

1.1 Introducing the Problem

Historically, intellectual property (IP) became a significant concern in Southeast Asia in the mid-1980s. The primary catalyst for this shift was the growing recognition by American policymakers that the US trade deficit was linked to losses from inadequate IP protection. In response, the U.S. government, a key player in shaping global IP protection standards, began addressing these deficiencies in 1984 with the Tariff and Trade Act, which tied import privileges under GATT to improved IP standards. Subsequently, the 1988 United States Omnibus Trade and Competitiveness Act further reinforced this approach. Article 301 of the Act established a process for creating a list of countries required to enhance their IP protection by specific deadlines, with the threat of trade sanctions for noncompliance (Antons, 1991; Antons, 2017).

In Southeast Asia, the ASEAN Economic Community (AEC) has pursued regional integration through initiatives such as the ASEAN Intellectual Property Cooperation Working Group and the ASEAN Framework Agreement on Intellectual Property Cooperation, signed in 1995. Supported by the ASEAN IP rights action plans for 2004–2010 and 2011–2015 and with a new action plan prepared for 2016–2020, progress has been made, albeit modestly, given the diversity of the parties involved and their interests. In addition to regular meetings and workshops, an ASEAN patent review cooperation program has been established to facilitate the sharing of information on patent applications and the reuse of search and examination reports from patent examiners in other offices. Launched in 2013, the ASEAN IP portal provided basic information on procedures, international agreements, and case documents, particularly for Singapore and Thailand.

Cambodia's integration into the global economy was marked by its accession to the World Trade Organization (WTO) in 2004 and its membership in the Association of Southeast Asian Nations (ASEAN) in 1999. These memberships aim to expand market access and attract foreign direct investment (FDI). However, Cambodia must develop a robust legal framework that protects intellectual property (IP) rights to be an appealing destination for investors. This necessity arises from the global emphasis on the IP as a critical economic growth and innovation component. Despite the establishment of various IP laws, Cambodia's IP system is still in its infancy compared to that of other ASEAN countries, posing significant challenges to legal enforcement and compliance (Alexander et al., 2016; Nguyen, 2023; Barizah, 2017). The development of Cambodia's IP laws has been relatively recent, with key legislation such as the Law Concerning Marks, Trade Names, and Acts of Unfair Competition adopted in 2002 and the Law on Commercial Arbitration in 2006. These laws were enacted to fulfill WTO requirements and protect the interests of foreign and domestic investors. However, the practical implementation and enforcement of these laws remain challenging, underscoring the complexity of Cambodia's IP system. The rapid evolution of technology and the digital economy further complicates the landscape, necessitating continuous updates and improvements to the legal framework. This article delves into the current state of Cambodia's IP system by examining its strengths and weaknesses from a legal perspective. This study aims to provide a comprehensive understanding of the challenges faced by Cambodia in aligning its IP laws with international standards and the steps needed to enhance its IP protection regime.

1.2 Exploring the Importance of the Problem

Cambodia faces significant challenges in its legal framework for intellectual property (IP), which remains underdeveloped compared to its ASEAN counterparts. Despite recent legislative efforts, the country's IP laws still fall short, creating uncertainties for investors. The enforcement of existing IP laws is hindered by procedural complexities and inefficiencies, which impede the effective protection of IP rights. A critical issue is the lack of comprehensive IP categories within Cambodia's legal framework. Emerging categories of IP, such as digital rights and nontraditional marks, are not adequately addressed, leaving significant gaps in protection. Although institutions such as the National Commercial Arbitration Centre (NCAC) exist, their effectiveness in handling IP-related disputes requires thorough assessment and improvement. Moreover, Cambodia needs to enhance its dispute resolution mechanisms. The current systems established by the Ministry of Justice and other relevant ministries and institutions must be evaluated and refined to ensure that they can effectively manage and resolve IP disputes.

1.3. Research Questions

Researchers have five main questions:
1. What are the main challenges in the current Cambodian IP legal framework compared to those of other ASEAN countries?
2. How effective are the existing enforcement mechanisms for IP rights in Cambodia?
3. What gaps exist in the legal protection of emerging IP categories in Cambodia?
4. How effective are dispute resolution mechanisms, such as the NCAC, for addressing IP-related issues in Cambodia?
5. What reforms are necessary to enhance the IP protection regime in Cambodia to attract more FDI?

1.4. Research Objectives

To answer the research questions, researchers have five main research objectives:
1. To analyze the Cambodian IP legal framework in comparison to that of other ASEAN countries to identify key deficiencies.
2. To evaluate the effectiveness of enforcement mechanisms for IP rights in Cambodia.
3. To identify gaps in the legal framework regarding the protection of emerging IP categories.
4. To assess the role and effectiveness of dispute resolution mechanisms, particularly the NCAC, in handling IP-related disputes.
5. To provide recommendations for legal reforms and policy measures to strengthen the IP protection regime in Cambodia and enhance its appeal to foreign investors.

1.3 Describe Relevant Scholarship

1.3.1. Cambodia's Intellectual Property Legal Framework

Cambodia's intellectual property (IP) legal system is relatively new compared to that of the rest of the ASEAN countries. Cambodia's accession to the World Trade Organization (WTO) and its membership in ASEAN countries significantly influenced its IP laws. These international agreements necessitate the adoption of related legal documents. For example, the Law on Trademarks, Trade Names, and Unfair Competition was enacted on February 20, 2002, and the Law on Commercial Arbitration was enacted on May 5, 2006. Cambodian trademark law defines a "mark" as any visible sign distinguishing the goods or services of one entity from those of another. These included words, names, letters, numerals, logos, devices, labels, signatures, slogans, colors (and combinations), shapes, three-dimensional signs, and holograms. However, nonvisible marks such as sounds, smells, gestures, and motions cannot be registered. Color marks must be composed of at least two colors, so single-color marks were also excluded. Collective marks, a distinguishing feature of trademark law, are owned by organizations and used by members to indicate quality, geographic origin, or other characteristics. The Trademark Law defines "trade name" as a name or designation identifying and distinguishing an enterprise. Trade names that are deceptive, contrary to public order or morality, are prohibited. Trade names are protected against unlawful acts even without registration. The Department of Intellectual Property Rights (D/IPR) of the Ministry of Commerce processes and registers all trademark applications. Applications can include multiple classes, with a filing fee required for each class. A Cambodian trademark agent must represent a foreign applicant. Domestic applicants can apply directly or through a licensed agent; a notarized power of the attorney is needed. Cambodia, despite not being a signatory to the Nice and Vienna classification systems, follows its standards in its trademark application process. These systems are internationally recognized and widely used for the classification of goods and services. Applications must include specific details about the mark, its classification, and the goods/services it covers. Priority claims under the Paris Convention must be filed within six months of the original application date.

Cambodia joined the Madrid System for international trademark registration on June 5, 2015. The World Intellectual Property Organization (WIPO) runs this system, which enables a single application to cover multiple nations while cutting costs and streamlining the procedure. Following this, Cambodia enacted procedures for international registration under the Madrid Protocol on November 1, 2016. This protocol provides a cost-effective and efficient way for trademark owners to ensure the protection of their marks in multiple jurisdictions. Cambodia's trademark registrations are part of the WIPO Global Brand Database, a comprehensive collection of trademark information from around the world. ASEAN's online trademark platform, which provides a user-friendly interface for trademark searches and registrations, replicates this database. Interested parties can request registrability or similarity searches to determine whether a mark can be registered or to identify similar existing marks.

A trademark cannot be registered if:

- The goods or services of one enterprise cannot be distinguished from those of others.
- This is contrary to public order or morality.
- It misleads the public about goods or services' origin, nature, or characteristics.
- It imitates official symbols or well-known marks without authorization.

- The application does not meet these criteria, and the D/IPR will issue a provisional refusal. The applicant must respond within 60 days, with a possible 45-day extension.

Trademarks are valid for ten years and can be renewed indefinitely. An affidavit of use or nonuse must be submitted within one year following the fifth anniversary of registration. This affidavit confirms that the trademark is still in use and helps prevent the registration of marks that are no longer in use. Failure to comply can lead to cancellation. Changes to the mark or registration details must be reported to the D/IPR, ensuring that the register is up-to-date and accurate. Trademark licenses and franchise agreements must be registered with the D/IPR. To remain valid, these contracts must include quality control provisions. Unregistered licenses have no legal effect on third parties. Once a trademark application is published, any interested party can file an opposition within 90 days. Grounds for opposition include similarity to existing marks and the potential to mislead the public. Registered trademarks can be canceled for nonuse, failure to renew, or improperly granted.

Cambodia's IP laws include provisions against unfair competition, a concept that goes beyond trademark infringement. Unfair competition can include creating confusion, making false allegations, and engaging in misleading advertising. These provisions protect not only trademarks but also the reputation and goodwill of businesses. Trademark owners can request customs to suspend the clearance of suspected counterfeit goods, and courts can order the destruction of counterfeit goods, providing additional tools for IP protection. Counterfeits and Enforcement: Cambodia is confronted with significant challenges in combating counterfeit goods. While trademark owners can request customs suspensions for suspected counterfeits, the enforcement of these measures needs to be more consistent. The legal framework allows for the destruction of counterfeit goods, but practical enforcement can be slow and bureaucratic. This situation underscores the urgent need for more effective enforcement mechanisms to protect intellectual property rights in Cambodia. Trademark infringement occurs when unauthorized use of a registered mark or a similar mark confuses the public. Cambodia's legal framework provides for injunctions and damages. However, court processes can be costly and time-consuming, often making mediation preferable. Penalties for trademark infringement range from fines of 1,000,000 to 20,000,000 Riels (USD 250 to USD 5,000), and imprisonment ranges from one month to five years. Repeat offenders face two penalties. Courts can also order the destruction of infringing goods.

The National Commercial Arbitration Centre (NCAC) was established to handle commercial disputes, including those related to intellectual property. It offers expedited procedures and emergency arbitrators to resolve disputes efficiently. Although no IP cases have been filed yet, the NCAC is equipped to handle them, providing a faster and more cost-effective alternative to traditional court litigation. Cambodia's court system is divided into lower courts (provincial and municipal) and higher courts (appeal courts and the Supreme Court). Currently, general courts handle commercial disputes, but there are plans to establish specialized commercial courts within the next government mandate (2023-2028).

Table 1: Existing laws related to Cambodian intellectual property rights

N	Description	Date of Promulgation
1	Law on the Protection of cultural heritage	25/01/1996
2	Law concerning Marks, Trade Names and Acts of Unfair Competition	20/02/2002
3	The Law on the Patents, Utility Model Certificates and Industrial Designs	22/01/2003
4	Law on Copyright and Related Rights	05/03/2023
5	Law on Commercial Arbitration	05/05/2023
6	Law on Geographical Indication-GI	20/01/2014
7	Law on Seed Management and Plant Breeder's Rights	20/05/2008
8	Law on Certificate of Origin	05/07/2023
9	Cambodia ratified on Bern Convention	27/06/2020
10	TRIP Agreement	Until 2033
11	Paris Convention for protection of Industrial Property	22/09/1998

As Cambodia's intellectual property legal system evolves, it faces significant challenges, particularly in terms of enforcing and combating counterfeits. The continued development and refinement of IP laws and more robust

enforcement mechanisms will be crucial for Cambodia to protect IP rights effectively and foster economic growth. As legal professionals, business owners, and individuals interested in intellectual property laws in Cambodia. As Cambodia integrates more deeply into the global economy, adherence to these legal frameworks will play a crucial role in attracting investment and encouraging innovation.

2. Method

Researchers employ desk research approaches, including the analysis of academic articles, legal texts, government reports, and documents from the WTO and WIPO, to examine the intellectual property (IP) legal framework in Cambodia. This methodology is designed to assess the current state of IP laws, identify challenges, and propose recommendations for improvement. A comprehensive review of the literature on IP laws in Cambodia and other ASEAN countries has been conducted to support this analysis.

3. Results

3.1. Research Question 1: What are the main challenges in the current Cambodian IP legal framework compared to those of other ASEAN countries?

Cambodia's IP laws, though relatively young, bear unique characteristics that emerged primarily after the country's accession to the WTO in 2004 and ASEAN in 1997. While the legal framework may not yet match the depth and refinement of countries such as Singapore and Malaysia, it presents a distinct trajectory of development and enhancement (IPOS, 2024; Indastri, 2023; International Trade Administration, 2024 a). While Cambodia has adopted several important IP laws, the enforcement mechanisms could be stronger. This includes significant challenges in policing and prosecuting IP infringements, which are managed more robustly in countries such as Singapore and Thailand. The urgency of strengthening these mechanisms is clear, and your role in this process is crucial. Cambodia's IP laws, while currently comprehensive in some emerging categories of IPs, such as digital rights, nontraditional marks (such as sound marks), and plant breeders' rights, have the potential for further development. This potential includes international transactions, which may draw inspiration from nations such as Vietnam and the Philippines' more recent and comprehensive IP laws.

The institutions responsible for IP enforcement, such as the Department of Intellectual Property Rights (D/IPR) and customs authorities, often need more resources and expertise, including financial resources and international experts. Other ASEAN countries have more developed institutions and better resources. Additionally, there is a general lack of public awareness and understanding of IP rights in Cambodia, which hampers compliance and enforcement. This lack of awareness, coupled with the scarcity of resources, poses significant barriers that need to be addressed urgently. Your involvement in promoting public awareness and advocating for better resources is vital.

3.2. Research Question 2: How effective are the existing enforcement mechanisms for IP rights in Cambodia?

The enforcement mechanisms for intellectual property (IP) rights in Cambodia are generally weak (HKTDC Research, 2017; Cambodia Daily, 2017; CDC, 2024). Procedural complexities and inefficiencies significantly hinder the effective protection of IP rights. Inadequate policing, limited judicial capacity, and a lack of specialized training for enforcement officials contributed to these challenges. The Department of Intellectual Property Rights (D/IPR) and customs authorities face resource constraints and lack the expertise necessary to enforce IP laws effectively (International Trade Administration, 2024; Netherlands Embassy in Bangkok, 2019; US Department of State, 2023; Nguon & Srun, 2022; Mol, 2023). Consequently, the rate of prosecution and conviction for individuals with IP infringement remains low. Although efforts to improve enforcement have been initiated, they are still in the early stages. Significant improvements are needed to meet the standards observed in other ASEAN countries.

3.3. Research Question 3: What gaps exist in the legal protection of emerging IP categories in Cambodia?

Cambodia's legal framework for intellectual property (IP) is developing but may only partially encompass the nuances of emerging IP categories. While the country has a Law on Competition (2004) with some provisions for trade secrets, the absence of a dedicated trade secrets law makes it difficult to enforce rights against the misappropriation of confidential information. Although the Law on Seeds (2004) provides some plant variety protection, plants may still need to fully comply with the International Union for the Protection of New Varieties of Plants (UPOV), potentially limiting protection for specific plant innovations. Moreover, the absence of a specific legal framework for geographical indications (GIs) in Cambodia is a significant disadvantage. GIs protect the reputation of products tied to a specific geographical location, and the lack of such protection could put Cambodian producers at a disadvantage when seeking GI protection for their goods. The Cambodian Law on Copyright and Related Rights (2003) also falls short of explicitly addressing the protectability of new forms of creative expression, such as database rights or computer-generated works, further highlighting the need for comprehensive IP legislation.

As a result, Cambodia's current IP legal framework does not adequately address digital rights, leaving gaps in the protection of digital content and online intellectual property. Emerging categories of nontraditional marks, such as sound marks and three-dimensional marks, need to be sufficiently covered under existing laws, limiting businesses' ability to protect these types of IP effectively. Although there is a law on seed management and plant breeders' rights, its implementation has been fragmented, and comprehensive protection mechanisms have been lacking. Similarly, the protection of utility models and industrial designs could be more developed with fewer provisions and enforcement mechanisms than with more mature IP systems in the region.

3.4. Research Question 4: How effective are dispute resolution mechanisms, such as the NCAC, in addressing IP-related issues in Cambodia?

Cambodia's dispute resolution mechanisms for IP-related issues exhibit both strengths and weaknesses. The National Commercial Arbitration Center (NCAC) offers an alternative to litigation through arbitration; it can be faster, more confidential, and potentially less expensive than court proceedings. Arbitrators at the NCAC might possess specific IP expertise, leading to more informed decisions than general judges. Arbitral awards issued by the NCAC can be enforced by Cambodian courts, providing a path to implement the arbitrator's decision.

Despite its potential, the NCAC in Cambodia has limitations. Litigation is less popular than arbitration, and IP disputes are even less represented in NCAC cases. While arbitration can be less expensive than court, it can still be costly, limiting accessibility for some rights holders, small businesses, or individuals. Furthermore, the NCAC lacks the authority to directly order remedies such as seizures or injunctions, which are crucial for stopping ongoing infringement; these measures require court intervention. Cambodia's court system handles most IP disputes. However, the courts can be slow and complex and may lack specialized IP knowledge among judges. The Department of Intellectual Property (DIP) can act as a mediator in IP infringement cases. While not binding, mediation can offer a faster and less confrontational way to resolve disputes. Despite the potential efficiency of the NCAC, its use has been limited, and the Cambodian court system remains the primary forum despite its drawbacks. The NCAC was established to provide a forum for resolving commercial disputes, including IP-related disputes. However, its effectiveness in handling IP disputes has yet to be thoroughly assessed, as it has yet to handle many IP cases. The NCAC has introduced features such as expedited procedures and emergency arbitrators to improve efficiency, but its role in IP dispute resolution needs further evaluation and enhancement.

In Cambodia, the dispute resolution landscape includes general courts that handle various types of cases. However, there is a clear need for specialized IP courts or dedicated sections within existing courts to enhance the handling of IP disputes. While the NCAC offers a potentially efficient option for IP dispute resolution, significant improvements are needed to realize its full potential and provide comprehensive protection for IP rights holders.

3.5. Research Question 5: What reforms are necessary to enhance the IP protection regime in Cambodia to attract more FDI?

Cambodia can implement several reforms to strengthen its IP protection regime and attract more foreign direct investment (FDI). First, the country should enact specific laws for unprotected areas, such as trade secrets, plant varieties, and geographical indications. Aligning these laws with international standards such as TRIPS and UPOV and reviewing and revising existing IP laws (patents, copyrights, and trademarks) will ensure clarity and comprehensiveness in protecting new forms of innovation and creative expression. Increasing training and resources for law enforcement, judges, and IP officials is crucial for effectively handling complex IP infringement cases. Additionally, enhancing border control measures to prevent the entry of counterfeit goods and streamlining procedures for obtaining swift and effective remedies such as injunctions and seizure of infringing goods is essential. Raising awareness, building capacity for using the NCAC for IP disputes, and considering fee structures catering to smaller businesses and individuals will further support IP protection. Cambodia's role in the global IP landscape is crucial. By exploring the establishment of specialized IP courts or tribunals and encouraging the use of mediation and other ADR mechanisms, Cambodia can demonstrate its commitment to fair and efficient IP dispute resolution. Collaboration with ASEAN member states and developed countries will not only harmonize IP laws and enforcement practices but also encourage Cambodia's dedication to international standards, making it an attractive partner for global IP initiatives.

Enhancing the capacity of enforcement agencies through better training, increased resources, and more robust legal provisions will ensure effective policing and prosecution of IP infringement. Updating and expanding the legal framework to cover emerging IP categories such as digital rights, nontraditional marks, and plant breeders' rights is also necessary. Implementing comprehensive public education programs to increase awareness and understanding of IP rights among the general public, businesses, and enforcement officials will foster a culture of respect for IPs.

Creating specialized IP courts or dedicated sections within existing courts to handle IP-related disputes more efficiently and effectively is another critical step. Cambodia should bolster institutions such as the Department of Intellectual Property Rights (D/IPR) with better funding, resources, and expertise to improve their IP management and enforcement capabilities. Greater collaboration with international IP bodies such as the World Trade Organization and the World Intellectual Property Organization will assist Cambodia in adopting best practices and staying current with global IP trends and standards (Rimmer, 2012). It is also critical to review and amend existing intellectual property laws regularly to ensure that they remain relevant and effective in the face of technological advancements and shifting economic environments. Implementing these reforms will result in a more robust and reliable IP protection regime and pave the way for a thriving Cambodian economy. This incentivizes domestic innovation and makes Cambodia a more attractive destination for foreign investors seeking to protect their intellectual property, thereby boosting foreign direct investment (FDI) and fostering economic growth.

4. Discussion

Cambodia's legal framework for intellectual property (IP) has made progress over the past two decades, yet it remains relatively underdeveloped compared to its ASEAN counterparts. The implementation of key legislation such as the Law concerning Marks, Trade Names, and Acts of Unfair Competition (2002) and the Law on Commercial Arbitration (2006) demonstrates Cambodia's commitment to aligning with international standards. However, enforcement mechanisms for IP rights face significant challenges, including procedural complexities and inefficiencies. Enforcement is hindered by inadequate policing, limited judicial capacity, and a lack of specialized training for enforcement officials. Institutions such as the Department of Intellectual Property Rights (D/IPR) and customs authorities are underresourced and lack the expertise necessary for effective IP law enforcement. This results in low prosecution and conviction rates for IP infringements. While there have been efforts to improve enforcement, significant advancements are needed to reach the levels observed in other ASEAN countries.

Emerging IP categories, such as digital rights, nontraditional marks, and plant breeders' rights, are not adequately covered by existing laws. This gap leaves businesses and innovators vulnerable and hampers the country's ability to protect new forms of creative expression. Moreover, the absence of a dedicated legal framework for geographical indications (GIs) places Cambodian producers at a disadvantage in protecting the reputation of

products tied to specific locations. The NCAC offers an alternative dispute resolution mechanism through arbitration, which can be faster and more confidential than traditional litigation. However, arbitration is not widely used for IP disputes in Cambodia, and the NCAC lacks the authority to order essential remedies such as seizures or injunctions without court intervention. Therefore, while the NCAC provides a potentially efficient option for IP dispute resolution, its practical impact remains limited.

5. Conclusions and Recommendations

5.1. Conclusion

In conclusion, while Cambodia's intellectual property (IP) legal framework is still evolving, it has made significant strides. The country has enacted key legislation, such as the Law concerning Marks, Trade Names, and Acts of Unfair Competition (2002) and the Law on Commercial Arbitration (2006), to align with international standards set by organizations such as the WTO and ASEAN. This progress, though not yet on par with that of other ASEAN countries, is a testament to Cambodia's commitment to IP protection. The challenges in Cambodia's IP enforcement mechanisms are significant and urgent. Procedural complexities and inefficiencies hinder institutions such as the Department of Intellectual Property Rights (D/IPR) and customs authorities. These constraints result in low prosecution and conviction rates for IP infringements, undermining the effectiveness of the legal framework. Addressing these issues is crucial for the protection of IP rights in Cambodia. Moreover, Cambodia's legal framework needs to adequately address emerging IP categories such as digital rights, nontraditional marks, and plant breeders' rights. This lack of comprehensive protection leaves businesses and innovators vulnerable, potentially stifling innovation and economic growth. A dedicated legal framework for geographical indications is necessary for Cambodian producers to protect the reputation of their region-specific products. The National Commercial Arbitration Center (NCAC) offers an alternative dispute resolution mechanism that could be faster and more confidential than traditional litigation. However, arbitration for IP disputes is not widely utilized in Cambodia, and the NCAC needs more authority to order essential remedies independently, such as seizures or injunctions. Consequently, the practical impact of the NCAC in resolving IP disputes still needs to be improved.

Comprehensive legal reforms are not only necessary but also key to unlocking Cambodia's potential for IP protection. These reforms should include enacting specific laws for currently unprotected IP areas, aligning existing laws with international standards, and increasing training and resources for enforcement officials. Enhancing border control measures and streamlining procedures for obtaining swift remedies are also crucial. These changes will not only attract more foreign direct investment (FDI) and support domestic innovation but also strengthen Cambodia's position in the global IP landscape. Public awareness and education about IP rights need significant improvement to foster a culture of respect for IP. Establishing specialized IP courts or dedicated sections within existing courts, promoting alternative dispute resolution mechanisms, and collaborating with international IP bodies and developed countries for expertise and best practices are essential steps toward strengthening Cambodia's IP regime. By implementing these reforms, Cambodia can build a more robust and reliable IP protection system. This will not only encourage domestic innovation but also make Cambodia a more attractive destination for foreign investors seeking to protect their intellectual property, thereby boosting economic growth and development.

5.2. Recommendations

- Cambodia should promote awareness and capacity building regarding the NCAC for IP disputes and implement comprehensive public education programs to increase awareness and understanding of IP rights among the general public, businesses, and enforcement officials.
- Cambodia should explore the possibility of expediting IP cases within the court system and explore the possibility of establishing specialized IP courts or tribunals with judges who possess deep knowledge of IP law.
- Cambodia should consider reforms to empower the DIP to handle a wider range of IP disputes, potentially through binding mediation outcomes; work with ASEAN member states to harmonize IP laws and enforcement practices; and partner with other developed countries to access expertise and technology

related to IP protection and enforcement.

- ❖ Cambodia should strive for a balanced approach that safeguards IP rights while ensuring access to knowledge and innovation for development purposes.
- ❖ Cambodia reforms should be sustainable in the long term, with adequate resources allocated for enforcement and capacity building and provide comprehensive training and resources for law enforcement, judges, and IP officials to effectively handle complex IP infringement cases.

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Implementation of *Mapasilaga Tedong* Licensing in Tana Toraja District Based on Laws and Regulations

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Abstract
The problem formulations in this study are: 1) How is the implementation of crowd licence on *Mapasilaga Tedong* activities in Tana Toraja? 2) How is the supervision of crowd permits for *Mapasilaga Tedong* activities in Tana Toraja? This type of research in legal research is research that uses empirical juridical methods with a descriptive research approach. The author's conclusion is: The implementation of the crowd permit for *Mapasilaga Tedong* activities in Tana Toraja is considered not properly implemented. Because there are still many inhibiting factors in terms of processing crowd permits including Socialisation, lack of public understanding of the procedure for applying for a crowd permit, lack of assertiveness in terms of time provisions from the Police in issuing crowd permits, and making crowd permits through practical ways. The supervision of crowd permits for *Mapasilaga Tedong* activities in Tana Toraja carried out by the Tana Toraja police has not been able to completely eradicate gambling practices in *Mapasilaga Tedong* activities. There are several factors that become obstacles to eradicating this violation of the law, namely: A) The police have not fully professionally seen and sorted out between culture and law violations that are considered a culture. B) The lack of role of the local government to assist the police in terms of management and supervision with the absence of local regulations related to crowd permits so that there is no harmonisation between the police and the local government of Tana Toraja in terms of management and supervision of crowd permits.

Keywords: Permit Implementation, *Mapasilaga Tedong*

1. Introduction

Culture is the benchmark of a nation's civilization. (Xu, 2021, pp. 1–10) Respect for culture is part of the greatness of a nation. In essence, culture is the result of copyright, taste and culture inherited by the ancestors. Therefore, it needs to be preserved and maintained. With a strong culture, the nation's identity will also be strong. In addition, Indonesia's cultural diversity is a great capital to bring this nation forward in line with other great countries.(Buwono et al., 2023, pp. 1726–1735) For this reason, this great capital needs to be maximised through the movement to empower cultural potential as a means of national progress.

Looking at history, Indonesia is a nation built from a collection of diverse backgrounds with the motto "Bhinneka tunggal ika" (Different but still one).(Anto et al., 2023, pp. 237–255) This principle means that diversity makes up the country of Indonesia. The concept of "one nation" has been popularised since the Soekarno administration,(Kueh, 2021, pp. 238–357) and in the Soeharto era was translated through "single principle" politics that emphasised thehomogeneity of society.

The government has the duty and responsibility to seek the welfare of its citizens, for that the government must be active instead of just waiting, it can be understood that certain activities that are given permission, must go through predetermined processes. The conception of the rule of law can be interpreted that the state of law is a state that has the aim of organising legal order, namely an order that is generally based on the laws contained in the people.(Hayek, 2022, pp. 256–270) Then, the Republic of Indonesia is also a state that adheres to the democratic system as stated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) which reads "sovereignty is in the hands of the people and is exercised according to the Constitution."(Ghins, 2022, pp. 128–158) In a democratic system, the position and existence of law as an instrument is very important. The law is made based on political dynamics,(Van't Klooster, 2023, pp. 1103–1123,) and the resulting legal products then become guidelines that should be obeyed. The implementation of the Government system, the Unitary State of the Republic of Indonesia implements a national policy concerning the implementation of Autonomous Government by adhering to the principle of decentralisation.

The legal basis for the implementation of autonomous government is the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) Article 18, which reads as follows:(Fikri & Wibisono, 2023, pp. 131–152) "The Unitary State of the Republic of Indonesia (NKRI) is divided into Regency Regions and the Regency Regions are divided into Regency / City Regions, each of which has a Regional Government regulated by Law." Autonomy is the essence of decentralisation, because decentralisation is the transfer of authority/governance by the government to autonomous regions within the framework of the Unitary State. The ideals of the Indonesian state realised by the founding fathers is a unitary state that protects the whole of Indonesia,(Fauzi, 2023, pp. 71–84) which in principle prioritises togetherness to achieve national goals while taking into account the distinctive differences between regions in Indonesia. Togetherness is constructed in the form of diversity in the administration of local government with the concept of regional autonomy. The concept of regional autonomy is actually a mandate given by the 1945 Constitution of the Republic of Indonesia,(Laksito, 2024, pp. 1–6) which is explicitly stated in Article 18 paragraph (2) that "the provincial, district and city governments regulate and manage their own government affairs according to the principles of autonomy and assistance tasks." The implementation of local government is directed to accelerate the realisation of community welfare through improved services, empowerment, and community participation, as well as increasing regional competitiveness by taking into account the principles of democracy, equity, justice, and the distinctiveness of a region within the system of the Unitary State of the Republic of Indonesia.(Permatasari et al., 2023, pp. 431–439) According to Harson, local government has an existence as: *Local Self Government* or local government in the local government system in Indonesia is all regions with various autonomous affairs for *local self government,*(Djaha & Gani, 2024, pp. 625–635) *of* course, must be within the framework of the state government system.

In managing its own household, the local government has the right of initiative, and has the authority to organise its own household affairs at its own discretion. In addition to being given certain affairs by the central government, it can also be given assistance tasks in the field of government (*medebewind tasks*).(Muhammad, 2023) According to Surya Ningrat, government is a group of individuals who have certain authority to exercise power. Government is the act or business or governing. According to Budiarjo, government is all organised activities that are based on sovereignty and independence, based on the basis of the State, the people or population and the territory of a State and have the aim of realising the State based on the basic concepts of the State.(Aulia & Isra, 2024, pp. 146–163) The government is an organ that is authorised to process public services and the obligation to obtain civil services for everyone who has government relations, so that every member of the community concerned receives it when needed in accordance with the demands of the governed.(Beigbeder, 2023) According to Muhadam Labolo, governance is actually an effort to manage life together properly and correctly in order to achieve agreed or desired goals together. Government can be viewed from a number of important aspects such as activities (dynamics), functional structures, as well as duties and authorities.(Chaniago et al., 2024, pp. 1722–1737) The Unitary State System of the Republic of Indonesia requires the birth of a decentralisation scheme with the principle of regional autonomy, where the President no longer fully takes care of all state affairs as a whole because Article 18 of the 1945 Constitution states that the Republic of Indonesia is divided into Provinces, Regencies and Cities, then in each Province, Regency and City there is a regional government (village), then in the regional government it is given the right

and authority to regulate and manage government affairs according to the principle of autonomy and the widest possible assistance task. The word *"village"* comes from the Sanskrit word *"desi"* which means land of origin, land of birth.

The state with its laws and regulations has very clearly prohibited all types of activities that contain elements of gambling in it, because gambling is a criminal offence. In Article 1 of Law Number 7 of 1974 concerning the Control of Gambling, states that all gambling offences are crimes. However, even though the legislation has provided a clear formulation of the crime of gambling, in reality there are still many people in Tana Toraja who commit gambling in *Mapasilaga Tedong* activities, due to the absence of concrete steps or efforts in supervision and procedures applied by permit applicants and licensors, the police should take the necessary actions to deal with licensing violations and/or security and public order disturbances in the form of dissolution. In some *Mapasilaga Tedong* traditional activities, the police were asked by the organisers solely to maintain the situation so that the situation remained conducive and the audience was orderly without taking any action. The police as law enforcement officers have not fully professionally seen and sorted out between culture and law violations that are considered as culture. In reality, the existence of laws and regulations have not been able to be implemented optimally to control and direct certain activities so that there are no violations of the law in it, especially regarding crowd permits. For the creation of maximum application of the law, it is necessary to have assertiveness from the police of the Republic of Indonesia as law enforcement officials who have the authority to grant permits, to apply the laws and regulations maximally so that the presence of law can provide certainty, usefulness, and justice.

Based on the above background, the legal issues to be studied are: How is the implementation and supervision of crowd licences for MapasilagaTedong activities in Tana Toraja.

2. Results and Discussion

2.1. Implementation of a Crowd Permit for Mapasilaga Tedong Activities inTana Toraja

In terms of the implementation of crowd permits at the Tana Toraja Resort Police (Polres), the work unit in charge of licensing matters is the intelligence and security unit or often abbreviated as Satintelkam. Satintelkam is tasked with organising and fostering the Intelligence function in the field of security, services related to public crowd permits and the issuance of SKCK, receiving notifications of community activities or political activities, as well as making recommendations on applications for firearm holder permits and the use of explosives. In terms of applying for a crowd permit related to *rambu solo* customary activities in Tana Toraja, there are several requirements and mechanisms that must be passed in the application, for the requirements and submission, as follows:[12]

1. In terms of applying for a crowd permit that brings in a mass of 300 - 500 people (Small), there are 3 (three) conditions, namely:
    - Certificate from the local urban village;
    - Photocopy of Identity Card (KTP) that has a desire as much as 1 (one) sheet;
    - Photocopy of Family Card (KK) who have a desire as much as 1 (one) sheet.

2. In the case of a permit for a crowd of more than 500 people(Large), there are 3 (three) conditions, namely:
    - Application Letter for a Crowd Permit;
    - Activity proposal;
    - Identity of the organiser / person in charge Permit of the place where the activity takes place.
    - The crowd permit application letter referred to above is a written application signed by the head of the organisation and attaching several supporting files to the application. The application letter for a crowd permit must contain:
        - Destination

- Form / Nature of Activity
- Place & Time
- Person in Charge
- Number of Participants

In addition to several supporting files for the application. The application letter for a crowd permit must contain several attachments if the event brings more than 500 people or is held by an organisation or association, the attachments are as follows:

1. Schedule / Schedule of Events
2. Committee List
3. Activity Proposal
4. Location Activity Permit Letter
5. Route Travelled
6. Precinct Recommendation
7. Ad / Art Organisation
8. Copy of the person in charge.

The process and mechanism for submitting a crowd permit applicationletter at the Tana Toraja police station, namely:(Rahmawati & Dermawan, 2023, pp. 182–227)

1. Applications must be submitted at least 7 days prior to the event;
2. The applicant came in person;
3. Checking Requirements by Service Officer
4. After that the file will be processed for approximately one week (seven days) working period if the file is complete then it will be given a receipt but if the file is incomplete then it will be given an explanation to be completed.

The processing time is seven (7) working days to conduct several coordination and research processes, namely:

1. Activity Feasibility Coordination;
2. Internal coordination to develop a security plan;
3. External Coordination with Related Agencies and Person in Charge of activities.
4. If there are vulnerabilities in the activity, the activity will be suspended / a rejection letter will be made.

After all the files have been examined, the relevant parties, namely the Tana Toraja Police, have an obligation 4 (four) days before the implementation of the activity, the Tana Toraja Police must be obliged to provide an answer to the application for permission / notification from the organiser. If the application for a crowd permit is permitted, three (3) stages will be carried out before the issuance of the Keramain Permit, namely:

1. Filing/Recording in the register book;
2. Submission of the Crowd Permit and a copy to the relevant agency (applicant).
3. Further coordination if security is needed.

For areas that are far from the Tana Toraja Police, the processing of crowd permits only reaches the police station, later the local police will forward it to the Tana Toraja police via email for the issuance of a crowd permit.

2.2. Supervision of Crowd Permits for Mapasilaga Tedong Activities in Tana Toraja

One of the regions in Indonesia that still maintains the traditions of their ancestors to this day is the Toraja region. The people of Toraja still perform traditional rituals from their ancestors, for example, *rambu solo* or death feast. The *Rambu Solo* funeral ceremony is basically one of the priceless cultural heritages of the indigenous Toraja people.(Sallata & Siumarlata, 2023, pp. 65–84) This is because the *Rambu Solo ceremony* cannot be separated from the values of the Toraja people's original belief called *Aluk To Dolo* which is

categorised as animism. In this *Aluk To Dolo* belief, one of the things that is very important for the Toraja people is the *Rambu Solo ceremony.*(Pongdatu & Huwae, 2024, pp. 1–13.)

The Rambu Solo death ceremony or ritual is also related to social issues because in its implementation the social strata of the deceased person are used as a measure of organisation, especially in matters of quantity. So it can be said that, unlike other cultures in Indonesia, the *Rambu Solo* death ceremony in Tana Toraja actually shows and strengthens the self-identity of the perpetrators. In other words, the type of *Rambu Solo* death ceremony is a representation of the level of social strata they hold. Thus, the richer a person is, the more festive the *Rambu Solo* death ceremony and the more money is spent to carry it out.

At the death feast there is a tradition called *Mapasilaga tedong* or buffalo fighting. Buffalo fighting is part of a series of death party ceremonies.(ISMAIL & NOH, 2023, pp. 55–64) Buffalo fighting has a meaning that describes social status based on the descent or position of someone who has died, therefore, not all death parties in Toraja can carry out this tradition, only for people with middle to noble social status who can carry out this tradition. For the Toraja people, buffaloes are considered the highest animal, so they have a special position as well as being one of the symbols of prosperity intraditional ceremonies.

In general, buffalo fights are used as entertainment for bereaved families and spectators.(Nguyen, 2023, pp. 35–50) In the past, buffalo fights were carried out with small bets or in the form of objects and in accordance with applicable customs. As time goes by, buffalo fighting is used as a gambling event, the perpetrators are spectators, buffalo owners and even the organisers of the buffalo fight, namely the family of the deceased and this activity has violated the existing law in Indonesia, namely it has violated criminal law. Article 1 of Law Number 7 of 1974 concerning Gambling Control,(Jaya et al., 2023) states that all gambling offences are crimes.

In terms of conducting its supervision, the Authorised Police Officer may take police actions necessary to deal with licensing violations and/or security and public order disturbances in accordance with the provisions of Article 8 paragraphs (1) and (2) of Government Regulation Number 60 of 2017 concerning Procedures for Licensing and Supervision of Public Crowd Activities, Other Community Activities, and Notification of Political Activities. one of which is about gambling in *Mapasilaga Tedong activities, the* authority, in the form of:

1. Authorised Police Officers take police action in the form of dispersal of public gatherings and other community activities carried out without a permit;
2. Authorised Police Officers can take police action in the form of dispersal of public gatherings and other community activities that have a permit but the implementation is not in accordance with the provisions of laws and regulations.

Every applicant for a kermaian permit whose permit has been issued has an obligation to use the permit as well as possible and not be misused, if in its implementation the permit is used to carry out actions that violate the provisions of the permit or even violate the applicable laws and regulations, it can be subjectto sanctions.

3. Closing

The implementation of crowd permits for *Mapasilaga Tedong* activities in Tana Toraja is considered not properly implemented. Because there are still many inhibiting factors in terms of processing crowd permits including Socialisation, lack of public understanding of the procedure for applying for a crowd permit, lack of assertiveness in terms of time provisions from the Police in issuing crowd permits, and making crowd permits through practical means.

The supervision of crowd licences for *Mapasilaga Tedong* activities in Tana Toraja conducted by the Tana Toraja police has not been able to fully eradicate gambling practices in *Mapasilag Tedong* activities. There are several factors that become obstacles to eradicating this violation of the law, namely: A) The police have not fully professionally seen and sorted out between culture and law violations that are considered a culture. B) The lack of role of the local government to assist the police in terms of management and supervision with the

absence of local regulations related to crowd permits so that there is no harmonisation between the police and the local government of Tana Toraja in terms of management and supervision of crowd permits.

4. Advice

It is hoped that the Tana Toraja Police will improve the quality of service, especially the service of making crowd permits by periodically socialising crowd permits through mass media and regularly updating the data contained on its website so that citizens can find out the correct licensing procedures and there is firmness in terms of the determination of time from the Police in issuing crowd permits so that people do not exceed the specified time limit and make practical arrangements.

The police as law enforcers should be more professional to be able to see and sort out between culture and law violations that are considered a culture, and it is hoped that the Tana Toraja Police will increase the number of SatIntelkam personnel who are considered lacking in terms of field supervision

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The Urgency of Regulating the Air Pollution Crime as a Crime Against Humanity

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Abstract
This article examines two main issues in international environmental law regarding the extensive classification of air pollution crime as a crime against humanity. Firstly, the international law regime's indecision status of air pollution crimes, especially in the form of carbon dioxide pollution, is a crime under international law, specifically under the term crime against humanity. The challenge is to extensively deconstruct the qualification of the related crimes based on their characteristics severity and nature of both crimes qualification. Secondly, there are existing problems to regulate air pollution crime as a crime against humanity including the enforcement and formulation of air pollution crime as a crime against humanity, and political considerations in the formation of international agreements that regulate air pollution crime as a crime against humanity and its enforcement. In this perspective, there's a contradictory situation where the international community is aware of global warming and carbon emissions but major industrialized countries are not fully committed to reducing carbon emissions.

Keywords: Air Pollution Crime, Crime Against Humanity, Deconstruct, Global Warming

1. Introduction

Air Pollution Crime (APC) is defined as a crime related to an emitting activity that pollutes the air, harming the natural environment and human health (CLRTAP, 1979), with various characteristics regarding the area and type of the emitter subject (Tymoshenko, et al., 2022), with general characteristics in the form of the high concentration level of Carbon Dioxide (CO2), change of the air color to a darker haze, and change in the air odor (DLH Semarang City, 2020). In terms of carbon emissions international law perspective, Bodansky characterizes that climate change, which occurs due to the release of carbon, does not only exist in a country's environmental policy, but is related to many types and categories of state policies, especially related to land use policy, energy policy, and economic policy (Bodansky, 2010) or policies that impact and cause the degradation of forest and land, known to be one of the contributors to carbon emissions (Susmiyati, 2017). So in this context, international environmental law provides a spectrum of characteristics that includes countries as carbon emitter subjects.

In the 19th century after the Industrial Revolution, the use of coal and petroleum from the production and transportation sectors increased, linear with the earth's temperature drastically increasing from year to year starting from the Industrial Revolution (NOAA Climate Change, 2024). It was recorded that the average increase in earth temperature was 1.06 Celsius from the Pre-Industrial period (NOAA Climate Change, 2024). In several studies related to pollutants that cause global warming, carbon dioxide occupies the highest position as a pollutant that causes warming of the earth's atmosphere, followed by other pollutants such as halogens, volatile organic compounds, and nitric oxide. Then the United Nations on Kyoto Protocol on Framework Convention of Climate Change (UNFCCC) was formed, which became the basis for a global commitment to reducing the carbon emissions of its countries. However, in fact, until now, excessive carbon emissions continue to occur, especially in downstream-producing countries such as the Netherlands and the European Union (Netherland's Hoge Raad, 2019).

Even an in-depth study of the relationship between air pollution and infant's health suggests that air pollution (depending on the type of pollutant) can affect the infant's health directly (if inhaled, pollutants affect the development of the infant's internal organs) or indirectly (if the influence of pollutants is through the mother of the baby when carrying the infant) so Green House Gasses possibly cause physical defects in infants, both in the womb and infants who have been born (Lin, et al., 2023). The various deleterious and damaging effects of APC on human health and the environment show that APC is not an ordinary crime, but fundamentally violates the right to life as regulated in Article 03 of the Universal Declaration of Human Rights (UDHR) and the right to a decent life as regulated in the First Principle of the Stockholm Declaration.

Crime Against Humanity (CAH) is a term that refers to a group of terms used by the pre-Tokyo Charter international agreement, which refers to the condemnation of the slave trade (Final Act of the Congress of Vienna 1815), the principles of natural justice (Treaty of Paris 1814), and the statement that the slave trade was a violation of the principles of humanity and justice (Treaty of Ghent 1814). The term CAH was first used globally in Section II, Articles 5(c) of the 1946 Tokyo Charter, which refers to acts of murder, extermination, enslavement, deportation, and other inhumane acts committed against civilians' human rights, well before and in times of war, or political persecution, and racially based executions. The Crime Against Humanity firmly gained its legitimacy within the scope of human rights, which is regulated in Article 7, Rome Statute. Arndt in Luban tries to translate the understanding of CAH as a crime that goes against the most basic human nature (crimes against the status of humans) by citing the argument of François de Menthon, Prosecutor in the Nuremberg Trials, that genocide is an attack that attacks human diversity, which is a characteristic human so that Luban tries to translate CAH in the explicitness of Menthon and Arndt's arguments as Crimes Against Humaness so that humanity (equivalent to the word "dignity") in this perspective is the "quality of being human/humanness" (Luban, 2004).

Grammatically, Luban then deconstructs the word "humanity" as a unit of humans or humankind (humankind and/or human race) so that CAH terminologically means crimes that target several human populations. Apart from the existing dissent regarding the appropriateness of the use of the term "humanity," Luban concludes that prohibiting crimes related to "humanity" is not only a problem of rhetoric and language but includes material related to humanity itself which is the most important thing (Luban, 2004). These two perspectives then become indicators that a crime can qualify as CAH. Based on the definition of CAH in Article 7 of the Rome Statute, CAH must be an act that systematically attack directed to civil population or individual(s) within a civil group, so that CAH is a crime that is categorized as a crime with the nature of collective victimization (Vollhardt, 2013) or which can be translated as a crime that targets individuals within a civil population or even the entire civil population themselves, so that the impact of these crimes is felt on a mass scale.

While global environmental pollution occurs and pollutes the human environment and damages nature, no international legal entity, neither countries nor international organizations, which can declare that carbon emitters are part of a crime. Excess carbon waste is part of a violation of fundamental human rights, which can be categorized as a CAH, so it is necessary to deconstruct the status of air pollution legal events while viewing them from the perspective of international law and human rights, and formulating the enforcing international criminal instrument related to the object of discussion.

2. Method

The paper will construct the relationship between legal theory, legal concepts, and regulations, and look at the reality of the regulations themselves as a basis for answering research problems related to written law analysis and applied law with a doctrinal approach, namely research that contains normative elements, analyzing legal theory, legal science and legal philosophy (Muhdar, 2019). The data used to support research analysis consists of various literature such as books, journals, scientific articles, laws and regulations, and other written sources that can support study analysis

3. Air pollution crime as crime against humanity concerning global climate change

3.1. Status quo of air pollution crime based on human rights perspective

Article 1(a) of the Convention on Long-Range Transboundary Air Pollution 1979 (CLRTAP 1979) clearly states that what is meant by air pollution is the act of releasing substances or energy into the air to harm and disrupt the function of the environmental ecosystem. Grammatically, air pollution is defined as the state of contamination of air condition, which consists of polluting element, polluter element, and polluting substance. The next element of pollution is the basic nature of the pollution itself, the deleterious or detrimental effect.

The status quo of pollution is an international event, but it is not considered a serious violation of international criminal law because there is no hard law instrument from international law that categorizes air pollution as a crime. As the principle of legality postulates: "*nullum delictum nulla poena sine praevia lege poenalli*" (Feuerbach, 1801) or there is no crime without law.

Air pollutants are classified based on their constituent materials and sources, namely as follows:

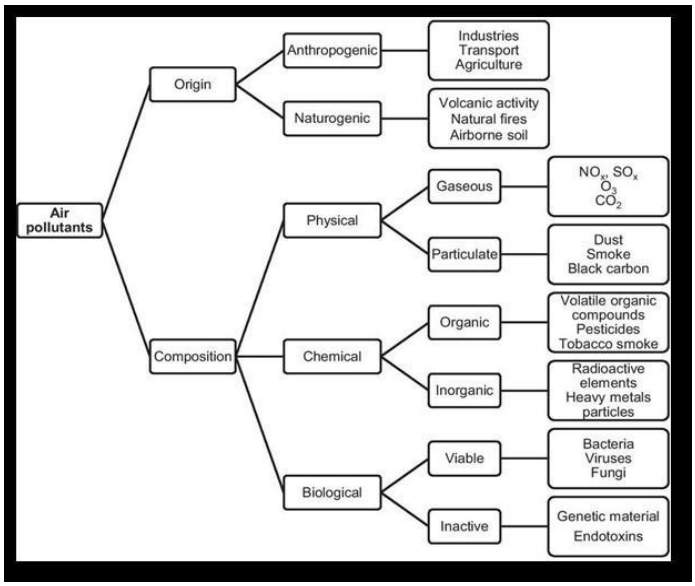

Figure 1: Air pollutant classification

Source: Hernandez-Gordillo, et.al., 2021.

Air pollutants can come from human/anthropogenic activities such as industrial, transportation, or agricultural activities. Pollutants originating from volcanic activity, natural fires, ground dust, and other pollutant materials that pollute without human intervention are called naturogenic (Hernandez-Gordillo, et al., 2021). Then, based on the composition/materials that make up it, pollutants are divided into 3 classifications; based on form/physicality, namely that it can take the form of various gases such as nitric oxide, sulfur monoxide, ozone, halocarbon class such as chlorofluorocarbon (CFC; a combination of carbon/organic material with halogen substances such as chlorine and fluorine) (Herzandez-Gordillo, et.al., 2021), or carbon dioxide and is in the form of particulates/ has a mass that is quite dense but very light so it can be carried by the wind, such as dust, smoke

particles, and black carbon/particulate matter (PM<2.5 μm). Then, based on the chemical properties of the constituents, it consists of organic constituents or organic preparations, such as volatile organic compounds (VOC) or organic materials that are detrimental to health (for example; fungal spores, spores of several types of poisonous plants, or dangerous pathogens), pesticides, and tobacco smoke (Kim, et.al., 2011).

Inorganic constituents come from materials obtained through extraction and processing processes, such as radioactive substances whose radiation can contaminate air particles and heavy metal particles that undergo evaporation, such as mercury. The components of air pollutants that originate from biological properties can be divided into 2 properties, viable/active, namely air pollutants which is alive and can move actively and spread in the air (such as airborne viruses, virus droplets, bacteria, and fungal spores) and which is inactive or passive; air pollutants originating from material from organisms that are harmful, but not actively alive, such as wood pulp and endotoxins or poisons found on the outside of animal skin membranes that can evaporate (Kim, et al., 2011). In general, air pollution comes from pollutants that are composed of material in a gaseous form such as carbon dioxide, sulfur monoxide, ozone, nitrogen dioxide, and particulate matter (PM 2.5 μm). However, in some cases, air pollution pollutants can be found such as radioactive exposed material/air in the case of the Chernobyl Accident (Dreicer, et al., 1996), 2,3,7,8-Tetrachlorodibenzo-dioxin in the case of the Seveso Pollution Disaster (Eskanazi, et al., 2004), and hydrogen fluoride and sulfur dioxide in the 1948 Donora Smog Pollution. Various pollutants in air pollution have various side effects on health and consequently on the environment.

Such as pollutants from organic materials which tend to degrade human health or carbon-based pollutants which have a broad spectrum that affects various environmental sectors including impacting human health. Carbon-based pollutants also affect the ozone layer and the earth's temperature due to the complexity of the carbon cycle that occurs in the atmosphere.

As this article mentioned previously, the influence and the damage of air pollutants to the air human environment or the atmosphere, specifically carbon dioxide, can be understood through the following Figure (Fig.):

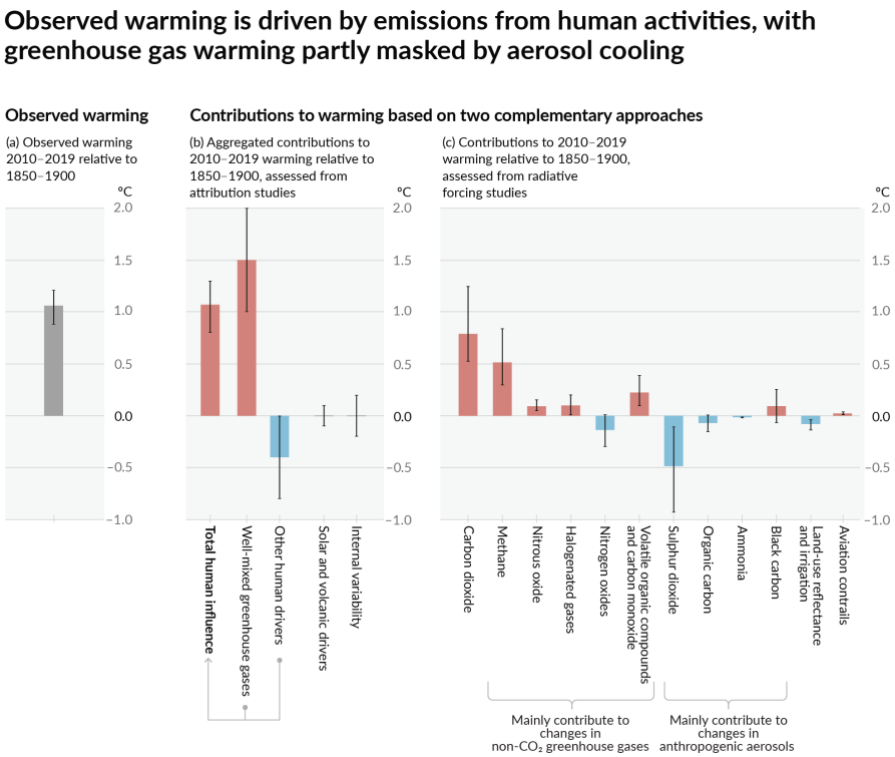

Figure 2: Substances that contribute to global warming

Source: IPCC, 2023

It is known that carbon dioxide is the biggest contributor to Earth's global warming. The natural presence of carbon dioxide in the atmosphere is not dangerous, because naturally, carbon dioxide can be found on the earth's surface as a heat absorber of cosmic radiation; which is useful for preventing the earth from freezing (NOAA, 2024). However, problems arise when there is an uncontrolled release of carbon that fills the air in the atmosphere, causing an excess build-up of carbon dioxide in the atmosphere. This excess buildup then causes the earth to experience a super-charge of cosmic radiation heat, resulting in an increase in the heat of the earth's surface, or what is known as global warming (NOAA, 2024).

The problems due to carbon emissions not only have an impact on the land and air environment but also have an impact on marine and aquatic ecosystems. In the concept of marine pollution, there is a premise that states every pollution ends up in the sea or "from or through" which is taken from Article 212 Paragraph (1) of the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982).

Scientifically, excessive absorption of carbon dioxide from the atmosphere into the sea will cause ocean acidification (NOAA, 2024), a condition where the pH of seawater becomes increasingly acidic due to the complex carbon cycle (NOAA, 2024). Increased acidity in seawater will then cause calcification or accumulation of calcium minerals on the body surface of marine biota; one of them is coral reefs (NOAA, 2024). Coral reefs that experience calcification will slowly die (Wang, et al., 2021), which will then damage fish and shellfish habitats, which will then have an impact on decreasing fishermen's income and the marine tourism sector due to this event.

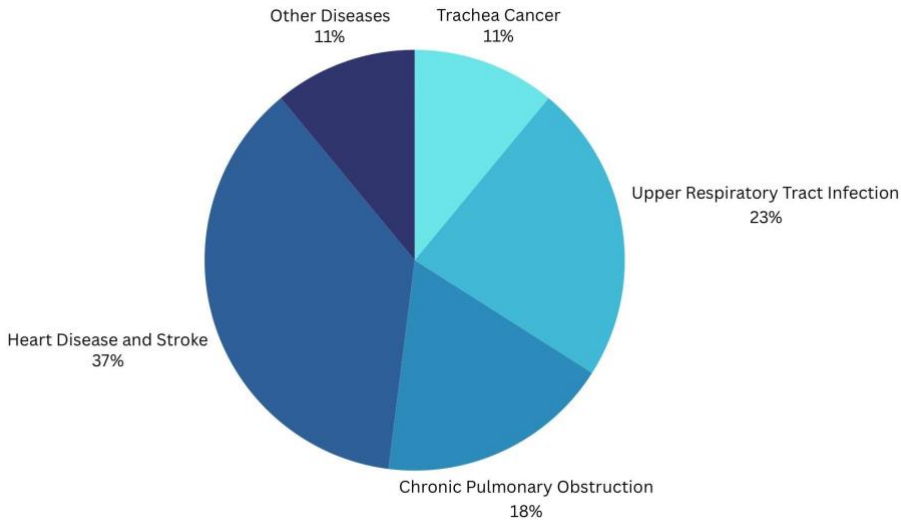

Figure 3: Premature Death Percentage caused by air pollution

Source: Processed from WHO report on Premature Death by air pollution, 2019

Air pollution not only degrades the environment but also causes a decline in the quality of health and even causes chronic diseases that cause death in humans. Based on Fig. 3, WHO reports that a certain percentage of deaths occur due to air pollution. In 2019, premature deaths due to air pollution which causes heart disease and stroke were 37%, 18% of deaths were due to chronic pulmonary obstruction, 23% of deaths were due to upper respiratory tract infections, and 11% of deaths were due to cancer of the trachea (WHO, 2023). In another study, air pollution was proven to cause a decrease in the quality of breathing and quality of life of people in Ger District, Ulaan Bataar City, Mongolia (Nakao, et.al., 2017).

From a human rights perspective, humans are guaranteed by Article 3 of the UDHR (*ius cogens*) to have the right to life. From a human rights perspective, the UDHR has not concretely placed and linked the right to life and the right to a good environment in the same legal framework. Then concretely, the right to life and the right to the environment are regulated in the First Principle of the Stockholm Declaration which states that humans have the right to live adequately and with dignity (adequate, well-being, and dignified life)(Stockholm

Declaration, 1972) and the next clause in this principle gives birth to the concept of environmental responsibility by humans.

With the occurrence of deaths due to air pollution and the decline in the quality of the environment and health, this shows that air pollution is not a normal criminal event like theft or fraud, but fundamentally violates human rights. In particular, carbon-based air pollution is not like oil pollution which is carried out specifically by certain legal subjects, for example, off-shore oil spill pollutant, hydrocarbons which cause marine pollution and responsibility which in identifying it can refer to the contractual rights holder of the upstream oil and gas business in the offshore working area (Triatmodjo, et.al, 2024), with proof through satellite imagery depicting the distribution of oil slicks and through fingerprint biomarker mapping of the oil spill (Wang and Stout, 2007); meanwhile the greenhouse gas-based pollution such as carbon dioxide is quite difficult to avoid because almost every sector of life produces carbon emissions and has a very large impact; carried out by many sectors but the causal identification of the impact and emitting subjects of air pollution is still unclear, such as the land-use change and forestry (LUCF) sector (Susmiyati, 2017), coal mining industry (Werner, et.al, 2024), household and manufacturing industry (Kim, et.al, 2020), landfills (Kweku, et.al, 2017), the agricultural and food industry (Kweku, et.al, 2017), and other industries based on fossil fuels (Kweku, et.al, 2017); cumulatively causing air pollution and global warming yet it has still unclear about the status of the air pollution, whether it is considered just as a civil violation event or it is could be considered as a serious international crime that violates the fundamental human rights.

3.2. Deconstruct the APC into CAH

Categorizing air pollution as a crime can be done by extensively deconstructing the current existing legal qualifications of international crimes as regulated in the Rome Statute. Extensification is the process of expanding the interpretation of the meaning contained in the rules so that the actions and the rules can be in harmony (Christianto, 2010). The European Court of Human Rights extended the interpretation of human rights within the framework of crimes against the environment, even though the Rome Statute does not explicitly regulate crimes against the environment as one of the qualifications for "most serious" crimes (Durney, 2018). Meanwhile, in the case of the Ogoni Tribe in Nigeria, it also experienced extensification in terms of deconstructing the qualifications of environmental crimes committed by the Nigerian government against the Ogoni Tribe, so that the environmental damage acts carried out by the Nigerian government were extensified so that they fulfilled the elements of "widespread/systematic attack" which fall within the authority of the ICC to try the case (Durney, 2018). With the logic of deconstruction and extensification of air pollution as an act that is detrimental to humans and the environment and following the elements of CAH, normatively, air pollution can be categorized as an international crime, hence, the APC could meet the elements of CAH and the wrongdoer be held liable for those who violate the clause.

The destruction of the environment and exploitation of natural resources carried out by Nigerian oil company in Ogoni Tribe's case cause changes in environmental conditions like soil, water, and air pollution by the extractive activities so that the company violate the basic rights of indigenous peoples in the region so that they experience what we know as ecocide or unlawful acts committed by a legal subject by unlawful exploitative methods, emitting or polluting the environment, or by using herbicides thereby destroying the ecosystem in the environment (Crook and Short, 2020). Although extensive deconstruction can be carried out in holding those responsible for air pollution, the extensification mechanism has its problems which conflict with the principle of lex stricta that states that law must be interpreted strictly; there should be no regulation that can be interpreted freely. However, regarding the situation and urgency of regulating APC as CAH, other principle regulate that a condition that threatens the interests and rights of many people must be punished; This principle is known as *Rei publicae interest* (Fraher, 1984).

In deconstructing the legal qualifications of air pollution as an international crime (specifically CAH), it is necessary to understand that air pollution is an act that threatens the interests of many people. Although Article 1(a) of CLRPAT 1979 textually does not accommodate air pollution as an international crime, this convention describes air pollution as an act that threatens the environment and its components. If criticized, the element of

"threatening" an act should fulfill the elements of the Principle of Material Legality so that the act of threatening the interests of many people should be substantially considered a crime.

However, even though APC is a branch of Environmental Crimes, there is a slight difference between the two, therefore the connecting elements between APC towards CAH and Environmental Crimes towards CAH cannot be equated, or simply, not as simple as Environmental Crimes extensively deconstructed towards CAH. Due to the scientific uncertainty of APC, the concepts of responsibility for Environmental Crimes and APC are different. Environmental Crimes tend to prioritize causality between acts that are considered to violate the law or rights and the elements of loss resulting from a social and ecological perspective, while APC must also link the determination of the parties' involvement in acts that cause air pollution collectively (collective origins) with the elements of loss that are *in dubio* or exists but scientifically it is difficult to prove (Adelman, 2013). What is meant by collective origins is the broad range of polluting subjects that produce carbon emissions, so the institutions or subjects that have the competence to calculate carbon emissions and impacts often experience errors in calculations and estimates (Adelman, 2013).

Scientific uncertainty is a condition where science has difficulty measuring something due to the many factors/variables that influence an event or the difficulty of tracking the relationship between variables (indetermination) (Costanza and Cornwell, 1992). For instance, it will be easier to track down the subject responsible for the source of oil leaks in the ocean by following the trail of oil slick than to track down the subject responsible for the source of global warming. Because the trail of oil slick would lead to a single (or by mechanism) legal entity responsible for the incident. But tracking down the responsible subject for the carbon emission that caused coral calcification in the ocean or caused premature death in 2019, would be impossible because air pollution has a collective origin character and is emitted by many sectors of the world.

The logic of scientific uncertainty postulates that an act cannot be categorized as being against public rights or interests (*publicae interest*) without being preceded by the existence of an act of fault so that it is against the law, the existence of a party whose rights or interests have been harmed (resulting in the legal standing of the parties), the existence of losses and violations (both in terms of public interest and individual rights), and the causal relationship between fault (*schuld*) and violation or loss. The causal relationship between fault and violation of rights and interests cannot possibly be explained if the qualifications of the parties' faults cannot be identified precisely due to the unknown determination and impacts of the actions of the legal subject of the carbon emitter. Or simply, due to the complex carbon cycle originating from various sectors, who can be held liable for the calcification of coral clusters in the Maldives? Simply put, no party can be held liable; Even though there is an element of violation of rights and losses, the causality of faults and violations with losses cannot be explained due to carbon emissions cannot be traced clearly due to the carbon cycle and the nature of the collective origin, giving rise to scientific uncertainty.

In anticipating the existence of scientific uncertainty regarding the actions of polluters, the precautionary principle exists to answer conditions of uncertainty (Costanza and Cornwell, 1992), which practically cannot be answered by the preventative principle (Trouwborst, 2009). Conceptually, the precautionary principle works by preventing every possible risk even at a very low level or even at a level of uncertainty (Trouwborst, 2009). In general, the principle of precaution is used to minimize threats to global defense and security, such as the United States carrying out attacks on Iraq even though no weapons of mass destruction were found (Trouwborst, 2009); Which contrasts with the preventative principle which requires an indication of certainty, rather than a condition of uncertainty (Trouwborst, 2009). The application of the precautionary principle was first used in the international environmental law instrument that we know as the 1992 Rio Declaration which was legitimized by the 15th Principle which requires an early response to threats to the environment, even in situations of scientific uncertainty; Therefore, this principle is equally beneficial to the environment in doubting conditions.

The application of the precautionary principle was then legitimized through the provisions of Article 3 of the Paris Agreement which regulates ambitious global efforts to commit to reducing countries' carbon emissions. This ambitious effort is known as nationally determined contributions (NDC) which contains commitments, reports, and mechanisms for countries to reduce carbon emissions as a form of climate change mitigation. NDC

is then used as a tool for monitoring a country's policies related to potential carbon emissions without any sanction mechanism for violations of carbon emission reduction, this is because the Paris Agreement is a form of soft law instrument in international law.

NDC can be a solution to characterize violations so that the problem of scientific uncertainty of APC can be answered, namely NDC as a benchmark for carbon emission violations so that APC can only occur if a country violates the NDC carbon emission quality standards. Therefore, APC has the characteristics of a formal offense, namely the point at which a criminal act is fulfilled is determined based on the provisions of the law which prohibits it so that the determination of the criminal act has been carried out based on the achievement of the redactional provisions of the law (Prastowo, 2006).

In linking Carbon-based APC with a most serious crime predicate, especially CAH, international law has the highest hierarchical principle/norm so that a crime, based on several conditions, can be categorized at that level. This principle is ius cogens which is a peremptory norm or principle that stands above other principles; where CAH and other very serious crime qualifications based on the Rome Statute fall into that hierarchy. *Ius cogens* come from the Latin phrase, "*ius*" which means "law" and "*cogens*" which is taken from the words "*co*" and "*ago*" which means "to drive," "lead," and "push". Meanwhile, *ius cogens* in the international legal system is a predicate/category/hierarchy of an act or crime that is considered very critical and crucial and is considered to occupy a peremptory norm position or is above other hierarchies in international law, giving rise to international legally binding or *obligatio erga omnes* among international communities (Bassiouni, 1996).

CAH was agreed by the parties in the Rome Statute to be in the hierarchy of *ius cogens* because of the long history of this crime and the anthropological considerations that underlie CAH as a fundamental crime, however, the position of APC, especially with carbon emission pollutants, is still unclear because its position is not specifically regulated regarding APC qualifications in international level.

In the same manner, APC is part of Environmental Crime, therefore, APC can be categorized as an ius cogens through an extensive deconstruction mechanism by extensifying the APC elements with crimes that are at the ius cogens level, the same way as environmental crime is deconstructed as CAH. There are several similarity variables between CAH and APC which can be seen in Fig. 4 below:

Crime Against Humanity	Air Pollution Crime
Collective victimization (Vollhardt, 2013)	Collective victimization (Skinnider, 2013)
Coordinated by the government officials or parties who have capabilities that impact many people (Rome Statute, 2002)	There are many polluting subjects, but the criminalization of acts is carried out by government officials that give them the legitimacy to carry out widespread pollution. (Durney, 2018)
Violates fundamental human rights (Rome Statute, 2002)	Violates fundamental human rights (Stockholm Declaration, 1972)
Intentionally crime (Rome Statute, 2002)	Intentionally crime (Durney, 2018)

Figure 4: Elements of CAH that met with APC

Source: Processed from various sources

Both APC and CAH have almost the same characteristics; The difference between the two is only in the legal subject matter of the perpetrator of the crime, whereas in CAH, the subject of the perpetrator is government officials or parties who have power such as the government, while in APC, the subject of the perpetrator is broader, but the perpetrator's limitations are only limited to government officials who legitimize the air pollution.

3.3. Formulation of an international agreement on APC as CAH

Extensive deconstruction is only temporary to deal with pollution cases that already exist, and cannot be used as a long-term solution. This is because APC has peculiarities in terms of law enforcement, especially those related to the benchmark of "pollution" so it is said to be a crime. With the characteristics of collective origins and scientific uncertainty, APC shows its uniqueness and distinction from other crimes, so the APC is a more complex form of crime than Environmental Crimes in general. Therefore, based on Trouwborst, the nature of pollution crimes can be resolved with the principle *In Dubio Pro Natura* which has the position of Precautionary Principle, in this case, precaution is defined as a precaution or prevention, which must be carried out without knowing the possible risks and real losses occur but are known to be detrimental, therefore, precaution is an answer to the nature and characteristics of scientific uncertainty which is also described as uncertainty in the APC problem. So, on the scale of proof between pollution (polluting the air) and collective losses, it is not necessary to prove the results of actions with losses, but with the belief that the emissions produced by the legal subject have exceeded the specified threshold, then the legal subject has carried out APC; then APC qualifies as a formal offense.

Such an evidentiary mechanism to determine the occurrence of APC cannot be practically accommodated through the Rome Statute, at least through current provisions; APC could only characterized as CAH, but the instruments of APC investigation, prosecution, and trial cannot be concretely regulated through the Rome Statute. Based on the problematic enforcement of APC as CAH, the formulation of APC enforcement in the form of a new international agreement that is complementary to the existing rules (Rome Statute) regulating APC as CAH makes a lot of logic.

In building and formulating a criminalization mechanism for APC which is an international crime with CAH qualifications, 2 very "critical" legal processes need to be passed.

First, requires legal establishment or legitimacy that a crime is considered an international crime with special qualifications (Randhawa, 2022). The elements of *ius cogens* are seen based on the convention that first regulated it, namely Article 53 in the Vienna Convention on the Law of Treaties 1969 (VCLT 1969) which regulates the existence of 2 requirements for an act or issue to occupy the highest hierarchical position; Firstly, the requirement of general international agreement concept, double consent. An act or issue can only be considered to fulfill the position of *ius cogens* if it is accepted and recognized by the parties to an international agreement, either explicitly regulated in an international agreement as *ius* cogens, or explicitly regulated in various international agreements but which substantially implies this occupies the level of *ius cogens* (Luhulima, 2018). Secondly, the universality of recognition form of the parties who must as a whole agree on the position of an issue or act occupies the position of ius cogens, as Article 53 VCLT 1969 requires the condition "as a whole" as a form of agreement from the international community. The universality requirement can also be viewed as near-universal so that an act or issue does not have to be wholly agreed upon by all parties as *ius cogens*, but if a majority of the parties agree, the universality requirement can be considered fulfilled (Luhulima, 2018).

Second, the legal proceeding steps which consist of inquiry, prosecution, trial, and execution of international court decisions (ICC). Inquiry is part of the COP's authority in Article 4 Paragraph 8 of the Paris Agreement which regulates the obligations of the parties to provide information required by the COP. In terms of the formulation of international agreement of the APC as a CAH, the authority of the COP can be expanded, not only as a carbon emissions supervision agency but also have the authority to look for facts related to violations of the NDC. Supervision of the NDC can be regulated through the establishment of an Independent Body of COP based on Article 4 Paragraph 6 of the Paris Agreement. The prosecution mechanism is the full authority of the Office of Prosecutor, an independent body under the Rome Statute which is tasked with carrying out investigations into allegations of APC as CAH. In terms of finding facts and information that are crucial in prosecution and trial, both the Office of Prosecutor and the Independent Body of COP work in a coordinated manner because the two bodies are closely related to each other in terms of APC legal proceedings before the case is submitted for trial. The trial is a mechanism that specifically falls under the authority of the ICC to try an APC case as a CAH based on the authority granted by the Rome Statute. However, the ICC's authority does not

eliminate judicial authority at the national level; therefore, the relationship between the ICC and national courts is complementary.

Apart from the debate regarding the success of the Kyoto Protocol and the Paris Agreement in building commitments and urging countries in the world to commit to reducing their carbon emissions, violations of these commitments to reduce carbon emissions have occurred frequently and even reports of violations have been documented. For example, Indonesia, which is committed to reducing carbon emissions, reported an increase in carbon emissions from 2016 to 2019 of 0.388 GtCO2 with the largest percentage of emission sources from the Land-Use Change and Forest (LUCF) sector (Indonesia. ENDC, 2022). On the other hand, the Dutch *Uitspraak Hoge Raad* in adjudicating the Urgenda v Netherland case is an important note that a public entity could build commitments, but without international responsibility and sanctions mechanisms, it turns out that it can have implications for violating carbon reduction commitments. The condition of voidness from the application of sanctions for violations of global commitments and the legitimacy of air pollution as a form of crime are two challenges to the international legal regime with an environmental protection perspective in drafting regulations for the application of criminal sanctions internationally.

The application of criminal sanctions internationally means imposing sanctions on actors responsible for air pollution, with limitations based on the principle of individual criminal responsibility. Reflecting on Article 25 of the Rome Statute regarding the character of individual criminal responsibility, the mechanisms that must be built by international agreements must contain the characteristics of this principle, by prioritizing and clarifying who is considered responsible for APC, by providing characteristics of those responsible for:

a. Subjects of natural law (natural person) or perpetrator of the air directly by committing crimes of excessive pollution and destroying the environment where humans live;
b. Subjects who orders, requests, or influences to commit or attempt a crime to pollute the environmental air space;
c. Subjects who intentionally facilitates the commission or attempted crime of polluting the air space of the human environment by assisting and/or abetting other perpetrators;
d. Subjects that by other means contributing to the commission or attempted commission of the crime of air pollution by another group of legal subjects, with the same aim and with the knowledge that the crime of air pollution was committed by that group.
e. In the form of an attempt to commit a crime by the perpetrator, even though the results of the crime/action have not yet occurred or been carried out due to reasons that do not depend on the perpetrator's intention; in other words, the perpetrator had planned and had the intention, but the implementation was not carried out according to plan or had not been carried out so that the planned crime had not occurred.

With clear characteristics of legal subjects as those responsible for crimes committed, the objectivity of perpetrators of international crimes against air pollution can be fulfilled.

From the perspective of the international legal regime, the "no crime without the law" approach places the supremacy of law on the actions of subjects of international law, including what subjects of international law are permitted and prohibited to do. So in its regulation, the normatification of international crimes in the form of texts or written regulations is needed as a juridical basis for prohibiting an act, threatening a crime, and punishing individual crimes internationally.

How the condition of an act of air pollution is considered a crime of air pollution is also one of the elements of consideration for a violation or crime of air pollution. For example, murder is considered a crime if a person's actions, whether intentional or not, with or without an element of planning, take the life of another person, therefore it is considered to meet the qualifications of the crime of murder. The benchmark for an act that is considered a crime of murder is the loss of a person's life as a result of an act. Or by reflecting on CAH, the element of an act that deliberately reduces or eliminates human values or the act violates the basic rights of humans themselves, which then, with the qualifications and details of each act, is considered as a benchmark for

determining whether an act is considered CAH. The benchmark for the crime of murder and CAH is absolute based on the attainment of the impact of an act so that materially, it does not require contextual translation to state that an act is considered part of the crime. However, in contrast to APC, determining when and how an act of polluting the air is considered a crime of pollution requires a benchmark, because the nature of the crime and violation of APC is relatively dependent on the amount of pollutant that pollutes and its impact on the human population. The act of polluting the air so that it can be categorized as an international crime of pollution also requires a standard of measurement as a benchmark for when an act of polluting the air internationally is considered an international crime of air pollution along with the intention of committing the crime, this places international air pollution as an international crime with the formal offense.

Determination of this benchmark must be based on the number of air pollutants released by subjects of international law, taking into account the size of these emissions, the ability of domestic carbon stocks to absorb carbon in a country, and the environmental impact of the number of pollutants that are not able to be absorbed by domestic carbon stocks. So responsibility is no longer just about proving whether or not the emissions released by the subject of international law cause ecological harm to the civilian population because the element of proof is only on the premise that excess emissions that cannot be absorbed domestically cause damage to the environment and human population cumulatively. The formulation of this quality standard must be prepared and included in international regulations to become a benchmark for a legal subject to be declared to have committed an international pollution crime. In terms of ambient quality standards for each country, international instruments can use National Determined Contribution (NDC) or equivalent reporting documents, by the carbon emission reduction commitments in Articles 6, 7, and 8 of the Kyoto Protocol and Article 13 Paragraphs 4 and 7 of the Paris Agreement. This NDC works as a performance evaluation report or a country's plan to reduce domestic carbon emissions. This evaluation was then presented at the Conference of Parties (COP) as an implementation of the Kyoto Protocol and the Paris Agreement.

Then the carbon emission threshold mechanism for each country can adjust the existing mechanism in the Kyoto Protocol and the Paris Agreement so that in the event of a violation of the carbon emission threshold, the two conventions formally act as a basic reference for demands for APC, therefore, the previous NDC is an advisory and collaborative nature between countries and the UNFCC COP, changing its status to an obligation for each country to be transparent and report its carbon emissions. The basis for determining pollution is based on the NDC of each member country, which is closely monitored by the COP Independent Body.

3.4. Political Consideration in the Formulation of an International Agreement Concerning Air Pollution Crimes as Crimes Against Humanity

In Punishment Theory, there are two contrasting perspectives, namely deontological ethics which is based on the moral rightness and wrongness of actions based on the rules and principles that govern them, so that the burden of taking action against an action must be considered on a ethical scale, not only based on public satisfaction in taking action against an action. actions and utilitarianism which are based on maximizing the fulfillment of happiness and usefulness (Binder, 2002). Although there are different interpretations of the justification for punishment both deontologically and utilitarianism, Guyora Binder believes that punishment must go through institutional mechanisms and be assessed based on a political rather than an ethical perspective (Binder, 2002). Likewise, the formation of international legal norms is influenced by political considerations above moral considerations.

In understanding political considerations, two important elements are understood as elements of political considerations in determining the direction of international policy. The first element is global awareness, namely the awareness of international parties regarding an issue that attracts world attention. The world's attention can only be attracted based on several issues with certain characteristics contained in a global phenomenon, such as humanitarian issues such as hunger and poverty, and economic and technological phenomena such as artificial intelligence and cryptocurrency. From the perspective of the global awareness element, the climate change framework has long been a topic of discussion, especially discussions and conventions regarding the impact of carbon emissions on the environment, as evidenced by the holding and agreement of various international

conventions related to the issue of climate change and carbon emission pollution such as the Kyoto Protocol, Paris Agreement, and several Conferences of The Parties (COP) related to climate change. Various international conventions that have been and will be implemented regarding climate change and carbon emissions are a manifestation of world awareness regarding the importance of protecting the air environment as part of the living environment.

The next element is the element of national/state interest, which is the concept that a country's attitudes and actions are based on its interests (self-interest) so that state behavior can be seen in the presence/absence of a country's interest in something (Guzman, 2010). State interest is described by Carr in Mearsheimer as "the art of concealing their selfish national interests in the guidance of the general good" (Mearsheimer, 2001). Carr's argument mentioned by Mearsheimer is based on the attitude of countries to take sides in a global issue based on the interests of each country. Mearsheimer gave an example of how the influence of the Truman Doctrine in the war between democracy and authoritarianism was part of the interests of the United States in expanding the principles of liberalism and heating ideological conflicts in Europe so that the alignment of European countries was with the United States, rather than with the Soviet Union. Or consistently, it is precisely the argument that the general interest and good as a cover for a country's national interests can be equated in the perspective of CAH, which was created not only to punish crimes that violate human values and the war crimes but also as an instrument of revenge for the countries that won the World War I and II to the countries that lost in these wars.

Cassese describes that the tendency of countries to avoid state responsibility and criminal liability is motivated by the political basis that the greater the responsibility and sanctions given to the state, the more reluctant countries are to agree to the contents of an international agreement (Cassese, 2008). For example, the 2001 ILC draft on International State Responsibility has not yet been agreed upon by the negotiating parties. An international state responsibility instrument is needed considering that a country's international responsibility has so far only been based on international customary practices. Apart from that, in the context of air pollution, it is very difficult to urge countries to create criminal liability instruments for air pollution perpetrators, because basically, air pollution is a systematic act and is spread throughout all levels of society, even involving production and civil economic factors. countries, so urging countries to agree to create criminal liability instruments for APC is the same as urging countries to limit the economic movements of countries.

Moreover, related to global power hegemony competition (simply called perpetual competition theory)(Mearsheimer, 2001), which requires developed countries to compete to become superpowers, production factors to support industrialization in a country are one of the determining factors in how strong that country is (Mearsheimer, 2001). Reflecting on Germany, which was once a superpower in the World War 1 era with various production factors supporting the war, or Japan, which was able to destroy Pearl Harbor after becoming an industrial country in the Asia Pacific, or Russia, which became a super country after increasing oil and natural gas production, then It is not surprising that the argument for power competition must be based on strong domestic industry and production. With the current status quo of upstream and downstream business patterns still based on carbon emissions, efforts to urge various parties to recognize air pollution as a crime (moreover, the criminal qualifications attributed to air pollution are equivalent to CAH) are very difficult.

APC's international legitimacy as CAH requires a clear and powerful basis for political consideration so that regardless of environmental urgency and human rights violations, international parties are willing to work together to agree on APC as CAH. In terms of measuring this political consideration, it requires the existence of several indicators that influence the success of increasing the status of Air Pollution as a crime, especially CAH. The first indicator is International Awareness or awareness of international parties regarding the issue of air pollution regarding actions that intentionally release or allow other people to release carbon pollutants into the air. This awareness indicator can be seen from the commitment of countries that have bound themselves to soft law conventions such as the Paris Agreement and the Kyoto Protocol so that measuring countries' awareness can easily only be seen from their status regarding these conventions. The second indicator is International Willingness or the willingness of international parties to comply with soft law conventions on the issue of air pollution. This willingness to comply can be seen from the process of these countries reducing carbon emissions, despite the absence of instruments for sanctions for violations in the process of reducing carbon emissions. For

example, the Dutch government is making improvements to reduce carbon emissions after the *Hogeraad* decision which stated that the Dutch government was guilty and obliged to establish pro-environmental policies. Then, the final indicator is a measurement of International Interest or the interests of international parties in international conventions. In influencing the actions of countries, interest is a crucial point in determining the actions of these countries. The interest in supporting the criminalization of air pollution must be based on the economic nature of a convention or at least the proposed convention is expected to benefit the country.

The basis of interest in political consideration in the formation of international norms regarding APC as CAH must contain or include several things, such as; Guarantee that the international legitimacy of APC as CAH does not disrupt the stability of the international community (including the economy and industrialism of countries); the legitimacy was created with good intentions and intentions (good faith) and is not a political instrument of superpower countries to control small and developing countries so that groups of small and developing countries do not need to worry about the tendency of large countries to influence and control the policies of these countries small and developing countries; and the last that the legitimacy is a strong encouragement for industrial countries to start abandoning carbon-based production and shifting upstream and downstream industrial styles to green (green production and green industrialism).

In reality, carbon-based air pollution is currently carried out by large countries in the world, because the manufacturing industry sector and downstream metal industry are production centers in developed countries; Efforts to limit or reduce carbon emissions are the same as limiting and reducing production of finished goods. Even reducing carbon emissions is already a challenge for industrialized countries, in capitalist terms, it will even be difficult to criminalize air pollution because in its development it will actually criminalize producers and even officials of industrial countries themselves. Industrial countries occupy the highest position in producing carbon emissions per capita. This is then in line with the dogma that industrialization is directly proportional to carbon emissions. The process of reducing carbon emissions cannot be done instantly, because it requires a transition between emissions-based production technology to low-emission production technology. This makes the soft law mechanism more compatible and adaptive to the carbon reduction process. However, on the other hand, the challenge of APC as CAH must still be seen as a utopian urgency, as das sollen, as an ideal condition for the supremacy of law and the upholding of legal ethics.

4. Conclusion

Based on extensive deconstruction, APC and CAH have two characteristics in common; hese two crimes are capable of targeting humans population on a massive scale (Collective Victimization) and violate human rights related to the right to a decent and healthy air environment. Based on the characteristics of the act of polluting the air and the impact of the air pollution itself, the APC itself is already at the *ius cogens* level, so the act of allowing the air to be polluted and the government exceeding the NDC itself can fulfill the CAH qualifications. Enforcement of APC can be carried out by formulating APC as CAH in an International Agreement which regulates in detail efforts for investigation, prosecution, and trial so that APC which has characteristics of scientific uncertainty can be regulated. However, the urgency of regulating air pollution events as an international crime, especially CAH, is not necessarily a humanitarian moral consideration, because countries' awareness of the issue of air pollution and climate change is not necessarily in a straight line with the interests of countries and the willingness of these countries to agreed to qualify APC as CAH. The direction of these criminal qualifications tends to inflict a financial loss to industrialized countries in the Western and Asia countries so that as a concrete step to form a hard law legal instrument to seek to reduce carbon emissions, in reality, it is much more difficult than binding carbon-emitting countries to carbon reduction conventions. Through a more flexible mechanism for monitoring carbon emissions in countries around the world, the form of soft law from an international law perspective is deemed more compatible in suppressing carbon emissions compared to forcing international criminal sanctions against parties who emit excessive amounts of carbon.

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Capacity to Marry: The Minimum Age for Marriage in Cameroon and its Compliance with International Standards

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Abstract
The Preamble of the Constitution of Cameroon Indent 17 affirms the Nation's aim to protect and promote the family which is the natural foundation of human society as well as protecting women and the young. Families generally start with marriage. Protecting the family therefore implies protecting marriage which goes by setting rules for its validity and maintenance. For a marriage to be valid, parties must fulfil formalities and have capacity. Capacity to marry determines whether an individual may legally be entitled to get married or not. The minimum age for marriage is a key component of capacity to marry as no marriage is valid if contracted under that age. This stems from the fact that age determines other criteria such as the capacity to give valid consent and to comprehend marriage's commitments. Setting the minimum age for marriage is a requirement enshrined in all relevant international human rights instruments ratified by Cameroon. The question is as to whether Cameroon's domestic law on marriage complies with international standards. In order to tackle that question, the exegetic method has been used to extract the contents of the relevant international and national instruments, analyse and interpret them in order to determine whether and, if so, to what extent the Cameroonian law on marriage complies with international standards relating to the minimum age for marriage. It is found out that while Cameroonian law complies with some aspects of international standards, it is still lacking in others and that, the only solution is to amend the existing law so that it may fully comply with international precepts.

Keywords: Capacity to Marry, Minimum Age for Marriage, International Standards, Cameroonian Law

1. Introduction

The minimum age for marriage is a human right issue that has been addressed by several human rights instruments. The main objective to set the minimum age for marriage is to ensure that, in as much as the family is the basic unit of society and is started ordinarily through marriage, early marriage, which accounts for numerous health issues and societal ills such as economic and sociological plagues, be prohibited (Maswikwa et al., 2016). Lawmakers worldwide agree on the fact that early marriage or child marriage is to be prohibited for the holistic well-being of society in general. Therefore, from the 1948 Universal Declaration of Human Rights (UDHR) to the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (the Convention on Consent and Minimum Age for Marriage) to the 1979 Convention on the Elimination of Discrimination against Women (CEDAW) and the 1989 Convention on the Rights of the Child (CRC) at the international level, to regional instruments such as the 1990 African Charter of the Rights and Welfare of Children (AfCRWC) and the 2003

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol), the minimum age for marriage has been clearly defined. Most countries in the world have adopted laws that comply with the international standards set in those instruments. Even if it is to be noted that such standards are still challenged by religious and socio-cultural beliefs and practices worldwide (Owohunwa, 2018; El Kobrousli, 2019; Zahe, 2013; Human Rights Watch, 2014; Child Frontiers Ltd, 2015). Yet, there are still countries where the internal law does not clearly indicate the minimum age for marriage or still allows under-age marriage. Among such countries is Cameroon which, even after two attempts to legislate on marriage still fails to clearly determine the minimum age for marriage while the tentative number of years tendered as the minimum age obviously does not comply with international standards. The relevant piece of legislation on capacity to marry dates as far back as 1981. It will clock 43 years on 29 June 2024 and the situation is at a standstill even after the ratification of relevant international human rights instruments that provide otherwise. In Cameroon, section 52(1) of the law organising marriage sets out the minimum age for marriage to be 15 years for girls and 18 years for boys. Yet, the same provision continues by stating that marriage may be celebrated for people under that age provided leave is obtained from the President of the Republic. Thus, the question arises as to whether the minimum age for marriage in Cameroon complies with international human rights standards that prescribe countries to define the minimum age for marriage and to prohibit marriages for persons under 18 years. This paper sets out to determine the compliance of Cameroonian law with these international human rights precepts. The first question that needs to be answered is whether Cameroon has clearly set a minimum age for marriage for, even as a number is stated, a caveat is provided that allows the President of the Republic to authorise marriage under that age. The second question is to determine whether this caveat nullifies the law's attempt to set the minimum age for marriage thereby violating relevant international human rights standards. The third question is whether the distinction that the Cameroonian law draws between the minimum age for marriage for girls and boys respects international commitments. These questions shall be examined in three steps: firstly, by looking at the international provisions relating to the minimum age for marriage; secondly, by discussing the minimum age for marriage as provided for under Cameroonian domestic law; and thirdly, by assessing the latter's compliance with international human rights standards while highlighting any challenges. Proposals to remedy those shall be stated in the conclusion.

2. The minimum age for marriage in international human rights law

The international human rights law referred to here consists of the provisions of international and regional human rights instruments relating to the minimum age for marriage, viz: the Universal Declaration of Human Rights, the Convention on Consent and Minimum Age for Marriage, the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

2.1. In the Universal Declaration of Human Rights

The UDHR is the first international instrument that mentions the legal age for marriage even if it does not state it. It provides in article 16(1) that "men and women of *full age*, without any limitation due to race, nationality or religion, have the right to marry and to found a family" (emphasis added). The UDHR only mentions the fact that spouses-to-be need to be of "full age". "Full age" may be ordinarily defined as a period of human life which is measured by years from birth and that is marked by a certain degree of mental or physical development to which is ascribed some responsibility and capacity. It is also considered as the age of discretion or the age of consent. Full age is legally acknowledged with minimum age for some activities for which individuals incur liabilities. Legal capacity is strongly tied to what authorities in a State consider as being the state of mental and physical development that qualifies the individual to undertake and own the consequences of their acts and deeds. For example, States may situate the minimum age for drinking or voting or, as in this case, contracting marriage. In fact, as article 16(2) of the UDHR states that "marriage shall be entered into only with the free and full consent of the intending spouses", it therefore seems logical that the law should set a minimum age that guarantees that consent to enter into such a contract is given by a person legally regarded as capable of giving such consent. What is even more important is that, although consent does not mean being fully aware of all the legal consequences of marriage, it does nevertheless require that there should be some knowledge of the fact that being married entails

some basic duties such as living together and usually leads to building a family. Therefore, even if no age is stated in the UDHR, the term "of full age" is a clear indication that under-age persons are not entitled to get married.

2.2. In the Convention on Consent, Minimum Age for Marriage and Registration of Marriages

Next, on the international level is the Convention on Consent to Marriage. It provides in its article 2 that State Parties to it "shall take legislative action to specify the minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses." Here, the international community seems to have taken a step backwards from the provisions of the UDHR by not mentioning the requirement that spouses-to-be should be persons of "full age". Instead, it is simply provided that each country shall enact legislation that will state the minimum age for marriage. This omission may imply that States may decide of a minimum age that does not correspond to "full age" or that "full age" may simply be any age determined by the Member State as being the minimum age. And, even if one were to assume that the precepts of the UDHR would still operate and that, the minimum age for marriage is impliedly "full age", this Convention goes further by providing for an exception that definitively blurs the minimum age for marriage. In effect, it provides that "*no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age*, for serious reasons, in the interest of the intending spouses" (emphasis added). Hence, it is possible that marriage may be allowed for people under any minimum age freely determined by a Member State under its domestic law, provided a competent authority grants a waiver. This legal instrument might therefore be held to be going against the UDHR as it destroys the grounds laid by the latter on the minimum age for marriage at two levels: first, by not providing for the minimum age for marriage, and second, by giving room for derogation from any domestic freely determined age.

2.3. In the Convention on the Rights of the Child

It should be noted from the onset that the CRC does not mention the term marriage nor its minimum age. It might seem surprising, yet, at the same time, it is fully understandable as marriage is not meant for children. Therefore, it may not be mentioned in a legal instrument relating to the rights of children. At the same time though, one would have expected it to be mentioned there in order to ensure that children enjoy their rights unfettered by marriage which is an adulthood issue. In either case, the minimum age for marriage is not mentioned in the CRC. Nevertheless, the CRC contains provisions that sustain the idea that full development and rights of children may not be fully attained in wedlock. In effect, the Preamble of the CRC recalls that "in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance". The Preamble goes further by stating that Member parties are "recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding". Then, it goes on by recalling that the need to extend particular care to the child was stated in the 1924 Geneva Declaration of the Rights of the Child and in the 1959 Declaration of the Rights of the Child, the 1966 International Covenant on Civil and Political Rights (in particular in articles 23 and 24), the 1966 International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and any other relevant instruments of specialised agencies and international organisations concerned with the welfare of children. It further states that "bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'". All of these proclamations point to the conclusion that starting a family is not in a child's capacity as the child still needs special care. They may thus be used as grounds for protecting children from early marriages. Even the Preamble's declaration that "the importance of the traditions and cultural values of each people for the protection and harmonious development of the child" may not be taken to allow the implementation of traditions and customary rules favourable to child marriage.

Apart from the Preamble, there are several provisions in the CRC that help militate for a minimum age for marriage. In effect, article 1 of the CRC defines a child as: "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". It may thus be inferred from this provision that a person under eighteen years may not be allowed to get married and that the minimum age for marriage is

eighteen years. Even if it is to be noted that the CRC leaves room for countries to provide for majority below that age which may result into a lower minimum age for marriage.

The CRC further states in article 4 that States Parties are "to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised therein.". Therefore, if State Parties are to ensure that children attain "the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health" which is provided for in article 24(1) or if the child is to be protected from all forms of sexual exploitation and sexual abuse as per article 34(1) as well as from "abduction of, the sale of or traffic in children for any purpose or in any form" under article 35, then, providing for a minimum age for marriage is key. To this may be added the duty to protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare which is contained in article 36. These are the main provisions which, when read together, may serve to advocate and hold States into setting a clear minimum age for marriage that will ensure promotion, protection and respect for these children's rights which may be infringed by child marriage and betrothal as well as elopement which are all multiple forms for practicing child marriage (Mwakyambiki, 2023).

Again, if States Parties are to ensure that a child who is capable of forming their own views may express those views freely in all matters affecting them and that these views are given due weight in accordance with the age and maturity of the child as per article 12(1) of the CRC, then, a minimum age for marriage must be set. It has been established that children who get married do not do so voluntarily (Mwakyambiki, 2023). Then, under article 19(1), States Parties are required to take "all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse". In the case of child marriage, when a young girl is being sent to marriage, she is likely to undergo physical and sexual violence (Lebni et al., 2023; Suyanto, 2023; Anggreni et al. 2023). Article 27(1) on the child's right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development and article 28(1) on the right to education are also sufficient grounds to advocate for a clear minimum age for marriage being set as child marriages account for a decrease in those areas.

Lastly, in General Comment 4 paragraph 9, the Committee on the Rights of the Child established by the CRC in its article 43, clearly stipulates that States Parties must ensure that specific legal provisions set a minimum age for sexual consent and marriage that closely reflect the recognition of the status of children. Under paragraph 20, the Committee holds that early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS as also expounded by Ramnath (2015). Besides, there are also non-health-related concerns linked to child marriage: children who marry, especially girls, often leave the education system and are marginalized from social activities (Mwakyambiki, 2023). As married children are legally considered as adults, they are deprived of all the special protection measures set forth in the CRC for children.

2.4. *In the Convention on the Elimination of Discrimination against Women*

Article 16(2) of the CEDAW provides that "the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage". The implications of this provision are that child marriage is strictly forbidden. Consequently, if a marriage or betrothal ceremony involves a child, it shall be deemed null and void. Article 16(2) goes on to urge that laws be adopted to set the minimum age for marriage. This leads to the understanding that that minimum age for marriage will be eighteen years which is the age at which a person may no longer be considered a child but an adult in the eyes of the law.

This is the purport of the General Recommendation 21, paragraphs 36-39 issued by the Committee on the Elimination of Discrimination against Women in 1994. The Committee therein held that "when men and women marry, they assume important responsibilities". As a consequence, "marriage should not be permitted before they have attained full maturity and capacity to act". And that "according to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is

impeded. As a result, their economic autonomy is restricted". These were the same findings shared by Bakhtibekova (2014) and Kohno et al. (2019).

2.5. *In the African Charter on the Rights and Welfare of the Child*

It is article 21(2) of the AfCRWC titled "Protection against Harmful Social and Cultural Practices" that clearly provides that "child marriage and the betrothal of girls and boys shall be prohibited" and that effective action, including in the form of legislation must be taken to specify the minimum age for marriage to be 18 years. While article 21(1) enjoins States Parties to the Charter to take all appropriate measures to eliminate harmful social and cultural practices that affect the welfare, dignity, normal growth and development of the child particularly those customs and practices prejudicial to the health or life of the child; and those customs and practices discriminatory to the child on the grounds of sex or other status. This Charter clearly links child marriage to "harmful social and cultural practices" and therefore requires that States Parties enact laws that set the minimum age for marriage at 18 years old.

2.6. *In the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*

Article 6 of the Maputo Protocol titled "Marriage" clearly provides that States Parties must ensure that women and men have equal rights in marriage and are regarded therein as equal partners. It also requires them to enact appropriate national legislative measures to guarantee that no marriage takes place without the free and full consent of both parties and, most importantly, in article 6(b) that, "the minimum age of marriage for women shall be 18 years". No child marriage is therefore permitted as the minimum age for marriage is clearly stated to be 18 years and States are urged to enact laws to that effect. It is to be noted that the Maputo Protocol only mentions women. This is attributable to the fact that it is a Protocol devoted to the rights of women. Besides, research clearly points to the fact that, more often than not, it is the girl child who is dragged into marriage as compared to her male counterparts (Mwakyambiki, 2023).

After having examined the international legal instruments on the minimum age for marriage, it is now time to determine whether Cameroonian law sets a minimum age for marriage so as to fulfil its international undertakings under the aforementioned international human rights instruments (with the notable exception of the Convention on Consent to Marriage which Cameroon has not ratified).

3. The minimum age for marriage in Cameroon

Even though Cameroon is a country where two legal systems coexist with very little harmonisation in the private law domain (Essama-Mekongo, 2024), there is a national legal instrument that governs conditions for the celebration of a valid marriage: the 1981 Ordinance on Civil Status Registration which provides in section 52(1) that "no marriage may be celebrated" "if the girl is a minor of 15 years old or the boy of 18 years old, unless for serious reasons a waiver has been granted by the President of the Republic". This means that the minimum age for marriage in Cameroon is slated at 15 years for the girl and 18 years for the boy. Yet, this is not even fully embedded as there is a caveat. In effect, the provision goes on to stipulate that waiver may be granted by the President of the Republic for serious reasons. This results in girls and boys being likely to be married under the indicated ages. Therefore, one may rightly conclude that there is, in fact, no minimum age for marriage in Cameroon. Apparently, the law provides that the minimum age for marriage is 15 for the girl and 18 for the boy, but it also provides that it is possible to marry under that age with the authorisation of the President of the Republic, thus casting doubt on whether, if at all, Cameroon has provided for a minimum age for marriage.

This ambiguous position of Cameroonian law may be attributable to some traditions and customs (Menkiawi, 2023). Meanwhile, part of the international undertakings is to not let harmful traditions and customs deprive children, both girls and boys, from their rightful childhood by allowing them to get into wedlock before they are of full age, that is, before they attain the age of 18 years as per article 16 of the UDHR, the Preamble to the Convention on Consent to Marriage, article 16(2) of the CEDAW, article 21 of the AfCRWC and article 6 of the Maputo Protocol as previously discussed.

The Preamble to the Convention on Consent to Marriage recalled that the General Assembly of the United Nations (UN) declared by Resolution 83 (IX) of 17 December 1954, that certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the Principles set forth in the Charter of the UN and in the UDHR, and reaffirmed that all States should take all appropriate measures with a view to abolishing such customs, ancient laws and practices by ensuring, inter alia, complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary.

Article 21(1) of the AfCRWC provides on its part that States Parties must take all appropriate measures to eliminate harmful social and cultural practices, in particular: "(a) those customs and practices prejudicial to the health or life of the child; and (b) those customs and practices discriminatory to the child -on the grounds of sex or other status". Subsection 2 goes further by providing that "child marriage and the betrothal of girls and boys shall be prohibited". Hence, "effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years".

Having visited provisions relating to the minimum age for marriage in both the international and national legal frameworks, it becomes necessary to assess the compliance of Cameroon's domestic provisions on the minimum age for marriage with international standards set in the relevant international human rights instruments.

4. Compliance of Cameroon's minimum age for marriage with international human rights law

Cameroon's law is to be examined in the light of relevant international human rights instruments to determine whether it complies with the international standards they set in relation to the minimum age for marriage, that is, whether a minimum age for marriage is set by the law, whether that age is 18 years, whether the law establishes gender equality on the issue and whether there are avenues to sanction any violation of the law.

4.1. Whether Cameroon prescribes a minimum age for marriage

The first issue to examine is whether Cameroonian law prescribes a minimum age for marriage as specifically required under international law. In effect, article 21(2) of the AfCRWC provides that "effective action, including in the form of legislation must be taken to specify the minimum age of marriage to be 18 years" while the CEDAW provides in article 16(2) that "all necessary action, including legislation, shall be taken to specify a minimum age for marriage". Then, article 6 of the Maputo Protocol requires States Parties to enact appropriate national legislative measures to guarantee that "the minimum age of marriage for women shall be 18 years". In addition, even though the CRC does not specifically mention marriage, General Comment 4 paragraph 9 of the Committee on the Rights of the Child clearly states that States parties must ensure that specific legal provisions set a minimum age for sexual consent and marriage. Therefore, it may be rightly held that the CRC also requires States Parties to enact laws that set the minimum age for marriage. Though not operative, as Cameroon did not ratify it, it is still worth mentioning that even article 2 of the Convention on Consent to Marriage also requires State Parties to take legislative action to specify the minimum age for marriage.

Cameroon, through section 52(1) the 1981 Ordinance on Civil Status Registration provides that no marriage may be celebrated if the girl is a minor of 15 years old or the boy of 18 years old. This prima facie appears to be a prescription of the minimum age for marriage in Cameroon in compliance with international requirements as contained in duly ratified relevant international human rights instruments.

4.2. Whether the minimum age prescribed complies with international standards

After having determined that Cameroon has prescribed a minimum age, the second step is to examine whether that minimum age complies with international standards contained in the relevant international instruments. Here, two aspects come into play: first, the minimum age itself, and second, whether it is the same for girls and boys.

4.2.1. On the minimum age for marriage

The UDHR provides in its article 16(1) that "men and women of *full age*… have the right to marry" (emphasis added). It does not specify the exact age that would be considered "full age". It might only be subject to interpretation by States' Parties which may lead to different views on the matter and thus leaves the door open for each one to determine a different age as an age that may be considered "full". This may mostly happen on the grounds of traditions and culture as previously discussed (Bakhtibekova, 2014; Kohno et al., 2019; Cislaghi et al., 2019). However, when read in conjunction with the CRC, little doubt is left as to what "full age" means. It means, as per article 1 of the CRC, a person who has attained the age of 18 years old.

Article 21(2) of the AfCRWC is clear on the fact that "legislation must be taken to specify the minimum age of marriage to be 18 years" while article 6 of the Maputo Protocol also sets the minimum age for marriage at 18 years. Besides, article 16(2) of the CEDAW provides that "the betrothal and the marriage of a child shall have no legal effect". Though not clearly stated, when read in line with the CRC, as recommended by the General Comment 4 of the Committee, this refers to a person who is above 18 years of age in accordance with article 1 of the CRC. Even if it should be noted that the same provision stipulates that States parties may provide for majority to be attained earlier.

It therefore appears that Cameroon does not fulfil its international undertakings under these international human rights instruments as concerns girls in so far as section 52(1) provides that they may get married at 15 years old while for boys, standards are complied with as their minimum age for marriage is 18 years old. Yet, had Cameroon ratified the Convention on Consent to Marriage, it might have been possible to hold otherwise. In effect, that Convention does not specify a minimum age for marriage even if it requires States Parties to take legislative action to specify the minimum age for marriage as it does not give any indication whatsoever as to what that age should be.

Then, even as Cameroon set the minimum age for marriage, even though it does not comply with the relevant international instruments, section 52(1) of the 1981 Ordinance on Civil Status Registration goes further by stating that spouses-to-be may marry under that age provided a waiver has been granted by the President of the Republic for serious reasons. As earlier discussed, this creates confusion as to whether a minimum age for marriage has really been defined in Cameroon as it clearly gives room for marriage to be celebrated for girls and boys under the stated age. Obviously, this further takes Cameroon far from the requirements of international instruments to which it is party which do not allow any derogation from the requirement that the minimum age for marriage is 18 years old. Again, had Cameroon ratified the Convention on Consent to Marriage, the situation would have been different. In effect, article 2 of that Convention provides that no marriage may legally be entered into by any person under the age specified by national legislation, "except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses". It would seem the Cameroonian lawmaker simply copied and pasted this provision even if it did not ratify the said Convention. Cameroonian law would have therefore been found compliant to the Convention on Consent to Marriage.

The second aspect of international standards is the requirement of non-discrimination in setting the minimum age for marriage.

4.2.2. On non-discrimination between girls and boys as to the minimum age for marriage

Cameroon has failed in setting the minimum age for marriage according to relevant international standards only as concerns girls. In effect, it provides for different minimum ages for marriage: 15 years for the girl and 18 years for the boy. It means, as discussed earlier, that for boys, the minimum age is complied with but for girls, it is not. This provision epitomises gender inequality as regards capacity to marry, an issue lengthily discussed by Mwakyambiki (2023) in the Tanzanian context. This obviously amounts to "discrimination against women" which is defined by article 1(f) of the Maputo Protocol as "any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women […] of human rights and fundamental freedoms in all spheres of life". International human

rights instruments do not make any difference between genders. In fact, equal treatment of both women and men is clearly enshrined therein. In this vein, the CEDAW Committee General Recommendation 21 on equality in marriage and family relations provides in its paragraph 38 that, provisions in some countries that set different ages for marriage for women and men "should be abolished" "as such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial" or as gathered from Mwakyambiki's (2023) account, sometimes, girls are married younger to prevent negative influence, also, because they are deemed able to bear children and take care of them and of a house at that age while men must prove they can provide for their family before they are allowed to have any.

General Comment 4 paragraph 9 of the Committee on the Rights of the Child clearly states that the minimum age for marriage should be the same for girls and boys in accordance with article 2(1) of the CRC which provides that rights set forth in the Convention must be respected and ensured to each child without discrimination of any kind, irrespective, among other things, of the child's sex. In its paragraph 20, the Committee strongly recommends States Parties to review and reform their laws and practice to increase the minimum age for marriage to 18 years "for both girls and boys".

The disparity in the minimum age for marriage between girls and boys marks the Cameroonian law's failure to keep with international standards whereas the Constitution of Cameroon has, since its 2 June 1972 version as repeated in the 1996 version, embedded the principle of non-discrimination as the first principle in its Preamble thus: "all persons shall have equal rights and obligations". The 25th Principle on its part, is also against discrimination as it provides that "the State shall guarantee all citizens of either sex the rights and freedoms set forth in the Preamble of the Constitution". The same disparity and discrimination also exist in other countries such as South Africa where girls may marry between 12-17 years while boys may marry between 14-17 years (Kotze, 2020; Mafhala, 2015) and in Tanzania where the law provides for 15 years for girls and 18 years for boys just like in Cameroon and, where in practice, girls as young as 12 are being married to men of at least twice their age (Mwakyambiki, 2023). In Cameroon, a survey has determined the percentage of girls who marry before the age of 18 to be 61% (UNFPA, 2004).

After having visited the substantive provisions relating to the minimum age for marriage in Cameroon, it is necessary to inquire whether any sanctions are attached to disrespect of the law as an essential measure to ensure compliance with international standards relating to the minimum age for marriage.

4.3. Whether there are sanctions provided for violations of the law

A right that is not backed by sanctions for its violations, is no right at all. In effect, if no sanction may be meted on an infringer, it means that no reparation is possible and, if there is no avenue for reparation, then the right cannot be fulfilled. Therefore, if it may not be fulfilled, it may as well not exist. In this respect, article 6 of the Maputo Protocol provides that States Parties should enact appropriate national legislative measures to guarantee that no marriage takes place if the parties have not attained the minimum age for marriage which is 18 years. Article 21(2) of the AfCRWC provides that "child marriage and the betrothal of girls and boys shall be prohibited" and article 16(2) of the CEDAW clearly states that "the betrothal and the marriage of a child shall have no legal effect". It can thus be gathered from the foregoing provisions that the sanction for the marriage of a person that has not attained the minimum age for marriage is nullity. In Cameroon, the 1981 Ordinance on Civil Status Registration follows that stance and provides in section 52(1) that "no marriage may be celebrated" when the parties are under the prescribed age. This means that, once identity documents inform that any of the parties to the marriage is under age, no civil status registrar may proceed with the celebration of marriage. And that, even if parties undergo a ceremony of marriage and it is later found out that any of them was under age, such a marriage is null and void. Cameroonian law therefore complies with the relevant international human rights instruments through this provision and thereby fulfils its international undertakings as concerns this aspect of the minimum age for marriage.

It proves useful to consider the standing of international law in Cameroon's legal order as an indicator of its weight and influence on domestic lawmaking.

4.4. On the standing of international standards under Cameroonian law

The general principle is that States Parties to international treaties and conventions must respect them and, as concerns human rights, their international undertakings are threefold, namely, to respect, protect and fulfil human rights (De Schutter, 2010). Yet, for that to happen, international standards need to be incorporated into States Parties' internal legal orders. Such incorporation obeys either the monist or dualist approach (Frimpong Oppong, 2006). Cameroon opted for the monist approach and, hence, the Constitution provides in article 45 that "duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement". There is no need for a reenactment of the same as domestic laws through domestic processes for them to become part and parcel of the law in Cameroon. It suffices that authorisation to ratify the said treaties and conventions is adopted by the Parliament. Therefore, all international instruments ratified by Cameroon rank higher than any domestic law which must comply with them. Hence, any law that does not is unconstitutional and should not be applied. However, means to control and cure laws' unconstitutionality are not available to the public at large but only to some categories of people at a given time in the lawmaking process. Therefore, in those aspects where the 1981 Ordinance on Civil Status Registration does not comply with international standards as contained in the relevant international human rights instruments, there is virtually nothing that can be offered as cure.

In effect, it is not possible to have direct control of constitutionality in Cameroon, that is, to have a court of law declare that the law is unconstitutional. Unconstitutionality of internal laws may only be checked by the Constitutional Council as per article 46 of the Constitution and section 2 of the Law relating to the Organisation and Functioning of the Constitutional Council (the Law organising the Constitutional Council). According to article 47 of the Constitution and section 3(1) of the Law organising the Constitutional Council, the Constitutional Council's mandate is, *inter alia*, to give a final ruling on the constitutionality of laws, treaties and international agreements. Key here is the fact that the control of constitutionality provided for here may not help cure the unconstitutionality of the 1981 Ordinance on Civil Status Registration. In effect, the Constitutional Council may only control the constitutionality of laws pending their adoption. Nothing is provided for in the case where a law that has already been enacted does not conform with the Constitution. On the other hand, section 19(1) of the Law organising the Constitutional Council provides that only the President of the Republic, the Speaker of the National Assembly, the President of the Senate, one third of parliamentarians and one third of senators and Presidents of Regional councils may seize the Constitutional Council with a petition for the control of the constitutionality of "*laws awaiting promulgation*" (emphasis added). There is no other provision as to the control of constitutionality of laws which means that if no petition has been lodged at the Constitutional Council before a law is promulgated to question its constitutionality, nothing may be done to cure its unconstitutionality once it is enacted. The only cure would be to enact a new law that will be free from the defect in question.

The situation is worsened here by the fact that the relevant legal instrument, the 1981 Ordinance on Civil Status Registration, is an ordinance and not a law in the strict sense of the term. In effect, an ordinance, as per article 28 of the Constitution, is any legal instrument that is enacted by the Executive on a domain that is under the competence of Parliament as spelled out in article 26 of the Constitution which the Parliament relinquishes to the Executive for a limited duration of time and for a specific subject-matter. This means that, the ordinary legislative process for adopting laws as laid down in the Constitution is not followed. Therefore, it is not possible to question the constitutionality of the law before it is promulgated as the instrument in question is enacted by the President of the Republic directly before being endorsed by Parliament after the act.

At this point, it is thus quite clear that even if the 1981 Ordinance on Civil Status Registration does not comply with international standards set out in international human rights instruments ratified by Cameroon, there is no cure at the moment as its unconstitutionality may not be challenged by an ordinary court of law nor by the Constitutional Council as such a possibility is not provided for in the Cameroonian internal legal order as concerns ordinances and, more generally, laws that are already promulgated. In effect, apart from the 1962 Convention on

Consent to Marry which was adopted prior to the enactment of the 1981 Ordinance on Civil Status Registration, any other international instrument on the minimum age for marriage such as the CEDAW, the CRC, the AfCWRC and the Maputo Protocol are post-1981 instruments. Therefore, although they provide otherwise, and although Cameroon uses a monist approach to incorporation of international legal instruments into its internal legal order, it is the law as contained in the 1981 Ordinance on Civil Status Registration that still applies, for the time being, until a new law is enacted that complies with international standards. This means that, as unconstitutional as the minimum age for marriage set out in the 1981 Ordinance on Civil Status Registration may be, it is still "good law" and will apply until a law is enacted that will be devoid of such unconstitutionality.

It should be noted that even in countries where ordinary courts of law are allowed to declare laws to be unconstitutional, the law still remains in force pending its amendment by Parliament. This is for example the case in Tanzania where Mwakyambiki (2023) refers to the case of *Attorney General v. Rebeca Z. Gyumi* where the petitioner seized the court on behalf of all minors for it to declare specific provisions of the Tanzanian Law of Marriage Act N°5 (sections 13 and 17 relating to the minimum age and establishing gender inequality between girls and boys regarding the minimum age for marriage as in Cameroon) as unconstitutional. The court held that marriage laws in Tanzania were both unconstitutional and discriminatory in addition to violating the rights of the girl child. However, such a declaration as important as it may be, is not enough without the amendment of the law.

5. Conclusion

The minimum age for marriage is a critical human rights issue that has been the subject-matter of several international human rights instruments, each calling States Parties to enact laws that will clearly provide for it so as to ensure compliance. While many countries worldwide strive to comply with the international standards enshrined in those international human rights instruments, Cameroon has not made any change to its internal law and still provides for child marriage in plain violation of its international undertakings under the CRC, the CEDAW, the AfCRWC and the Maputo Protocol that it ratified. While Cameroon complies with certain aspects of these international standards such as having a law that sets the minimum age for marriage, that law defaults in setting such a minimum age below the age spelled out in international human rights instruments and by containing a provision that may eventually lead to the conclusion that there is no minimum age for marriage in Cameroon. In effect, a waiver of the President of the Republic may permit marriage even under the age indicated. Such an exception would still stand as complying with international undertakings if at all Cameroon had ratified the UN Convention on Consent to Marriage which gives room for that. Yet, even if such was the case, as later international instruments clearly provide for the minimum age to be 18 years for both girls and boys, it is doubtful that that specific international instrument would still be considered good law. Cameroon's law also fails in discriminating between girls and boys while all relevant international human rights instruments strongly prohibit any form of discrimination thereby fighting gender inequalities. Unfortunately, the law, as it stands in the 1981 Ordinance on Civil Status Registration, is still good law despite the fact that international legal instruments adhered to are directly incorporated in Cameroon's legal order and rank higher than internal legislation. For civil status registrars and judicial courts alike to stop complying with it, the only solution under Cameroonian law is the enactment of a new law. This is all the more important as there are still traditions and customs that allow under age marriage while the dramatic consequences to girls, the main victims of child marriage, to their mental, psychological and physical health, level of education with undesirable consequences on the economy of society and its overall wellbeing point to the need to raise the minimum age for marriage. However, it is to be noted that the Penal Code of Cameroon sanctions a person who forces girls and boys under 18 years into marriage under section 356(3). This age was increased when the new Penal Code was enacted in 2016 abrogating the previous one which provided for the same penalties but for forcing girls to marry under 14 and boys under 16. This means that the full meaning and effects of international undertakings are taken into consideration. It remains for a new law to be enacted. Several drafts of the Code of Persons and the Family have been produced over decades, adoption of same would solve the issue and make Cameroon comply with international standards when it comes to the minimum age for marriage. Meanwhile, the prevalence rates for child marriage in Cameroon are 11% by 15 years and 30% by 18 years old (Girls Not bride, 2024). This makes it an urgent matter if Cameroon is to pursue the realisation of Sustainable Development Goal 5.3 which aims at eliminating all harmful practices such as child, early and forced marriage and female genital mutilations by 2030.

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