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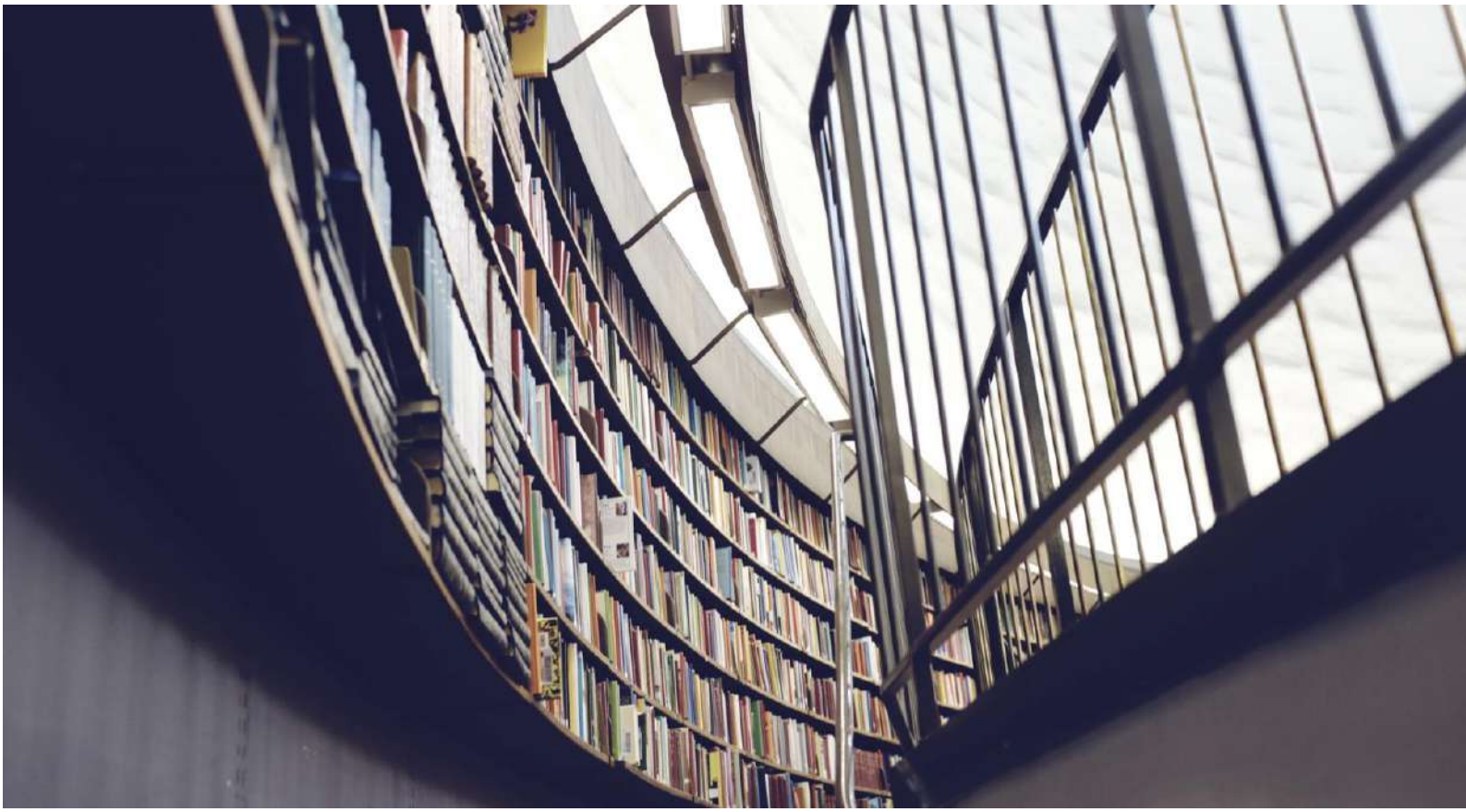

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Examining the Position of Afghanistan in the New Plan of China's Belt and Road Initiative (With Emphasis on Media Strategies)

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Abstract
Afghanistan is China's neighbor and with its location in the south of Asia, it is important for global players including China. Afghanistan participates with Pakistan in the initiative-way project. The main question of this article is that what are China's goals through the Belt and Road initiative through Afghanistan? This article explains the goals and actions of world powers and especially China in the political scene with the descriptive-analytical method and using the theoretical approaches of balancing, the international regimes and the interdependence theories. Afghanistan has paid attention to the role of foreign radio media in reflecting this issue. Based on the results, the improvement of the economic situation of the troubled Xinjiang region in the northwest of China, the stabilization of China's economic and commercial position in Central Asia, the development of China's economic influence in Afghanistan and Pakistan, and the revival of its traditional position is vital. China is on the Silk Road in the framework of a wide land and sea corridor. With West Asia and Europe, it is considered among the motivations and reasons for the formation of China's plan. Also, due to the competition with the big powers, China wants to minimize their role in Afghanistan and reach a balance of power with them. Therefore, the percentage of Afghanistan's confidence has come and the request for this plan is from Afghanistan.

Keywords: Afghanistan, China, Belt and Road Initiative, Foreign Media

1. Introduction

The fall of the Soviet Union, the independence of the countries in Central Asia, and the end of the Cold War era competitions caused the countries on the historical path as well as the trans-regional powers to try to create a new condition with the revival of the road. Among these efforts are the plans of the Economic Cooperation Organization (ECO) and also the program of the international transport corridor of the Caucasus and Central

Asia and Europe (Tracica[1]) with the participation of the countries of the Central Asia region, the Caucasus. The Belt and Road project of China, which includes three land (central), maritime (southern) and northern routes, is one of the most significant economic and commercial projects that parallel China's unprecedented economic growth in the world economy has been presented and with media and investment advertisements. The expansion of the Chinese has been followed since 2013. China is facing challenges in the execution of this project.

The conclusion of customs and preferential agreements, territorial and border differences between Afghanistan and Pakistan on the Durand border line and India and Pakistan in the Kashmir region, security challenges caused by terrorism and extremism, the existence of competing plans. such as the Russian Federation (Eurasian Economic Union) and the United States of America (the New Silk and Greater Central Asia), Turkey (Silk Road Plan) and the European Union (Silk Wind Action Initiative), Sinophobia in Central Asia, weak supervision and economic corruption are among the important challenges. d. Various countries and regions are under the influence of China's Belt and Road project, and one of these countries is Afghanistan (Kalji, 2017).

Throughout history, Afghanistan has been a gateway for many fighters to invade India. Due to its special geographical location and being in the heart of Asia, this country is located on the main route of trade caravans of the Silk Road. After September 11, 2001, when America's presence in this country expanded, with the increase of China's power and the traditional competition between Russia and America, this country turned into an arena for the competition of regional and extra-regional countries, each of which has its own They are the restraint and control of the opposite side. For China's influence in Afghanistan, it must gain the satisfaction of this country so that it can be a suitable alternative for these countries. According to John Mearsheimer, reaching regional hegemony is the only way by which China can fully dominate Taiwan and solve its other problems with Xinjiang (Mearsheimer & Brzezinski, 2005).

The intend of this paper is to look at the goals, reasons and times of the formation of the Belt and Road initiative of China and to explain the position of Afghanistan in this plan with an emphasis on the foreign media approaches of Iran and Afghanistan. The main question is "What are the position and benefits of Afghanistan and China in the Belt and Road Initiative"? The sub-questions are: "The nature, dimensions and goals of China in the belt innovation plan - what is the way?" How do other competing plans (America, Russia and India) intersect and overlap with the Chinese plan? What is the mission of Iran's international media, especially in the subcontinent and East Asia, and what media strategies can be offered? The main hypothesis of his research is that "China wants to reach a balance of power with other big regional and extra-regional powers, especially Russia, India, America, and in order to prevent the penetration of these powers and reduce their effects. The main rationale of this research is descriptive-analytical.

2. Research background

British sources have paid special attention to China's plan. "What vision is there for the Silk Road under the leadership of China and the Asian Infrastructure Development Bank?" (Esteban and Otero-Iglesias, 2015), "Chinese Road: The New Silk Road", (Brugier, 2014) "Innovation of Cloud Road Operations" A new evening in Asia Central" (Fedorenko, 2013), "Why does Washington need to coordinate with the New Silk Road around the axis of Asia?" (Kuchins and Sanderson, 2013), "Washington and the New Silk Road: A New Big Game in Asia?" (Najam and Humayun, 2012), and "China's New Silk Road to the Mediterranean: Eurasian Land Bridge and Return to Admiral Zheng He[2]" (Lin, 2011) is one of the English sources.

The articles "Geopolitical Basis of America and China's Silk Road in Central Asia" (Tishyar and Toviserkani, 2016) "Belt Band Innovation - China and its Impact on the National Interests of Iran and Afghanistan" (Khadaghalipour, 2016), Belt folds: the consistency of Heartland's theory (Yazdani and Shahmohammadi, 2015) "Innovation of China's New Silk Road (Goals, Obstacles and Challenges)" (Amirahamdian and Salehidoltabad, 2015) "Investigation of the positive aspect and dynamic necessity of Iran in the economic belt innovation" D

[1] Tracica
[2] Zheng He

from the perspective of the Copenhagen school" (Yazdani V Shah Mohammadi, 1393), are among the Persian writings that introduce and explain the nature and dimensions of China's plan as well as other Russian, American and European rival plans.

European resources due to the fact that Europe is located in the northern end (the port of Riga and Lithuania), the central (the Silk Road economic belt) and the south (Silk Seaway), which provides the time for the increase of land trade. It provides rail and road between China and European countries. They have a relatively positive view of this plan. Midders of the Ummahs are the same as the newly redesigned. Each of the nomads, with the sake of their own, the most prominent, in these cases, the special position of Afghanistan in the belt innovation plan - media strategies and how to reflect the news of developments has not been specifically addressed.

From the point where in the previous researches I just studied the road, China's goals from this action and China's goals in Afghanistan have been discussed without connecting it with China's plan; This article is innovative from the political perspective and the goals that China has in competition with other players, with a look at the role of the foreign media of Iran and Afghanistan, which can play a vital role in its reflection. In fact, explaining Afghanistan's important position in China's plan and providing media suggestions on how to deal with this issue, this article is considered innovative.

3. Theoretical framework

In this article, a combined theoretical model consisting of balancing approaches, the international regimes and the interdependence theories are used to analyze the topic. The theory of international regimes explains the cooperation of states in the international arena and is optimistic about it. The concept of regime means a set of rules, procedures, decision-making and behavior to ensure and protect interests. This theory can explain the actions of weak countries in this region (Sazmand and Ramazani, 2018).

Equilibrium refers to a system whose main players ensure and preserves their identity, completeness and independence through the process of creating balance. This theory assumes that countries are more inclined to adopt balance-based behaviors in order to prevent the creation of another power as control tools.

The balance of power has goals including "preventing the emergence and establishment of a superior and dominant power, preserving the existence of the elements that constitute the balance and the balance itself, ensuring stability and international security, strengthening and maintaining peace." It is (Qawam, 111:2014), according to this, in theory, relations between states are based on power and national interests, and all states are trying to get the most out of the balance of power and secure their national interests.

In this direction, naturally, the states are in a process of confrontation and struggle, and each of them has a continuous effort to become and stay strong, which is in the form of a union with other states in such a way that the result is the union and coalition that prevents aggression and ensures peace and stability. In fact, the basis of the theory of balance of power is based on the fact that powers can be controlled and limited only by means of power (Alibabaei, 1991:236).

According to Morton Kaplan, the basic principles of power balancing are:

a) Increasing the military power of the country for the purpose of intervention, not war.
b) Using war in emergency conditions.
c) Continuation of the war until the surrender of the enemy, not its destruction.
d) Serious opposition to the superiority of each of the members (Kaplan, 2003: 162).

According to Kenneth Waltz, the two basic conditions for achieving a balanced system are the existence of anarchy and the other is the existence of control tools (Waltz, 1979: 126-127) which Must be collective be chosen The meaning of the balance of power is the assumption that all international relations are the result of national interests, that through gaining power, the states always seek to preserve it (Sifazadeh, 1993:103).

The existence of multiple political actors, the lack of a central power and project, the unequal distribution of power among the actors of the international relations arena, the constant but controlled competition and the disputes between the ruling political actors to gain value and the world's scarce resources and the understanding between the world's major leaders about the common benefit resulting from the continuation power distribution mechanisms are a necessary condition for power balance (Qawam, 1991: 61). Several basic components, including: polarity, balance, strategic position and perception of leaders, have an effect on the strategic behavior of countries (Moritzen, 1997: 85-87). Creating buffer states, forming unions, creating spheres of influence, competition or arms race, war as a last resort and intervention is one of the ways to balance power (Waltz, 1997: 103).

Based on the theory of interdependence, the main feature of today's international system is neither conflict, nor based on conflict and cooperation, but based on multiple interactions and interdependence, especially economic interdependence and It is technical and the destruction of the chain of order and control. In fact, the concept of mutual dependence can be found under the theories related to the general integration of employment, new employment and communication (Sazmand and Ramazani, 2018).

4. Belt innovation plan - China's way

Two thousand years ago, when the Chinese Emperor John Jiank[3] built the Silk Road, this road was built for the trade of Chinese goods from the west to the east. In the current century, in 2013, the President of the Republic of China "Xi Jinping[4]" proposed a transport network consisting of roads, pipelines and infrastructure networks that connect China and Central Asia to West Asia and Europe. He proposed economic cooperation. Belt and Road Innovation Plan, which was discussed in the State Council of China in 2015, has a financial turnover equivalent to 21 trillion dollars through about 65 countries in three continents (Sheida, 2018) and more than 62 percent of the world's population, approx. 39 percent of It covers the land area and 30 percent of the gross production of the world. The road of this plan started from Shi'an[5] in the central region of China and after expanding to the west, it passes through Gansu[6] province and the two cities of Khorgas[7] and Urumchi[8] in Xinjiang[9] province. This road then goes to the southwest and after passing through Central Asia, it leaves the north of Iran, Iraq, Syria and Turkey behind.

After passing through Istanbul, it passes through Bulgaria, Romania, the Czech Republic and Germany, after that it goes to the Netherlands and finally reaches Venice[10], Italy, which is also the end point of both sea and land routes. China will be (Brugier, 2014: 63). The sea route starts from Guangzhou[11] in Fujian[12] province of China, and after passing through Guangdong[13], Gansu and Hainan[14] provinces, it reaches the Strait of Malaga in the south. After passing through Kuala Lumpur, it goes to Calcutta and from the Indian Ocean to Nairobi in Kenya, after that it passes through the Horn of Africa and goes to the Red Sea. The end point will be Italy (Jamshidi and Khatami, 2017:9). In May 2014 AD, the first phase of the joint terminal built by China and Kazakhstan was put into operation from Lian Yungang[15] port in the east of Jiangsu[16] province of China.
This terminal was put into operation with the capital of 64 million Chinese Yuan and as a part of the Belt and Road Initiative, and in October 2014, approximately 21 Asian countries wanted to join the Asian Infrastructure Bank (known as the Investor and Support Bank). in this project) as the founding members And they created a

[3] Jan jiank
[4] Xi Jinping
[5] Xi'an
[6] Gansu
[7] Khorghas
[8] Urumqi
[9] Xinjiang
[10] Venice
[11] Guangzhou
[12] Fujian
[13] Guangdong
[14] Hainan
[15] Lianyungang
[16] Jiangsu

joint agreement for the establishment of this bank. This number increased to 56 countries in January 2015 with the addition of some other countries.

On March 28, 2015, the National Reform and Development Commission of China, the Ministry of Foreign Affairs and the Ministry of Commerce of this country jointly launched the Belt and Road Innovation Plan with the title of the joint vision of the Silk Road Economic Belt and the Sea Silk Road, which includes the principles, framework and priorities of cooperation (Shida Wakai, 13:2019).

4.1. China's goal of Afghanistan's participation in Afghanistan's Belt and Road initiative

In recent years, Afghanistan and the region have been exposed to new trends of trans-regionalism by the players. America with the "Greater Central Asia Plan" and "New Silk Road" in the north-south direction, China with the "Belt-Road Innovation Plan" and Russia with the "Eurasian Economic Union" plan are the leaders of regional integration. It is in the direction of goals and benefits they have come up with their own opinion. It seems that considering the implementation of economic plans in the energy and transit areas in the North (Russia), East (China) and West (Iran and Caspian Sea) by Central Asian countries, the expansion of economic plans with Afghanistan, India and Pakistan (southern route) is seriously on the agenda of the countries of this region.

Construction of Gas Pipeline (Turkmenistan-Afghanistan-Pakistan-India), Kasa 1000 Power Transmission Line (Kyrgyzstan, Tajikistan, Afghanistan, Pakistan), Afghanistan-Uzbekistan Railway (Hiratan-Mazar Sharif) and Turkmenistan-Afghanistan (Turgund) y- Herat) There are important economic plans that will be implemented to increase the geo-economic connectivity of Central Asia with Afghanistan, Pakistan and India (South Asia). It is in such conditions and space that Afghanistan, as one of the important neighbors, has been noticed by the Chinese authorities. In 2014, China hosted direct talks between Afghan authorities and Taliban representatives and encouraged Pakistan to adopt a softer policy towards Afghanistan (Clarke, 2016).

On the other hand, Afghanistan intends to use the capabilities of China's plan to revive its historical place. Joining this plan can solve some of the problems of Afghanistan, which does not have adequate roads, railways, and air lines, and lacks access to the sea. Afghanistan is implementing a 10-year national development plan (from 2015 to 2024), in this direction, combining Afghanistan's national development plan with China's plan can achieve an important part of this plan. The government of Afghanistan wished to connect to this network from routes other than Pakistan. Ashraf Ghani, during his visit to China in 2014, asked for direct commercial connection between Afghanistan and China through the Wakhan Corridor. And the Chinese are willing to cooperate with Afghanistan in the China-Pakistan economic corridor. Afghanistan's agreement to join the China-Pakistan Economic Corridor at the Beijing Trilateral Meeting with Wang Yi, China's Foreign Minister, Salahuddin Rabbani, Afghanistan's Foreign Minister and Khawaja Mohammad Asif, Pakistan's Foreign Minister in December 2017 was announced.

The China-Pakistan Economic Corridor, which will open the way from China to the Indian Sea with the cost of 57 billion dollars, with the addition of Afghanistan to this plan, a branch of this economic corridor will be drawn through Afghanistan to Central Asia. The main challenge for Afghanistan to join this economic corridor is the not very warm relations between Kabul and Islamabad and insecurity in Afghanistan. Afghanistan does not officially recognize the border between the two countries and accuses Pakistan of supporting the Taliban group (Sheida, 2018: 23). India, along with America, is one of the main critics of China's plan and considers it to be a catalyst for China's hegemony and has warned that the execution of this plan is not transparent enough and that countries with weak economies will be affected by China's economy. India is using the Indian sea route to Chabahar port, Afghanistan and Central Asia. On the one hand, Afghanistan supports the Chabahar port project with India's axis to bypass Pakistan, and on the other hand, it relies on the help of its other western allies. In such a situation, in the direction of balancing and diversifying its foreign policy, Afghanistan is interested in using the economic and transit capacities of China's plan, especially in the context of the rail line network, and joins a plan that It can lead to Chinese hegemony (Shefahi, 2019).

One of the neighbors that have made efforts to ensure Afghanistan's security is China. China has come to the conclusion that the prerequisite for security in Afghanistan and gaining the initiative in competition with other players is to create the necessary infrastructure for the development of this country, which in the form of implementation of Afghanistan's security and accordingly, it has increased security in its borders. In addition, it will get the satisfaction of the Afghan authorities to achieve the main goal which is the same in the political scene (Sheida, 2018).

The Chinese authorities believe that with the passing of years, the cooperation and relations between the two countries will expand. With the establishment of the National Unity Government in 2014, Ashraf Ghani chose China as a good friend and met with Xi Jinping, and in this meeting, both countries announced their economic and strategic cooperation agreements, joint statement they pointed to the reconstruction of the Silk Road Economic Belt and reminded them that the reconstruction of the Silk Road Economic Belt is not only beneficial for both countries, but also connects the countries of the region and leads to the development of the countries.

From the point of view of the Chinese government, the participation of the Afghan government in this project to connect South, West and Central Asia is very important (Sheida and Kai, 2019: 23). China is ready to provide its assistance to the reconstruction of Afghanistan by making this country a partner in plan Belt innovation - increase the way. (alizada & bismellah, 2018:36).

China, through the Belt and Road Initiative, will reduce the presence and role of major global players in Afghanistan, which has a rich historical background in Afghanistan, and due to the lack of presence in that country, it is a balance of power. with them in the political scene of Afghanistan to achieve goals which are related to each of them.

5. Competition of different countries with China in Afghanistan

5.1. The historical background of India's influence in Afghanistan

India's long-standing relations with Afghanistan have caused this country to pay more attention to Afghanistan in its competition with Pakistan (Tamna, 24:2008). Due to the inevitable strategic competition with China, America has accepted the necessity of cooperation with India, and due to the lack of past history of conflict, lack of regional and global competition, economic needs and understandings. Razashi found it desirable to move to India in order to establish closer relations. (Dahshiyar, 339:1382). India is trying to invest, support and develop Iran's Chabahar port and more appropriate access to Afghanistan through Iran, as well as provide economic aid, political influence and increase relations with Central Asian countries. do not have access to the sea, the effects of the "Gwadar" port development plan in the state Pakistan's Balochistan has been reduced to a minimum by China, and this action of India is a kind of secret war between Delhi and Beijing.

By gaining influence in Afghanistan and establishing a consulate, India has increased its political influence and built the Afghan Parliament building, and Indian Prime Minister Narendar Modi participated in the opening ceremony of the new Afghan Parliament building during his visit to Kabul. In addition to this, India intends to increase the capacity of the Afghan army in the fight against terrorism in the region by providing military helicopters (Emirahmdian and Salehidol Abad, 2015). China has taken more effective steps compared to its Asian rival, India, and is more prepared to create a wider economic development period in the world. In terms of military and political competition, these two countries have had many tensions in the past 30 years, and these tensions have sometimes had bad and sometimes good effects in Afghanistan.

How much these competitions benefit Afghanistan, is something that requires a certain policy. Therefore, the creation of balance and balance between these two countries is by the statesmen of Afghanistan, who use them as the great economic powers of the region in the period of reconstruction and security of the country, and this balance of power is good. Manage. Otherwise, the destructive tensions of these two neighbors will create insecurity and weaken the national sovereignty, as well as negative use of Afghanistan's natural resources, and will have an irreparable negative impact on the Afghan economy. It will be left (Farzinnia, 133-119: 2009).

China considers terrorism and Islamic extremism as a great threat to its security, but so far it has not taken a practical step to eliminate the activities of these groups. In the way that China urgently needs security in order to expand the global trade market and obtain good economic and commercial opportunities, and this is only possible when it convinces Pakistan to fight terrorism in the region. The effort to spend will lead to the preparation of times China is investing in Afghanistan. Considering the view of Beijing-Islamabad and the conflict between the policies of Islamabad and Delhi, these different views of both sides on the internal dimension of Afghanistan may increase the difference between Delhi and Beijing. Pakistan and China are in serious competition with India.

Despite the flexibility experienced by India in the issue of Afghanistan, China uses Pakistan to challenge India and inflames the fire of negative competition among these two countries so that it can attack India. It mostly involves political-security issues. From India's side, it is pessimistic about China's Silk Road plan and has presented the Mausam[17] plan, which challenges China's plan. From perspective of Indians, this plan is a reminder of the greatness of India and the role of the Indian Ocean in trade, and it includes East Africa, Sri Lanka, South Iran and South East Asia (Amirahamdian and Salehidol Abad, 2015).

Due to the fact that China's Belt and Road initiative includes Pakistan, India's concern about this matter has increased and Delhi is looking for cooperation with the US Silk Road project, which is the opposite point of China's plan. Although China is trying to get India's cooperation in the execution of this plan, but due to its alignment with America's policies and not losing the initiative to act against China, the possibility of India's cooperation with China in this project is small (Zimmerman, 2015: 19)

5.2 Historical relations between Russia and Afghanistan and Russia's competition with China in this country

Russia's serious goal in Afghanistan is to prevent the spread of instability, terrorism and narcotics to Central Asian countries and Russian soil. Many of the terrorist groups in this group of countries not only receive financial aid from Afghan groups, but their intellectual guidance is also under the responsibility of the extremist forces in Afghanistan. China's strategy includes the purchase of energy and useful minerals in Central Asia, Iran, Afghanistan, as well as large investments in these countries. It is clear that the Russians cannot compete with Chinese capital on their own, so in order to prevent China's influence, they announced the formation of the Eurasian Union, which aims to reunify the republics of the Soviet Union and reduce its role.

China's expanding economic relations in Central Asia and Afghanistan are of concern to Moscow, while all three countries are members of the Shanghai Cooperation Organization (Afghanistan is an observer member) and can implement large-scale economic programs. Also, they do not have the same opinion on the situation of the region and ways to solve problems. They all believe that the main threat in Afghanistan is terrorism, but they do not have the same opinion about the source of this threat. While Afghanistan and Russia consider the Taliban to be under the protection of Islamabad for its geopolitical purposes, China believes that Islamabad can play an significant role in the peace process. Considering the lack of withdrawal of international forces, internal problems, corruption and weakness of official institutions in Afghanistan have caused the Taliban to recruit better, it is necessary to engage with the Taliban and bring them into the political process (Amirahamdian and Saleh Doltabad, 20-35:2016).

5.3. America's presence in Afghanistan and the main conflicts with China's presence

After the events of September 11, America's influence in Afghanistan increased dramatically. Afghanistan has the potential, with huge energy and water reserves, a strategic opportunity to take advantage of America's military, political and economic projects in the 21st century (Tamna, 114:2009).

China was against the increase of the American military presence and its long-term presence in Afghanistan, because it believed that part of the American plan in Central Asia and Afghanistan was a threat to China in terms

[17] Mausam

of security and control of strategic programs. China's policy in Afghanistan has been aimed at driving America out and pursuing the peace process in Afghanistan. Claiming to fight with security threats and preventing the expansion of extremism, America has paid its presence in Afghanistan, while at the same time considering the encirclement of China.

Although America welcomed the increase of China's interaction in Afghanistan and believes that America's strategic interests have changed and considers China's participation in Afghanistan to its advantage, but the Afghan authorities believe that the media competition there is a conflict between China and America. From their point of view, both sides want to get Afghanistan's natural resources, because Afghanistan's resources are rare in the region, and secondly, there is the issue of America's military influence in Afghanistan, which is in conflict with China's goals (Rafi'i, 19:2013).

America's effort to penetrate Afghanistan and China's effort to prevent this issue has become one of the most important issues of Beijing-Washington. This issue has caused Russia and China to reach a substantive agreement. According to some analysts, the Shanghai Cooperation Organization with the presence of Russia and China has been an anti-American pact since the beginning, which has condemned the missile defense shield. China is not satisfied with the fact that Afghanistan is the executor of NATO's policies in the region, and one of Beijing's strategies is to distance Afghanistan from the West and NATO.

Meanwhile, the absence of China's strategy in Afghanistan, besides the expansion of America's influence in Afghanistan, is a new threat and should be prevented from the presence of the West in the country with policies such as peace in Afghanistan. In addition to the point of view of the Chinese, because of the unjustified face of America and the West in Afghanistan and the positive face of China, there is space for a more constructive role for Beijing in Afghanistan. Also, considering that Afghanistan has accepted Beijing to play a more prominent role in this country, the relations between China and Afghanistan have been expanding in the past year, and despite having a short and mountainous border with Afghanistan, Beijing He is sensitive about the developments in Afghanistan. Meanwhile, China's success in mediating between Kabul and Taliban can increase China's political influence in Afghanistan as an important player (Shafi'i and Salehidolabad, 25-4: 2016).

The Chinese are looking for access to Afghanistan's underground resources and reserves, and one of China's goals is to cross the road in addition to reacting to America's colorful role in Afghanistan, to access Afghanistan's natural resources and competitors. Hilary Clinton, the US Secretary of State at the time, presented a strategic and transit plan in 2011 before presenting China's Belt and Road initiative. (Clinton, 2011: 6) . America's Silk Road emphasizes the development of transportation as a main route, which is set against China's Belt and Road initiative. Considering its goals and positions, America has reviewed China's movements to the point where it is trying to create its own silk road, focusing on Afghanistan, against China's plan. America's plan will start from Turkmenistan and reach India by passing through Afghanistan and Pakistan, which plans to consider other transmission networks in addition to the transfer of energy from Central Asia to India through Afghanistan.

Another aspect of this plan is that if Afghanistan is integrated into the regional economy, in addition to attracting better investments and using its potential resources, it can prevent the excessive ambitions of China not only in This country is located in Pakistan and Central Asia (Amirahamdian and Saleh Doltabad), 33:2017). Currently, the communication between Central Asia is ongoing through this plan; For example, the electricity of Uzbekistan and Turkmenistan provides the majority of Afghanistan's electricity, and the rail lines between these countries were built by America. America has more than 40 infrastructure projects in the framework of its Silk Road in order to reduce the efficiency of China's Belt and Road Initiative.

Some parts of these plans were opened in 2015 with the presence of the heads of these countries and American officials, and the US aims to help the countries of the region for economic reconstruction, political development, and preventing interference with other countries. Barack Obama, the former president of the United States, has stressed the need to implement this American plan even more decisively. At the threshold of the US presidential elections, there should be an atmosphere on the need to strengthen the infrastructures and actions necessary to

follow and expand this plan with the aim of helping Afghanistan, Central Asia and preventing anti-environmental programs. According to the claim of the American authorities, China will reduce the innovation plan - China's way is nothing but It is not a burden to damage the environment, he emphasized. Trump's weak position in China's control in this region should be noted, and in order to support the US Silk Road project, attention and increased investment in this project was requested. He emphasized that in case of victory in the elections, the implementation of China's non-standard and illegal programs and the innovation of the belt will be prevented (Aarthi, 2020).

6. Conclusion

Based on the theory of balance, if China has a policy away from tension, America and other powers will imagine China's behavior as peaceful and will not compete with it. In this direction, China, which is considered one of the major powers, by crossing the road from Afghanistan, where it feels the presence of a superpower like America, wants to reduce America's interests in Afghanistan.

On the one hand, America needs Afghanistan to dominate the Central Asian countries and slow down China's growth, and on the other hand, China needs it to reach a power equal to other superpowers, especially America. Also, India's extensive influence in Afghanistan forces China to counter India's influence with Afghanistan's participation in the Road Initiative, on the other hand, Russia wants to compete with global powers and China. It is the control of each of them. Due to the increase of China's economic power compared to Russia, the Russians are trying to prevent the increase of China's power in Afghanistan and accordingly they want more power in Asia and a serious competition with China.

In order to neutralize the power of regional and extra-regional competitors and reach a balance of power with these players, China wants to control their influence on the surrounding areas, especially Afghanistan. It can be analyzed in the light of the theory of interdependence, how China provides and supports the innovation belt against its ideological values. China seems to believe that the new model of international relations should be based on mutual respect, equality, justice, cooperation and mutual benefit. China's plan includes the countries located on the historical route of the Silk Road, and in this regard, it is very much in line with the goals and interests of the regional countries, especially Iran and Afghanistan, and strengthening their transit role. It is a region.

In this article, looking at Afghanistan, the hidden competition between China-America, China-Russia and China-India, each of which pursues specific goals, was discussed. China is a rival of major world powers. Therefore, India, the neighbor of this country and the United States of America, has played a greater role in the neighboring country of China, namely Afghanistan, with the green light of America. Russia, another rival of China in Afghanistan, is an active player in this country. America now wants to restrain China and prevent this country from reaching the position of superpower. America's long-term presence in Afghanistan has turned into a major challenge in China's foreign policy. Therefore, China's intervention in Afghanistan in the form of Belt and Road initiative will be an important component in the new geopolitical game. Although apparently there is some kind of cooperation between all four powers in the fight against extremism and terrorism, but this cooperation is aimed at taking a leading role in the balance with other powers.

The integration of the strategies of these actors means that the Afghan government will be under the influence of the influence of the great powers in order to maintain balance and balance, the powers that want their influence in the field of security and support of their partners. to maximize (the Chinese-Russian company and the American company - India). The existence of competition between these forces means that the weakening of each of them means the strengthening of the other actor. China and Russia are against the presence of America and India in Afghanistan; Therefore, China and Russia are trying to achieve the balance of power between America and India with beneficial cooperation.

Since Afghanistan does not have the ability to control any of them, by adopting the right policy, it can cooperate with each of them and ensure its benefits and interests with vigilance. America and other world powers, which

are worried about the power of Beijing, are trying to continue and expand their presence in vital areas such as Afghanistan. Iran and Afghanistan are considered a central element in China's Belt and Road initiative. The conclusion of the 25-year cooperation program between Iran and China, the increase of trade relations between Iran and China vis-a-vis the West, including in the energy field, the special geographical location of Iran in terms of moving goods and crossing oil and gas pipelines. A short journey to Europe and the Persian Gulf Iran's land route is a major advantage in the global economy.

The North-South Corridor project is a unique economic and commercial opportunity for Iran; On the one hand, in order to strengthen and transport transit goods in a short time with less cost and more safety, the construction of Chabahar-Sarakhs railway line is considered necessary. Also, placing Chabahar port on the route of the North-South transit corridors and as a result of establishing the transit connection between the countries of Russia, Eastern Europe, Central Europe, Northern Europe, Central Asia and the Caucasus on the one hand, and South Asia on the other hand, Far East, Oceania and the countries bordering the Persian Gulf on the one hand Another, it is considered as an outstanding advantage for Iran. Due to the shortness of the route in the north-south corridor and the provision of facilities and infrastructures and the provision of extensive facilities in different parts of the transport, Iran's route has many attractions for the transit of goods. it is

7. Media Strategies

Compared to the plans of other powers, China's plan is to some extent securing the interests of Iran, Afghanistan, and Pakistan, but so far, a specific legal framework for the plan has not been agreed upon between Iran and China. The position of Iran in comparison with Pakistan in China's plan is not clear. Unlike Pakistan, where different Silk Road projects are clearly drawn on the map, and a separate line of credit is also provided for each of the projects, the position of Iran and Afghanistan is in China's innovative road. It is suggested that the dimensions of this issue be explained in the programs related to China's Belt and Road Initiative in foreign media. News reports, productions and expert roundtables with the presence of Chinese, Pakistani, Afghan and Iranian experts will be prepared to introduce and explain the capabilities. Among the attractive ideas is the programming that can be considered in the Chinese, Dari and Pashto radio sections.

Explaining the mutual cooperation capabilities of Iran, Afghanistan and the countries of the region in the context of China's plan, especially in the context of land and rail communication corridors and the connection of the Central Asian region to Turkey and Europe, the Persian Gulf and Oman Sea is one of the programs that can be included in the agenda. In the media programs and negotiations with the Chinese side, through generalizations and drawing a specific map of the location of Iran and Afghanistan in the land and sea routes, and also assigned credit for each of the plans.

According to the published documents, only one of the drawn corridors will pass through the north of Iran, and this corridor also has alternative (rival) routes from the Caspian Sea route; Therefore, it is suggested that the role of Iran in different corridors becomes prominent and media. Considering the conclusion of the 25-year cooperation plan between Iran and China, there should be appropriate media coverage on the issue of not mentioning the name of Iran in the official documents until the time to include the name of Iran in the official documents of the Chinese plan. Also, I would like to point out the traditional position of Iran as the main part of the historical road, and this is the point that China's plan does not consider the historical and traditional position and the current geopolitical and transit situation of Iran, which is a bridge of communication. It is east and west, it cannot achieve expected and desired success. It is necessary to emphasize the participation of Iran in the development, planning and continuation of China's plan.

In Chinese, Dari and Pashto radios, a special emphasis is placed on joint cooperation with China for the development of the railway network of Afghanistan, Iran and Pakistan, and the use of Iran's media capabilities to reduce the differences between Pakistan and Afghanistan. Afghanistan and the priority of aligning with China's plan to counter America's and India's plans And Russia should be expressed more and more. In the process of preparing news reports, documentary programs and roundtables related to China's plan, literature and poems

related to the history of the Transylvanian River, the historical, cultural and social role of the Silk Road in cultural exchange are appropriate. And the idea will be used.

In this direction, the position of the Silk Road next to Nowruz cultural area as a part of the common and intangible heritage is supported by UNESCO and its role in creating the unity of the regional nations and the constructive role of Iran in ensuring security. The path of China's plan should be emphasized through the fight against terrorism and extremism. And try to convey this to the target audience as one of the important reasons why Iran cannot be left out of the economic and transit plans of the region. America's Silk Road plan does not include Iran, the negative effects of Iran's removal from regional relations should be noted in the foreign media, especially the English-language broadcast network and Chinese and Russian radios.

In this regard, it should be emphasized that the increase of independent political units of the region will have beneficial results for each of these players. It has been shown that the intervention of the American investor in the region's equations will cause damage to the countries of these regions in the long term, and considering China's geographical political position and the advantage of being a neighbor to the countries of the region, China will be accompanied by success. The formation of the tripartite mechanism of Iran-Afghanistan-India for the development of Chabahar port is of high economic and strategic importance. With regard to India-China and India-Pakistan relations, in the media direction of Indian, Chinese, Dari and Pashto radios, attention should be paid to this issue, and to compare the trilateral mechanism of Iran-Afghanistan-India with the development of Gwadar port in Pakistan or China's prevention plan. The preparation of a radio and television documentary with the topic "Iran's past and present role and position in the historical path of the silk" is one of the media needs, especially on the PressTV network. In this regard, it is important to use the existing documents and other works related to the Silk Road and Iran's role in it through translation in foreign television and radio networks.

Preparing news reports and talk shows with the presence of Chinese experts in relation to "Iran's role in China's plan" is one of the needs of the media, which, in addition to broadcasting on Chinese radio and televisios. And, Dari and Pashto radio, Indian radio and Russian radio as well. Preparation of news and production reports on the status and capacity of free zones and Iranian ports in the Caspian Sea and Oman (with emphasis on Chabahar port) and the Persian Gulf and its role in China's plan, in the work order of all Bronmer networks. It will be specially placed in the Chinese and Prestige section.

It is useful to publicize the cultural diplomacy and interactions and communications of Iran's elites and scientific centers, universities and studies with the countries of the region in the revival of the Silk Road. In this way, we can expect the correction of wrong mindsets, perceptions and stereotypes, and realistic recognition and awareness of our country's capacities and talents at the level of "official diplomacy" in the innovation of China's way.

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Afghanistan's Geopolitical Developments and Foreign Policy

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Abstract
Nearly a century after Afghanistan gained independence in 1919, the question of autonomy and originality in the nation's 20th-century foreign policy remains a topic of contention within the country. Following its independence, Afghanistan found itself in a unique situation shaped by the influence of major global powers' competition. Over the past century, geopolitical shifts have significantly influenced both the internal and external circumstances of Afghanistan. This article seeks to address the query: How did regional geopolitical developments impact Afghanistan's foreign policy from the time of its independence to the events of September 11, 2001? This article is descriptive-analytical in which the relationship between the geopolitics of the region and Afghanistan's foreign policy is examined. The geopolitical situation of Afghanistan in the geopolitical theory of the world order of Saul Cohen has shaped the theoretical discussion of the author, Afghanistan as a quasi-independent state in the geopolitics of the region, not just in the post-Cold War period. The special feature of Afghanistan in the region has been prominent since the independence of this country until now. The findings of this paper show that the foreign policy of Afghanistan after independence in the phases of geopolitical stability and transformations in the security structure of the region is more towards a neutral and balanced strategy. The country has had relations with the great powers of every period and has always distanced itself from such a strategy. It is and the independent or what was once a semi-independent position in the regional geopolitics has evolved into a pivotal and crucial region with the accompanying strategy with great power, coup, revolution and even military occupation has also occurred in this country.

Keywords: Soviet Union, Afghanistan, South Asia, Middle East, Neutrality Policy, Companionship Policy, Heartland

1. Introduction

The introduction to the establishment of the country of Afghanistan emerged on the scene in the mid-18th century, coinciding with the death of Nadershah Afshar and widespread changes in the territory of Iran. In 1747, Ahmadkhan Abdali established the government of Afghans, consisting of several Pashtun tribes in Kandahar. Starting from the latter half of the 19th century and in the 1860s and 1870s, the expansion of the borders of the Russian Empire to the south in Central Asia caused the Emirate of Bukhara and Khanashin Khojjand and Khiva to come under the power of Moscow. These developments brought the Russian territories close to British colonial lands in India (Toriya, 2014: 49).

At that time, Iran was a buffer zone between the lands under Russian rule in Central Asia and British colonial India. Due to Iran's military defeats from the tsarist army in the Caucasus and the signing of the Turkmenchai Treaty in 1828, Russia found the right to have a military and commercial presence on Iranian soil.

As a result, the British government in India thought of creating a new buffer zone and provided reasons for the separation of the Persian Gulf in the south and Herat in the east of Iran. This issue and subsequent developments in the 19th century became a prelude to the emergence and end of the independence of Afghanistan in 1919 (Mojtahed-Zadeh, 2004: 123). After that, the monarchy, republic, communist and Islamic systems ruled Afghanistan. Since the time of independence, Afghanistan has passed the difficult path of securing national interests in foreign policy in connection with geopolitical developments and competition of regional and global powers. This article aims to address the impact that regional geopolitical developments have had on the area have had on the country's foreign policy since the independence of Afghanistan until September 11, 2001. After the theoretical discussion, the geopolitics of the region in the past and the geopolitical order in the 20th century, and then the foreign policy of Afghanistan based on the use of neutral policy or distancing from it. This policy is reviewed in two periods.

2. Theoretical discussion

Geopolitics as described by Saul Cohen is a product of its time and the definitions and theorizing about it have also evolved according to time. In the first use of this term, Rudolph Killen defined geopolitics in 1899 as the concept that posits the state as a geographical organism and phenomena in time and space; the state without this feature is an abstract concept. Karl Haushofer, who is known as the father of German geopolitics, calls geopolitics the new science of national government; A guide about the spatial algebra of all political processes that relies on broad geographical foundations, especially political geography (Cohen, 2015: 15).

Geopolitics is a combination of fixed and variable elements. The fixed elements of geopolitics are such as geographical location, the size of the land, the shape of the country, the spatial situation[1], and the variable elements are things such as population, natural resources, political institutions and structures. It includes social and international system developments (Ezzati, 1992: 75). Geopolitical regions are also distinguished from each other based on fixed and variable geopolitical elements. Geopolitical regions have been important since the commencement of the establishment of this field of studies and their emergence has been a function of the evolution of geographical regions. The evolution of each geopolitical region can be elucidated in the following pentagonal stage framework:

1. The stage of existence of a geographic region that is coherent based on one or more structural and functional features.
2. The stage of the emergence of the geopolitical region: when the structural and practical distinctiveness of the geographical region gained status and acknowledgment from the point of view of political actors, especially the states the geopolitical region is formed.
3. The stage of forming the geopolitical structure: in this stage, a network of relations between the actors is formed to provide more benefits for them. Cohesion, conflict, competition, conflict, cooperation and divergence are observed among the actors of geopolitical regions.
4. From the relations that are formed in the third stage, the geopolitical state of affairs of the region in terms of convergence, divergence, integration, division of forces and regional gap is fixed and determined to a large degree in this stage.
5. What is formed in the fourth stage, if the result is cohesion, it provides the floor for the formation of regional organizations. Otherwise, the region will move towards the intensification of the crisis and return to the third stage (Hafeznia, 2010: 1-3).

Cohen explains the geopolitical structure of the world in three hierarchical levels, which consist of:

1. The geostrategic region[2] that includes the division at the macro level.

[1] Topography
[2] Geostrategic Realm

2. The geopolitical region[3], which is geopolitical sub-divisions and is considered intermediate level.
3. National states, many independent regions, quasi-states and sub-divisions of land within and between states, which are located at the lower or small level of the global geopolitical structure. (Cohen, 2015: 37).
From Saul Cohen's point of view, Afghanistan's geopolitical situation can be analyzed at both the medium and small levels.

On the one hand, this country is a part of the geopolitical region of the fragile Middle East belt; The fracture belt is a region that is subject to deep internal conflicts and is affected by the competition and interventions of the influencing powers of geostrategic regions, which is the reason for the rupture and fragmentation of the region. According to Cohen, the Middle East has been in this situation since the 1940s (Cohen, 2015: 48). On the other hand, Saul Cohen has identified states that have capabilities for independence or semi-independence[4] from geopolitical regions.

In this independent situation, Afghanistan is located in the fragile belt of the Middle East, between the Middle East, the heartland region of Russia and the independent region of South Asia. Such geographical proximity has provided a powerful capacity for this country to create a Pashtun confederation in the east and south or an Uzbek and Tajik confederation in the north of Afghanistan (Cohen, 2015: 56-58). Also, the geopolitical situation of Afghanistan after independence has been influenced by the periods of geopolitical order and law, these stages will be explored in the subsequent discussion.

3. The geopolitical situation of Afghanistan and the era of geopolitical order in the 20th century

The geopolitics of a region in the 20th century is under the influence of the periods of order and geopolitics. The geopolitical revolution is usually accompanied by war, the collapse of some powers, the emergence of new countries, changes in the world's geographical and political map, and changes in the ranking of regional powers. This feature is evident during the two world wars; While in the geopolitical system, the strategy and policy of activists and the control and management system have more stability and continuity. Post-World War One and the independence of Afghanistan, three periods can be observed: the geopolitical period (1945-1919), the geopolitical system of the Cold War, and after the Cold War period that began in 1991 (Rahimi, 2011: 77). Of course, there is no consensus about the era and the geopolitical system. Peter Taylor, focusing on the periods of world order and geopolitical history, identifies three periods in the years 1904 to 1945, 1907 to 1946, and 1989 to 1991.

Also, in addition to the passing periods, two periods of global geopolitical order appeared until the ending of the Cold War. The first period of the geopolitical order was formed between 1904 and 1945 due to the competition for the succession of Britain as the dominant power, and the second period was observed during the Cold War (Taylor, 1). 993: 38-40). Before we examine the periods of geopolitics in the 20th century, we examine the geopolitics of Afghanistan.

3.1 Afghanistan and the inherent geopolitical configuration in the surrounding area

The distinctive geographical positioning of Afghanistan significantly influences the geopolitical characterization of the region, and it has been called "Crossroad of Asia" or "Heart of Asia". Mackinder believed that there are points in every continent that countries try to control, and they consider controlling it as controlling the heart and center of the same continent. Afghanistan stands as one of the regions that have been subject to rule by various empires throughout history (Hekmatnia, 2004: 100). Afghanistan is a country surrounded by land whose north, south, east, and west regions are separated by the Hindu mountains. In the east of this country is Pakistan, and in the north of the country is the plain of Central Asia and the Sihun and Jihun rivers, and the three countries of Tajikistan, Uzbekistan and Turkmenistan are the northern neighbors of Afghanistan.

[3] Geopolitical Region
[4] Independent/Quasi State

The short, difficult and mountainous border amid Afghanistan and China has made this country the connecting point of China's nuclear powers with Pakistan and India. In the west of Afghanistan, the plateau of Iran has the largest Shia population and connects Afghanistan to the Middle East (Martin, 2011: 4). In this way, the meaning of regional geopolitics for Afghanistan is the same the geopolitical interconnection among the three regions of the Middle East, Central Asia, and South Asia in the communication intersection of Afghanistan. In order to analyze the geopolitics of Afghanistan, it is essential to look at the effect of the security composition of those regions on the geopolitical system and geopolitics of Afghanistan.

Comprehending the power dynamics within these regions is essential for gaining insight into Afghanistan's domestic and foreign policies. After Afghanistan's independence, the geopolitics of the region began to be under the control of the three great powers of Britain, Russia, and Germany. During the Cold War, the region was dominated by bipolar geopolitics, and after that, the era of influence of regional powers began.

3.2 Afghanistan and the geopolitical security composition of the region

The semi-independent situation of Afghanistan in the region has been linked with the concept of the barrier state[5] in the existing studies in the 20th century. Since the word "barrier state" was recorded in the Oxford English Dictionary in 1883, there has been a consensus about the status of Afghanistan's barrier in the security composition of the region. Before independence, Afghanistan has been in the status of a barrier between the Russian Empire and Britain in India, and the status of a semi-independent state is considered by Cohen (McLachlan, 1997: 89). While in the 19th century, Afghanistan was the place of conflict and competition between Britain and Russia, in the 20th century, after the independence of Afghanistan in 1919, this competition continued until the ending of the World War Two, Germany was another world power, which has had an impact on the situation of Afghanistan, which is being examined in the discussion of Afghanistan's foreign policy in this period.

In the security composition during the Cold War, Afghanistan was at the center of the rivalry between the two superpowers, America and the Soviet Union. Upon the demise of Joseph Stalin in 1953, the priority he gave to the Soviet Union also changed. The strategy of the Soviet Union during the post-Stalin Cold War was to support communist movements and regimes in several parts of the third world, which meant distancing itself from Stalin's eyes. The invasion of the Red Army to Afghanistan in support of the communist government of Afghanistan in 1979 is evaluated in this context (Cohen, 2003: 6). This invasion changed the status of semi-independent Afghanistan in an obvious way. In response to this situation, America started supporting the Afghan Mujahideen against Russia. With the fall of the Soviet Union, Afghanistan returned to its former semi-independent status. In this connection, the geopolitical situation of Afghanistan in the 20th century geopolitical system is examined.

4. Afghanistan in the geopolitical period from 1919 to 1945

With the independence of Afghanistan in 1919, this country was bordered by British India in the east and Russia in the north. During this period, Britain and Germany's efforts to expand their influence caused some geopolitical theorists such as Agnew and Dolby to talk about Darwinian geopolitics and environmental algebra. During this period, geography has acted as an independent variable that shapes the policies of countries (Pishgahi-Fard and Ghodsi, 2009: 81-82). Therefore, the geopolitics of the Afghanistan region during this period was the center of competition between the great powers of Russia, Britain and Germany.

4.1 Afghanistan during the Cold War

Post-World War Two, a geopolitical bloc based on the rivalry between the Soviet Union and America was formed. The penetration barrier policy was included in the security strategy of the Western Army against the Soviet Union and found a special place in geopolitical theories.

[5] Buffer State

4.2 The Heart of the Soviet Union and the Geopolitics of the Region

According to George Kanan's article "Behavioral Sources of the Soviet Union" written in 1947, many consider him to be the founder of the penetration barrier policy against the Soviet Union. But researchers such as Francis Sempa believe that the strategy of penetration barrier was proposed by Halford Mackinder before, and from his point of view, if Kenan is the father of penetration barrier strategy, then Mackinder can the patriarch knew this strategy (Sempa, 2002: 67-68).

In addition to Mackinder, Spikeman (1893-1943) also agreed with Mackinder's geopolitical point of view; however, he proposed a study according to which coastal Eurasia was the key to global power instead of the heartland. According to him, the power that has control over the Rimland region also has control over Eurasia and the fate of the world is in his hands.

Also, James Burnham, (1904-1987), a philosopher and political theorist, wrote an aggressive analysis in 1944 about the "threat of the Soviet Union against the West", According to Burnham, after communism took over China, America should change from the policy of "blocking penetration" to the aggressive policy of "liberation"; Because the penetration barrier cannot create an obstacle for the expansion of the communist ideology of the Soviet Union. Also, with the link between China's communism and the Soviet Union, Moscow could control most of the "island of the world" (Sempa, 2002: 73-77).

Some believe that in the 1970s, America's weakness in the military rivalry with the Soviet Union was an indication of the superiority of America's nuclear power compared to the previous decades, and this situation is the reason for the foreign policy of the Soviet Union became more aggressive, which manifested itself in the attack on Afghanistan. The visible change in the nuclear balance had an impact on the conduct of the Soviet Union and European countries (Askarkhani, 1998: 23).

4.3 South Asia and geopolitics of the region during the Cold War

The escalation between India and Pakistan is a prominent feature of South Asia during the Cold War and even after it, in terms of social and cultural structure, the formation of Pakistan is affected by the tension between the followers of Hinduism and Islam in India. In the political-security structure of the region, the issue of Kashmir is considered to be a big dispute and place of conflict between the two countries. Since the 1970s, with the expansion of Saudi Arabia's role in supporting the radical Sunni Islamist groups, the conflicts between religious and ethnic groups in Pakistan and in the region have increased. In addition to the prominent role of Pakistan in the security link of South Asia and Afghanistan, India also has an important position in the political, economic and security structure of the region. During the Cold War, this country had about 73 percent of the region's land area, about 77 percent from the population perspective, and from the gross domestic product perspective, it included 77 percent of the share of South Asia (Basrur, 2008: 46-49).

4.4 Middle East and geopolitics of the region during the Cold War

Cohen believes that since the 1950s in the Middle East, the competition of the six regional powers, either individually or in the form of forming an alliance and union with one of the superpowers, has affected the regional system (Cohen, 1992: 8-9). From the middle of the 1970s, the influence of Middle Eastern developments on Afghanistan increased. Before the Islamic revolution of Iran, this country, along with Saudi Arabia, in alignment with America, ensured the stability of the Persian Gulf; however, with the Islamic revolution, the collaboration between the two countries changed to regional conflict and competition, and it affected the geopolitical security composition of the region.

5. Regional Geopolitics in the Post-Cold War Era (1991-2001)

The fall of the Soviet Union and the geopolitical bipolar system of the 1990s transformed the region, and the independence of the Central Asian republics in 1991 brought new independent actors into the fold, most of the

populations of these countries are Muslims. Saul Cohen classifies the geopolitics of the region under the geopolitical structure of the world post-Cold War era. In Cohen's division, global geopolitics is divided into three macro, medium and micro levels; Geostrategic region is related to the macro level, geopolitics is related to middle level regions and national states, regions with more independence, quasi-states and territorial divisions within and between states at the micro level. It takes (Cohen, 2015: 37). According to this division, in the post-Cold War era, Afghanistan has the status of an independent quasi-state[6], which is the reason for its independence from geopolitical regions. This country is located between the three regions of the heartland of Russia, the independent region of South Asia and the fragile belt of the Middle East, and this geographical proximity has a powerful capacity for this country to create Pashtun confederation in the east and south, adjacent to Pakistan, as well as Uzbek and Tajik confederations in the north, adjacent to Afghanistan. Central Asia has provided (Cohen, 2015: 56-58)

5.1 Afghanistan's foreign policy in the 20th century

Foreign policy in this period according to internal developments and power relations in the geopolitics of the region including four periods of royal governments, the republican government of Dawood Khan, the communist government and finally the period of the Islamic government. These four courses can be studied and reviewed in two sections. The first part of the course is the balancing and neutral policy in Afghanistan's foreign relations. This section includes the royal governments that have been in Afghanistan for nearly half a century. The second part is also specific to the post-monarchy period in Afghanistan, which gradually distanced the Afghan government from the neutral policy and includes a period of coups, revolutions and civil wars.

5.2 The period of superiority of neutral foreign policy and balance in foreign relations

5.2.1. The government of Shah Amanullah (1929-1919)

Shah Amanullah, after the war with Britain and the country's complete independence in 1919, in order to avoid the competition of Britain, Russia and Germany in the geopolitical security composition of the region, a neutral and balanced strategy in relation to he assumed great powers, a strategy that is rooted in the situation the border of Afghanistan was opening and it had turned into the traditional strategy of Afghanistan's foreign policy, especially throughout the period of the royal governments (Andisha, 2015: 1-3).

He took three important goals by considering the positive balance in foreign relations:
1. Creating equal platforms for cooperation and attracting foreign investments.
2. Avoiding unilateral military reliance on great powers.
3. Reducing tension in relations with great powers (Arefi, 2017: 161-163).

In the book "Afghanistan on the Path of History", Ghulam Mohammad Ghabar describes the effort of Amanullah to increase the capacity of human resources in sending students abroad as follows: Germany, France, Italy and Turkey based on the Ministry of Education information. They were educated, and next year, some Afghan girls were to be sent to Turkey for the purpose of education, and it was also considered to send some military students to England (Ghobar, 1989: 793).

Equal opportunities for participation and economic cooperation for foreign countries were respected in Afghanistan during the Amanullah era. The observance of equal opportunities for foreign countries can be seen in the policy of equal behavior in creating foreign investment opportunities until the last years of the Amanullah government. For example, during his six-month trip to Russia and Europe in 1928, Shah discussed the construction of a road from Amoudria to Kabul and the plan to build a railway in Afghanistan with a joint venture between Germany and France. Despite the colonial experience and the war with Britain, Amanullah did not have the desire to continue the tension with this great power and took the path of negotiation, which ended in the signing of the agreement of November 22, 1921 between the two countries. It was dragged (Farhang, 1988:

[6] Independent/Quasi State

345-346). Shah Amanullah improved the relations with the Soviet Union after Moscow recognized the independence of Afghanistan on March 27, 1919, and on April 7 of the same year, he presented a proposal of alliance between the two countries in written form. On February 28, 1921, the two countries signed a friendship treaty. On November 27, 1926, a neutrality and non-aggression agreement was signed between Afghanistan and the Soviet Union. Following that, in 1927, an agreement was made to establish an air line between Kabul and Tashkent (Ghobar, 1989: 786-787). In this way, Shah Amanullah, with a realistic attitude, sought to balance the relations with the great powers, and neutrally sought to turn the threats, interference, and penetration of the Soviet Union, Britain, and Germany into an opportunity for reconstruction. And there was progress.

5.2.2. Foreign policy during the government of Mohammad Nadershah (1929-1933)

After Shah Amanullah, with the coming to rule of Habibullah Kalkani, the Sultanate in Afghanistan was disrupted for about 10 months - from January to October - 1929; But after the fall of the Kalkani government, Nader Khan, the son of Mohammad Yusuf Khan from the Barkezi family, founded a new dynasty that carefully implemented the policy of gradual modernization.

With the failure of Amanullah's hasty reforms and the disruption of government affairs, Nadershah took a cautious approach in foreign policy. During the inaugural ceremony of the National Council of Afghanistan in 1931, Nadershah declared the principles of Afghanistan's foreign policy to be neutral policy. While Amanullah's neutrality was a balance in relations with Russia, Britain and other countries, Nader Shah's policy of protecting the Arabian Sea seems to be unseemly. He showed his loyalty to the policy of non-interference in India and Central Asia in the form of coordination with the interests of the British government in India (Gerigorian, 2009: 395-396). His excessive conservatism in foreign relations reduced the level of relations with Russia and Britain, which had expanded during the Amanullah era. Nadershah faced three issues in foreign policy:
1. Solving internal economic and political issues that were related to German policies;
2. Limiting Russia's influence in Afghanistan.
3. Preventing British influence and interference in the free border areas between Afghanistan and India under British administration (Adamec, 2013: 331).

Nadershah's practical action in advancing the neutral policy was to send Shahuli's brother as Afghanistan's representative in London and to send another brother, Mohammad Aziz, to Moscow. On October 19, 1929, Russia’s Minister of Foreign Affairs officially recognized the Kingdom of Nadershah and expressed his hope that friendly relations between the two countries would continue and expand. Afghanistan also signed a non-aggression pact with Russia.With the improvement of relations between the two nations, commercial relations also expanded (Gerigorian, 2009: 409). Nadershah was assassinated on November 8, 1933 and the case of his government was closed. Nadershah's neutral strategy caused him to be cautious in relations with Britain and Russia; Although Nadershah sometimes consulted the British government in India and Russia on technical matters; But during his time, Afghanistan's political relations with Britain and Russia decreased significantly. For countries like the United States of America and Japan, there was no practical initiative and the level of relations remained very low.

5.2.3. Foreign policy during the government of Mohammad Zahershah (1933-1973)

On November 8, 1933, Zahershah, the last king of Afghanistan, assumed power at the age of nineteen following the death of his father, Nadershah. He ruled Afghanistan for about 40 years and on July 17, 1973, after a bloodless coup by his cousin Sardar Dawood Khan, he left power. Since Zahershah was young when he came to the Sultanate, the power was in the hands of three of his uncles, Shah Mahmood Khan, Shah Wali Khan, and especially Mohammad Hashim Khan, who held the title of Prime Minister. Despite this, the prominent feature of Mohammad Zahershah's foreign policy was the continuation of his father's conservative policy (Gerigorian, 2009: 461).

In 1934, Mohammad Zahershah announced the principles of the country's foreign policy in the National Assembly as follows: fostering amicable ties with all nations emphasizing on strengthening peaceful relations

with other countries. Neighboring, not interfering in the affairs of other countries. Zahershah believed that by continuing the neutral policy and bringing aid from two superpowers after the Second World War, Afghanistan's interests would be better secured and if it would get help from Moscow Fet, you need to ask for help from Washington too (Tanin, 2005: 103).

In the geopolitical era spanning the two World Wars and throughout the Cold War, Mohammad Zahershah cautiously adopted a neutral and balanced policy in relations with the great powers. Progress - Except for the time during the presidency of Sardar Mohammad Davod Khan (1953-1963), which in the pursuit of Pakistan's independence in 1947, tension arose over the Durand border line and the claim of Pashtunistan on the soil of Pakistan.

The examination of this period shows that the geopolitics of the region between the two world wars and till the ending of the world war two was in a critical situation and the competition of the three powers of Britain, Russia and Germany in Geopolitics. In one region, the royal system of Afghanistan is regarded as a policy of neutrality and balance in he has guided the relationship with the powers. After the independence of Afghanistan, Shah Amanullah had a desire for innovation and progress with a model from the West; But the geopolitical limitations in the region caused Russia, Great Britain, and Germany to seek ambitious goals by adopting a neutral policy, balancing relations, and creating equal opportunities. While Amanullah's foreign policy spent a successful period in balance and neutrality; but Amanullah's hasty reforms did not meet with public acceptance and failed.

Avoiding fundamental reforms, Nadershah and Zahershah cautiously continued the path of neutrality in Afghanistan's foreign policy till the ending of World War Two. During the Cold War, the geopolitics of the region was influenced by the geopolitical system resulting from the rivalry between the two superpowers, the Soviet Union and the United States. The separation of India and Pakistan in South Asia are also complicated the geopolitics of the region. Dawood Khan, the Prime Minister of Zahershah, from 1953 to 1963, in the first turn of the neutral policy, tried to solve the issue of border disputes with the Soviet Union and even with the United States through the policy of cooperation. Pakistan and resolve the issue of Pashtunistan; but it did not succeed. Until the end of Zahershah's reign in 1973, Afghanistan's foreign policy was on a neutral path.

5.3 The period of neutrality and balance policy in Afghanistan's foreign relations

5.3.1. Foreign policy during the period of the republic of Mohammad Dawoodkhan (1973-1978)

Mohammad Dawood Khan, who had tried to free Pashtuns from Pakistan's rule during his presidency, got another chance to do this during his presidency. He was eyeing Washington's support. When in 1956, America announced its position on the border of Afghanistan and recognized the Durand border as the official border of Afghanistan and Pakistan, Dawood Khan asked for the support of this country in the matter. Pashtunistan was disappointed and publicly expressed its desire for strategic relations with the Soviet Union.

During his first trip as the president to Moscow in June 1974, Russian officials asked him to talk to Pakistan and strengthen his relationship with Parcham Party, which was supported by Moscow. This behavior of Russia changed Dawood Khan's expectations from Russia and its effects were revealed very soon in internal and external dimensions. After Dawood Khan's trip to Moscow, he started removing the members and supporters of Parcham Party from the circle of internal advisors and the government board (Rasanayagain, 2005: 62-63).

From this period onwards, Mohammad Dawood Khan distanced himself from the camp of communism. During Dawood Khan's moving away from Moscow, Iran played an important role as the regional policy in Afghanistan's dependence on Russia. In 1975, the Shah of Iran promised to pay two billion dollars for the construction of the railway line from Kabul to Bandar Abbas. Although in practice, 1 million dollars were paid and there was no news about the construction of the railway line from Afghanistan. In June 1976, with the visit of Bhutto, the Prime Minister of Pakistan to Kabul and the improvement of relations, the dream of Pashtunistan also ended for Dawood Khan.

5.3.2. Foreign policy during the communist governments (1987-1992)

After the communist coup in 1978, Afghanistan's foreign policy was completely formed in connection with Moscow and enmity with the Western camp. In this era of communism ideology, internal conflicts and intra-party rivalries left no room for a dynamic foreign policy. After the coup, Nurmohamed Taraki and Hafizullah Amin, the main faces of the Khalq party, who consider themselves the main winners of the 1979 revolution (Thor 7, 1357), BaBabrak Karmalbecame the face of the Parcham party. They decided to pressure to accept the rule of the people in the new era and claim an equal share. Not being able to.

He tried very hard to prevent the split between the People's Party and the Flag and to keep the People's People's Party united. But there were many differences between the party leaders and this was not possible. In the end, the Kremlin also approved the policies of the People's Party. In September 1979, Taraki traveled to Havana to participate in the Non-Aligned Conference, and on the way back he made an unplanned stop in Moscow and met with Foreign Minister Berzhnev and Gromyko. The result of these meetings was information that they gave to Taraki about Hafizullah Amin's increasing power. The Russians believed that Amin's coming to power is not in the interest of the Afghan revolution (Braithwaite, 2011: 62).

On his return from Moscow, Taraki invited Amin to his place of residence on September 14. There was an attempt on his life; but Amin escaped from the place and with the siege of Saranjam Citadel, on October 8, 1979, Taraki was killed in the Citadel of the Republican Presidency. With this action, Amin ignited the conflict within the Shalavor party and created division in the party. Amin's government did not last more than a hundred days from September 1979 to December this year (Tanin, 2005: 267-273). Amin tried the policy of accompanying America. The main obstacle in this path was the assassination of the American ambassador Adolph Dobbs in Kabul. As a result of Amin's efforts, relations with Washington improved.

In the latter part of October and early November 1979, the Soviet Union's Communist Party reached the assessment that the political changes in Afghanistan could be advantageous for the United States and finally decided to send military forces to Afghanistan. December 1979, Soviet Union military planes landed at Bagram and Kabul airports and helped the ground forces that had arrived two days ago from Hirtan and Torgundi ports. Russian forces surrounded the residence of Hafizullah Amin in Kabul and killed him in the evening of December 27, 1979 (Tanin, 2005: 278-289).

With the killing of Hafizullah Amin, Babrak Karmal gained power with the support of the Soviet Union forces from 1979 to 1986, and the foreign policy of Afghanistan came under the control of Moscow. Following the transformations in the Soviet Union after Brezhnev's death, in November 1985, Gorbachev, who opposed the ongoing military presence of the Soviet Union in Afghanistan, came into prominence and believed in supporting the transfer B7 didn't have a chance, he informed Karmel that he has decided to withdraw the military forces of the Soviet Union.

In such a situation, on April 14, 1986, Babrak Karmal declared his resignation from the role of Secretary-General of the People's Democratic Party, and Dr. Najibullah was appointed as the new Secretary-General of the People's Democratic Party. Moscow implemented the commitment based on withdrawing from Afghanistan, and on February 15, 1989, the withdrawal of Soviet Union forces from Afghanistan was completed. With the exit of the Red Army from Afghanistan and the strength of the Mujahideen in the battlefield, there was an expectation of the fall of Najibullah's government; but he tried to maintain order and improve his position by changing the name of the People's Democratic Party to the Homeland Party in 1990. But the Mujahideen did not accept it and the last communist government of Afghanistan was overthrown. Mujahideen managed to win the Islamic revolution of Afghanistan by controlling different provinces of the country on May 8, 1992 corresponding to April 28, 1992.

In a nutshell, it can be said that the communist government in Afghanistan was never able to maintain its unity; Noor Mohammad Taraki, Hafizullah Amin, Babrak Karmal and Dr. Najibullah were the leaders of the communist government in Afghanistan from 1978 to 1992. During this period, Afghanistan's foreign policy

completely left the path of neutrality and changed its path to support the Soviet Union. Amin's coup against Taraki and its repetition by Babrak Karmal against Hafizullah Amin, who was inclined to America and even opened the foot of the Red Army to Afghanistan, shows that the cost of leaving the policy of neutrality is very high.

5.3.3. Foreign relations of the 1990s (the Mujahideen government and the emergence of the Taliban)

The civil war and the tenuous legitimacy of the Mujahideen government had an impact on Afghanistan's foreign policy during this era led by Burhanuddin Rabani. In this geopolitical period, the relations of the influence of Jihadi parties, in collaboration with regional and global powers, played a role in shaping the destiny of Afghanistan and the surrounding region.

With the victory of the Afghan Islamic Revolution on April 24, 1992, an agreement was reached on the framework of the interim government between the jihadi groups residing in Peshawar, Pakistan. According to the agreement, two months ago, Sabghatullah Majdadi, the president of the interim government was appointed. After him, Burhanuddin Rabani of Tajik tribe, the second interim president of the Mujahideen government, took over this post for four months from June 28, 1992.According to the agreement, after this period, the Haloaqad Council was supposed to be established to appoint a temporary government for eighteen months and schedule general elections in Afghanistan. Due to the violation of this agreement from both sides, Burhanuddin Rabani held a council meeting to appoint the president in Herat city. On December 30, 1992, this council extended the government of Burhanuddin Rabani for two years. With this decision, the pros and cons were formed and the civil war continued. With the coming out of the Taliban in 1994, the direction of politics in Afghanistan turned from the Islam of the Mujahideen to the radicalism and Islamic fundamentalism of the Taliban. Infinitely the basis of the nomadic seats (Saikal, 2004: 209-210).

The diversity in the war's lineup left no possibility for the advancement of the foreign policy of the government of Burhanuddin Rabani. For this reason, more than the foreign policy in this era, I see the role of regional and world powers' relations with the heads of nations and jihadist parties. In this period, with the fall of the Soviet Union, the hegemonic system of Central Asia also collapsed and the newly sovereign republics of Central Asia turned into independent actors in the region.

Iran, which had completely abandoned its alliance with the United States with the Islamic revolution of 1979, turned into an important and independent actor in the region. In Afghanistan, following the withdrawal of Soviet forces and the collapse of the communist system, the military strength and power of the army disintegrated. In such a situation, Russia and America's indifference to Afghanistan's civil war provided an opportunity for Pakistan's influence in this country. The massive flood of immigrants from the 1970s onwards, Islamabad's support of Afghan Islamists, and the creation and strengthening of Sunni jihadi parties in this country, created the time for Pakistan's influence and the link between South Asia and Afghanistan in the region.

Burhanuddin Rabani, the head of the Islamic government in his foreign policy was looking to establish good relations with Pakistan and his firm support of Kashmiri Muslims in the conflict between India and Pakistan confirms this claim. Despite this, Burhanuddin Rabani 's effort to create an independent policy in foreign policy, which included establishing relations with other neighboring countries, including India, was not favorable to Pakistan. In this unstable period, the fate of Afghanistan was again influenced by the relations and interventions of regional and world powers. Barnett Rubin describes the situation of this period as follows: for two years (1992-1994), the United Nations made no effort to initiate peace talks in Afghanistan. Regional powers including Pakistan, Iran, Central Asian countries, Saudi Arabia, India, and Russia intervened in Afghanistan's affairs. Russia was worried about the threat of Afghanistan's civil war in Tajikistan's neighborhood to re-establish power in Central Asia.

Iran was also against Pakistan's action and saw it as a part of America's restrictive strategy against Iran's regional economic interests. A trans-regional coalition was formed. The Pakistani army, with a large number of Pashtun

officers and Pakistani drug traffickers, many of whom were active in Pashtun tribal areas, cooperated widely with the Pashtun Taliban. (Rubin, 2013: 29).

Apart from Afghanistan's connection to the geopolitics of South Asia, the Middle East also exerted an influence on the security policies of the region. In March 1990, Saudi Arabia provided 100 million dollars to the Islamic Party of Afghanistan, led by Gulbuddin Hekmatyar, to support a plan he and General Shahnawaz Tani to overthrow Najib's government. With the fall of Najib's government in 1992, Arabia continued to provide financial aid and fuel to the Mujahideen government. Of course, this aid was optional, and due to the hostile relations between Iran and America, the Mujahideen who were present in Iran, as well as about two million Afghan immigrants from the aid of Arabia and Jamaat Jah. So, the way parties and immigrants in Pakistan are benefiting from it, they remained undivided (Rashid, 2002: 198).

In addition to this, compared to Arabia, Iran's policies were mostly implemented in connection with Shia parties and currents. Tehran maintained ties with Shiite groups in the central highlands of Afghanistan, specifically in Hazarajat, including Bamyan and its adjacent provinces. In 1988, by integrating the eight Shiite parties in the "Islamic Unity Party", Iran tried to make this party appear in the international dialogues in which the Sunni parties supported by America, Pakistan and Arabia If they have an advantage, it should be present (Rubin, 2013: 35- 36).

Following the Cold War, the significance of the region surged in Central Asia due to the emergence of newly independent republics. Simultaneously, in South Asia, the enduring nuclear-powered competition persisted between India and Pakistan, marked by longstanding disputes, particularly concerning Kashmir. During this period, the rivalry between Iran and Arabia increased. With Afghanistan being in the midst of civil wars, the time was created for the coming out of the Taliban. During this era, the geopolitical landscape of the region was influenced by the foreign relations of jihadist parties, groups, and the Taliban with global and regional powers. The lack of a draft government in the decades after the Cold War in Afghanistan makes it difficult to analyze its foreign policy in this period.

6. Conclusion

From what has been studied, it can be concluded that Afghanistan's foreign policy in the 20th century is influenced by regional geopolitics. In the 20th century, before the Cold War, as Peter Taylor said, there was a competition for the succession of Britain, and Afghanistan's foreign policy was affected by this competition. During the Cold War, the neutral path of Afghanistan's foreign policy gradually turned towards Russia, and finally, after the Cold War, Jihadi and Taliban forces engaged in geopolitical conflicts across South Asia, impacting both the Middle East and Central Asia. Various governments ruled Afghanistan from the time of independence until September 11, 2001. Monarchy, republic, communist government, Islamic republic, and Islamic emirates came to power one after the other; Afghanistan's foreign policy during this period was affected by the competition of great powers.

The strategy of neutrality and balance in relations with the big regional and world powers, which was implemented during the fifty-year period of the Afghan monarchy, had guaranteed Afghanistan's stability to some extent; Since the era of Dawood Khan's presidency and then the communist government, Afghanistan's departure from the path of neutrality has had unpleasant effects and consequences for the Afghan governments. Even post-Cold War era, the competition of global and regional powers in the geopolitics of the Middle East, South Asia, and Central Asia has had an impact on Afghanistan's relations, and the status of the semi-independent state after Since it changed the course of developments in Afghanistan, September 11, 2001, the independence of Afghanistan, until the event in Geopolitics has been reproduced.

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Dual Citizenship in Indonesia from the Perspective of Dignified Justice and Sovereignty

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Abstract
The granting of citizenship constitutes the sovereignty of a country. In state practice, all countries recognize the concept of citizenship because the existence of citizens is one of the requirements of a state. The generally recognized concept of citizenship is single citizenship. However, in the development of global life, countries are creating opportunities for dual citizenship for their residents. Through Law Number 12 of 2006 concerning Citizenship, the Indonesian government opened limited dual citizenship in Indonesia. The limited dual citizenship privileges given to children resulting from mixed marriages and children of Indonesian citizens born outside Indonesia have brought an influx and encouragement from the Indonesian diaspora for the concept of dual citizenship in Indonesia to be widely opened. This research aims to analyze the application of dual citizenship from the perspective of the theory of Dignified Justice and Sovereignty. This research uses a normative method with a conceptual approach, namely by identifying existing doctrinal principles or views. The theories used in this research are the theory of dignified justice and sovereignty theory. The research results show that the theory of dignified justice which originates from the noble values of Pancasila opens up space for the full implementation of dual citizenship in Indonesia, as a fulfilment of human rights and dignity itself. In the aspect of sovereignty theory, the application of single and limited dual citizenship is an absolute right of the Indonesian state which has been stated in its positive law. So it is important to refer to the nation's laws and cultural values as well as the country's long-term interests before implementing dual citizenship in its entirety.

Keywords: Dual Citizenship, Dignified Justice, Sovereignty

1. Introduction

The application of dual citizenship or even multi-citizenship is a common practice in several countries in the world. According to Satya Arinanto, until 2020 44 countries had implemented the concept of dual citizenship in the context of ensuring that a person does not lose the citizenship of their home country if they continue to take citizenship of another country (Mardatillah, 2020). If you look closely, generally the countries that implement this dual citizenship policy come from Commonwealth countries, the majority of European countries and several

countries that are not territorially large. Referring to this, the policy of granting dual citizenship is more due to preventive measures by the state to prevent the loss of citizens due to naturalization as citizens of another country (brain drain). Apart from that, the implementation of this policy also has aspects of historical ties to Commonwealth countries. Whatever the philosophical basis, the implementation of the dual citizenship policy is the state's effort to fulfil the main element of a state, namely the existence of permanent residents.

As countries around the world open up and global migration increases, the spread of Indonesian citizens abroad is increasing. Not only migrant workers, but Indonesian citizens who have professional careers abroad are also experiencing growth. This is of course supported by the opening up of opportunities for educational scholarships and global economic growth. Although there is no exact data, it is estimated that around six million Indonesian diaspora are spread abroad. From this estimated number, Dino Patti Djalal conveyed the great potential that Indonesia could gain if the concept of dual citizenship was implemented optimally in Indonesia (Mardatillah, 2020). In another public discussion, Cahyo Rahadian Muzhar, as Director General of General Legal Administration at the Ministry of Law and Human Rights, stated that dual citizenship is considered to have the potential to improve the national economy, one of which is a positive influence on increasing financial inclusion as well as being a source of foreign exchange that influences Indonesia's economic development (Ramadhan, 2022). This will of course change the political map of Indonesian citizenship law which will then institutionally also change a series of citizenship regulations in Indonesia. It cannot be denied that with the rapid flow of global development, the need for individuals, especially the diaspora, to have dual citizenship under Indonesian citizenship law has become a long-awaited desire. However, the state's efforts to realize this concept are another matter that is of course full of considerations (Charity, 2016). In its implementation, of course, the state must consider several aspects such as legal aspects, defence aspects, security aspects, socio-cultural aspects and economic aspects. If implemented, of course, the recognition of dual citizenship can be seen as part of the state's efforts to realize prosperity for all citizens and protect the human rights of citizens regarding their citizenship status.

In some academic literature, the issue of dual citizenship is an interesting topic. Of the several literatures that have topics related to dual citizenship, generally, these academic texts review the concept of dual citizenship from the perspective of Indonesian positive law. As written by Ahmad Jazuli in the Legal Policy Scientific Journal, reviewing the concept of dual citizenship for the Indonesian diaspora by referring to the Indonesian Citizenship Law (Jazuli, 2017). Likewise, as written by May Lin Charity in the Constitution Journal, which emphasizes the protection of Indonesian citizens who are abroad through the implementation of dual citizenship for the Indonesian diaspora because it is a necessity based on the reality of globalization and the spirit of the constitution which protects all of Indonesia's blood (Charity, 2016). Fery Nuriawan's discussion of dual citizenship emphasized the principle of nationality. From the three literature reviews, there has been no discussion of dual citizenship from the perspective of Dignified Justice and Sovereignty theory. Likewise, regarding literature that uses the theory of dignified justice, such as that written by Teguh Prasetyo, which reviews the theory of dignified justice in the formation of laws and regulations (Prasetyo, 2016), as well as in Indonesian national insight in the global era (Prasetyo, 2017), these two literatures do not specifically uses citizenship law as its subject matter. For this reason, discussing dual citizenship from the perspective of Dignified Justice and Sovereignty is an empty gap that has not been filled by any academic writing. So this article is an enrichment of legal literature that is quite important to consider.

Based on the explanation above, it is very important to explore this issue more deeply using the perspective of the theory of Dignified Justice and Sovereignty to assess whether it is time for Indonesia to fully implement the concept of dual citizenship. An independent study in this research needs to be carried out to further analyze aspects relating to the application of dual citizenship to maintain state sovereignty. Furthermore, through a dignified justice approach, this research can explore and formulate appropriate citizenship policies when the concept of dual citizenship is applied in Indonesia so that the results of this research can become a reference in making research-based citizenship policies, not just evaluation-based ones.

2. Research Methods

In general, research is defined as human scientific activity that aims to develop or study science (Prasetyo, 2019). Each science has its method of searching for truth (Prasetyo, 2019). In the principles of legal science, the research method used in this research is a normative method. Normative legal research methods can be interpreted as legal research at the level of norms, rules, principles, theories, philosophies and legal rules to find solutions or answers to problems in the form of legal voids, norm conflicts or norm ambiguity. This research method uses primary sources of legal materials in the form of applicable laws and regulations (Prasetyo, 2019), secondary sources of legal materials obtained from sources, books that are related to the research object, and research results in the form of reports, theses and dissertations, as well as tertiary legal material sources such as dictionaries and encyclopedias (Prasetyo, 2019). The data that has been obtained is then used as supporting data in analyzing dual citizenship from the perspective of Dignified Justice and Sovereignty.

2.1 Subsection Identification

The specific approach used in this research is theoretical. The theoretical approach is carried out by understanding and reviewing the legal theory of the topic being studied (Taekema, 2018). The theoretical approach connects the theoretical basis with the concept of dual citizenship as a research object. By referring to the theory of dignified justice, this research seeks to answer the question of why and how the concept of dual citizenship in the perspective of dignified justice theory.

2.2 Sampling Procedure

This research takes primary data and secondary data because this research is normative in nature. The following are the legal materials used in the primary data sources and the secondary data used:

2.2.1 Primary Legal Material

Primary legal materials are the main legal materials, as authoritative legal materials, namely legal materials that have authority (Suardita, 2017). Primary legal materials include statutory regulations and all official documents that contain legal provisions. Primary legal material as the main legal material that supports this research, namely:

1) Laws of the Republic of Indonesia, including the Citizenship Law, Immigration Law and Population Administration Law;
2) Regulations of the Government of the Republic of Indonesia, especially those related to the implementation of citizenship law;

2.2.2 Secondary Legal Materials

Secondary legal materials are documents or legal materials that provide explanations of primary legal materials such as books, articles, journals, research results, papers and so on that are relevant to the issues to be discussed (Prasetyo, 2019).

2.2.3 Tertiary Law Materials

Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials, such as legal dictionaries and legal encyclopedias (Prasetyo, 2019).

3. Result

3.1. Citizenship

Law as a rule (norm), is a law that is understood as a set of life instructions, namely in the form of commands, prohibitions, permissions and meanings or definitions. Definitions can be found in various kinds of statutory regulations that apply in a legal system. It is often found that definitions in law are regulatory in nature so the nature of the definition cannot be simply ignored. Because this understanding was deliberately formulated to create order in society (Prasetyo, 2021). Juridically, citizenship is defined as all matters relating to citizens, as intended in Law of the Republic of Indonesia Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. Of course, this concept has a very broad explanation depending on the depth of understanding and the aspects you want to study. It's just that Law Number 12 of 2006 concerning the Citizenship of the Republic of Indonesia does not explain further what is meant by matters relating to citizens of that country. Referring to positive law in Indonesia, other provisions that also regulate citizens are included in several laws, including:

1) Law Number 1 of 1974 concerning Marriage;
2) Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia;
3) Law Number 6 of 2011 concerning Immigration;
4) Law Number 23 of 2006 as Amended into Law Number 24 of 2013 concerning Population Administration.

These four laws and regulations certainly regulate matters regarding citizens following the main functions they regulate.

In conceptual terms, citizenship is a person's membership in the control of a particular political unit, namely the state. Citizenship gives citizens the right to actively participate in political activities. Citizenship is a process of civic thinking (citizenship). In this sense, residents of a region are referred to as citizens of that region, because both are also political units. In regional autonomy, citizenship becomes important, because each political unit wants to provide different (usually social) rights for its citizens. Citizenship is similar to nationality. What differentiates nationhood from nationality are rights in political activities.

The term citizenship has the meaning of membership which shows the relationship or bond between the state and citizens. Citizenship is defined as any type of relationship with a country that results in that country's obligation to protect the person concerned. The definition of citizenship is divided into two, namely as follows:

1) Citizenship in a juridical and sociological sense. Citizenship in the juridical sense is characterized by the existence of a legal bond between people and the state. Citizenship in the sociological sense is not characterized by legal ties, but emotional ties, such as ties of feeling, ties of descent, ties of fate, ties of history, and ties of homeland.
2) Citizenship in the formal and material sense. Citizenship in the formal sense indicates the place of citizenship. In legal systematics, citizenship issues fall under public law. Citizenship in the material sense shows the legal consequences of citizenship status, namely the rights and obligations of citizens (Suparno, 2018).

3.2. Principles of Citizenship

In the discussion of this research, the concept of citizenship that applies in Indonesia is of course based on several principles outlined in Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, namely:

1) The principle of jus sanguinis (law of the blood) is a principle that determines a person's citizenship based on descent, not based on the country of birth.
2) The limited principle of ius soli (law of the soil) is a principle that determines a person's citizenship based on the country of birth, which is limited to children under the provisions regulated in the Citizenship Law of the Republic of Indonesia.
3) The principle of single citizenship is the principle that determines one citizenship for each person.
4) The principle of limited dual citizenship is the principle that determines dual citizenship for children by the provisions regulated in the Citizenship Law of the Republic of Indonesia.

Apart from the principles mentioned above, several special principles are also the basis for drafting the Law on Citizenship of the Republic of Indonesia as regulated in the Elucidation to Law of the Republic of Indonesia Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, namely:

1) The principle of national interest is the principle that determines that citizenship regulations prioritize the national interests of Indonesia, which is determined to maintain its sovereignty as a unitary state that has its ideals and goals,
2) The principle of maximum protection is a principle that determines that the government is obliged to provide full protection to every Indonesian citizen under any circumstances, both at home and abroad.
3) The principle of equality in law and government is a principle that determines that every Indonesian citizen receives equal treatment in law and government.
4) The principle of substantive truth is a procedure. A person's citizenship is not only administrative in nature, but is also accompanied by the substance and conditions of the application which can be justified.
5) The non-discriminatory principle is a principle that does not differentiate treatment in all matters relating to citizens based on ethnicity, race, religion, class, sex and gender.
6) The principle of recognition and respect for human rights is the basis that in all matters relating to citizens must guarantee, protect and glorify human rights in general and the rights of citizens in particular.
7) The principle of openness is a principle that determines that all matters relating to citizens must be carried out openly.
8) The principle of publicity is the principle that determines that a person who obtains or loses Citizenship of the Republic of Indonesia is announced in the State Gazette of the Republic of Indonesia so that the public knows about it.

3.3. Dignified Justice

Dignified justice is a legal theory that has several important postulates in the legal field (Prasetyo, 2015). The postulate in question, among others, is that law is a system. A system is a unit that consists of several interrelated parts. In the system, several elements or elements are interconnected with each other to achieve the goal. Other postulates include justice that humanizes humans (Prasetyo, 2023). The Theory of Dignified Justice offers the postulate of law as a system where one important characteristic is that conflict is not desired. What is desired is a healthy debate, a dialectic that is beneficial for the development of legal thinking (Prasetyo, 2023).

The theory of dignified justice is based on the soul of the nation. Referring to this, Pancasila as the soul of the people and the soul of the nation (volkgeist) of Indonesia is the basis of the theory of dignified justice in the Indonesian legal system (Prasetyo, 2015). Pancasila is the basic norm of the state (philosofisce grondslag), an important element in the legal system, which is called the Pancasila Legal System. The precepts in the Pancasila principles are measures of goodness for a legal system. Another element or elements in the Pancasila Legal System are legal objectives (Prasetyo & Barkatullah, 2020). According to the perspective of Dignified Justice, the aim of law is justice that humanizes humans. In the concept of justice that humanizes humans, there is justice itself, benefits and legal certainty. These three components of justice that humanize humans are always present in every rule and legal principle and concrete legal regulations and legal discoveries (Prasetyo, 2023).

According to the perspective of Dignified Justice, a system does not allow conflict to occur within it. So in the philosophy of Dignified Justice, there is no conflict between justice and expediency. Likewise, there is no conflict between usefulness and legal certainty (Prasetyo, 2020). Justice, certainty and expediency as legal objectives are a unified balance. Every time the law is discussed, it automatically contains the meaning of justice, as well as certainty and all laws are useful. Teguh Prasetyo sees the aim of law as justice - because in justice there is certainty and in justice there is benefit.

The theory of dignified justice also adheres to another postulate, namely the principle that if people want to search for the law, the law can only be found in the soul of the nation. What is meant by the soul of the nation are 2 things. First, namely the applicable laws and regulations. Second, the court decision which, if possible, has permanent legal force (Prasetyo & Barkatullah, 2020).

3.4. Sovereignty

The word 'sovereignty' comes from English, namely 'sovereignty' which comes from the Latin word 'superanus' meaning 'the top'. The state is said to be sovereign or sovereign because sovereignty is an essential trait or characteristic of the state (Santoso, 2018). When it is said that a country is sovereign, it means that that country has supreme power. In the context of its implementation, even this supreme power has its limits. The space for the application of supreme power is limited by the country's territorial boundaries, meaning that a country only has supreme power within its territorial boundaries. So, the definition of sovereignty as supreme power contains two important limitations, namely (Kusumaatmadja & Agoes):

1) Power is limited to the territorial boundaries of the country that has that power, and
2) That power ends when the power of another country begins.

In general, there are 2 (two) types of popular sovereignty theories, namely (Akani, 2019):

1) Absolute Sovereignty
   This doctrine emphasizes that sovereignty is not only the highest authority but also does not recognize the existence of other authorities and sovereignty has more or less unlimited power. The holder of power has full authority in determining national interests. Situations like this allow for coercion of will in implementing various decisions taken by the owner of power.
2) Relative Sovereignty
   The idea of relative sovereignty is that sovereignty can be subordinated to international law. However, the sovereignty of one country cannot be subordinated to another country because in principle all countries are the same. The doctrine of relative sovereignty emphasizes that the sovereignty of a country must be free from the form of authority of other parties. States are sovereign within the scope of their jurisdiction and have the right to be free from all forms of intervention. However, countries cannot be free from international legal norms. Because international law also regulates various other sovereign countries and each country has the same obligations in international relations based on agreed international conventions and agreements.

4. Discussion

4.1. Application of the Dual Citizenship Concept

As agreed in the 1933 Montevideo Convention which regulates the rights and duties of states (Montevideo Convention in Rights and Duties of States), the existence of permanent residents is the first element of a state. This is as stated in Article 1 of the convention, where a group of people/individuals who live in an area where there is a government and can communicate with and be recognized by other countries as an international entity is a qualification for a country to be recognized as an international legal person. In the following clauses, the convention does not specifically discuss who a "permanent resident" is. Even in the discussion in Article 9, the term "permanent residents" which is referred to as "residents" (inhabitants) is then translated into citizens and foreigners (nationals and foreigners). In the following clauses, there is no other explanation in this convention regarding permanent residents, citizens and even citizenship which are the basic elements of a country.

Apart from what is regulated in international agreements, citizenship is a basic right of every human being. This is as regulated in Article 15 of the Universal Declaration of Human Rights which states "Everyone has the right to a nationality" and in Paragraph (2) it is stated that "No one may be arbitrarily deprived of his citizenship or denied the right to change his nationality". Other international legal instruments that specifically regulate citizenship include the 1951 Convention concerning the Status of Refugees. In addition, to address the protection issues faced by stateless persons, especially those who are not refugees, the international community has adopted the 1954 Convention on the Status of Stateless Persons. This agreement aims to regulate the status of stateless persons and to ensure that their human rights can be exercised as widely as possible. This convention complements the provisions in various international human rights treaties (UNHCR, 2010). Of course, the concept of statelessness emerged along with global political dynamics and increasing international migration.

In Indonesia, positive law regarding Indonesian citizenship is regulated in Law of the Republic of Indonesia Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. In general, this law regulates:

1) Anyone who is an Indonesian citizen (Article 2 and Article 4);
2) Requirements and Procedures for obtaining citizenship of the Republic of Indonesia (Article 3, Articles 8-22);
3) Loss of Citizenship of the Republic of Indonesia (Articles 23-30);
4) Requirements and procedures for regaining Republic of Indonesia Citizenship (Articles 31-35), and;
5) Criminal provisions (Articles 36-38).

In general, this citizenship law states that Indonesian citizens are native Indonesian people and other people who are authorized by law as citizens (Article 2). This law does not recognize the concept of dual citizenship (bipatride) for its citizens or the concept of statelessness (apatride) for anyone residing in the country's territory. The dual citizenship granted to children in the Indonesian Citizenship Law is an exception. Regarding the implementation of dual citizenship, Indonesia does not fully recognize the concept of dual citizenship. This is as regulated in the Constitution of the Republic of Indonesia Article 26 Paragraph (1), that:

1) Those who become citizens are people from the original Indonesian nation and people from other nations who are legalized by law as citizens.
2) Residents are Indonesian citizens and foreigners residing in Indonesia.
3) Matters concerning citizens and residents are regulated by law.

The basic idea of implementing dual citizenship is to bring back citizens who have been successful abroad to build their own country, as has been done by China and India, which have succeeded in building a technology centre in Mumbai to match Silicon Valey, United States (Jazuli, 2017). This is of course in line with the government policy conveyed by Vice President Ma'ruf Amin to representatives of the Indonesian Diaspora in Singapore, namely that all Indonesian citizens wherever they are can continue to optimize their potential, both Human Resources and Natural Resources to provide good impact for the Indonesian nation and state (Jazuli, 2017).

However, the government's response regarding the regulation of dual citizenship in Indonesia must be examined carefully from a multi-variable analytical perspective. Will dual citizenship then bring a spirit of nationalism to the diaspora or will it instead become a "tool" for a handful of world citizens who simply want to make a profit in Indonesia? For this reason, in this paper, the discourse on dual citizenship needs to be seen as an effort to strengthen nationalism, not as a technical issue to facilitate naturalization itself.

In discussions related to the application of the concept of dual citizenship, there are at least 4 (four) considerations of urgency in its application, namely:

1) Rights and obligations of citizens.
   The clear separation in the concept of citizenship in the current Indonesian Citizenship Law has implications regarding different rights and obligations between Indonesian citizens and foreigners, especially those in Indonesian territory. The concept of single citizenship that is implemented provides clear limits on the rights of foreigners in Indonesia regarding financial (fiscal) matters, asset ownership, population and immigration administration as well as political and state defence matters. If the principle of dual citizenship is implemented, then arrangements regarding fiscal matters, property rights, political rights and obligations as well as a national defence will become important aspects that need to be restructured. For example, we can see its application in the United States regarding strict military and fiscal regulations for citizens, including those who have dual citizenship (Jazuli, 2017). Such legal authority is given to everyone within the territory of the state. In principle, all individuals are free and entitled to enjoy the rights as citizens and also have obligations as citizens (Prasetyo, 2018).
2) State rights and obligations.
   It is clearly stated in the 1945 Constitution of the Republic of Indonesia (along with its amendments) that the state, through the government, must guarantee protection, measurable freedom and welfare for its citizens. Do individuals with dual citizenship who have loyalty to more than one country and its legitimate and sovereign government then receive equal rights from the state when compared to individuals who only

have a single citizenship? Likewise state rights from individuals when the state demands loyalty to the basic ideology, defence of the state by citizens and role and development of the state by citizens. Of course, this must be considered carefully to maintain the dignity of the state and human dignity as citizens.

3) Benefits of applying Dual Citizenship.
   Based on a study conducted by the Immigration and Citizenship Task Force (TFIK) as quoted by May Lim Charity, there are several advantages to implementing dual citizenship (Charity, 2016), including:
   a) Improving the economy;
   b) Increasing competitiveness and state revenue;
   c) Creating new jobs;
   d) Bridging investment and investment in the country, negotiations, technology transfer and infrastructure development;
   e) Increasing human resource potential, transferring competencies and skills to reduce dependence on foreigners;
   f) Maintain regional stability or international peace
4) Disadvantages of implementing Dual Citizenship.
   Apart from the potential benefits that can be obtained, the implementation of dual citizenship also has the potential to cause losses to both individuals and the state (Charity, 2016), including:
   a) Creates dual obligations (fiscal obligations and national defence obligations) for individuals with dual citizenship;
   b) The possibility of getting different behaviour (political and social rights);
   c) Dualism in implementing Rights and Obligations as a citizen;
   d) Potential low social participation of individuals with dual citizenship for both countries;
   e) Increased motivation to migrate for families or relatives of individuals with dual citizenship;
   f) Ideological, political and state loyalty;
   g) There is the potential for legal violations.

4.2. Dual Citizenship in the Concept of Sovereignty

The application of dual citizenship refers to a situation where a person legally holds citizenship of more than one country. The relationship between the application of dual citizenship and state sovereignty can be complex and varies depending on citizenship policies and laws in the country concerned. Here are some factors to consider:

1) Dual Citizenship and Legal Sovereignty
   Some countries have regulations against accepting dual citizenship, where individuals are required to renounce their other citizenship if they wish to become citizens of their country. This is intended to ensure the individual's absolute loyalty to the country and maintain the integrity of the country's legal sovereignty. In this case, the application of dual citizenship can be considered contrary to state sovereignty, because the person has ties to another country which can affect his or her loyalty and allegiance to the country of origin (Novianti, 2014).
2) Economic and Social Benefits
   The application of dual citizenship can provide economic and social benefits for individuals and the country concerned. Individuals with dual citizenship can access more opportunities and benefits, such as freedom of travel, access to a broader labour market, and property ownership rights in different countries. However, in some cases, this can also cause problems such as possible tax evasion or economic activities that are detrimental to both countries (Novianti, 2014).
3) International Cooperation and Diplomacy
   The application of dual citizenship can have implications in the context of international cooperation and diplomacy. Some countries allow dual citizenship to strengthen diplomatic ties with other countries and facilitate the flow of investment and technology transfer. However, some countries prohibit their citizens from having dual citizenship due to national security considerations (Rumetor, 2019).
4) Conflicts of Interest and Loyalty
   The application of dual citizenship can create potential conflicts of interest and loyalty for individuals who have dual citizenship. Sometimes these situations can be difficult to resolve, especially in the context of political conflicts or the interests of different countries. This can raise questions about a person's loyalty

and dedication to their country of origin, as well as influence the decisions and actions taken by that individual (Romdiati, 2015).

In maintaining state sovereignty, countries have different policies in regulating the application of dual citizenship. Some countries prohibit it completely, while others allow it with certain restrictions and conditions. The main goal of the state is to ensure that individuals who have dual citizenship continue to uphold the country's sovereignty and national interests (Asshiddiqie, 2011).

4.3. Dual Citizenship in the Perspective of Dignified Justice Theory

The law exists in every group of people on this earth. Despite the complexity and modernity of human groups, none of these groups is free from rules, norms and laws that regulate their lives. Therefore, the existence of law is universal and cannot be separated from society as a human group. As society grows, law, which was originally an agreement on life arrangements, develops in such a way that, in deep thought, it becomes a concept, structured as a science and develops into various theories. As in all other sciences, in the development of legal science, there is the formation of theories relating to the legal material itself. Apart from that, the formation of legal theory is followed by the formation of legal concepts in the context of systematizing and structuring legal material (Prasetyo & Barkatullah, 2020).

In analyzing the implementation of dual citizenship in Indonesia, it would be very relevant to analyze it from a theory that originates from Pancasila as the soul of the nation (volkgeist), namely the theory of dignified justice (Prasetyo, 2018). From the perspective of dignified justice theory, several aspects need to be considered, including:

1) Equality and Social Justice
   The application of dual citizenship must take into account the principles of equality and social justice. In this context, it is important to ensure that granting dual citizenship does not create unfair social inequalities or inequality. All citizens, including dual citizens, must have equal access to the rights, benefits, and resources provided by the state. If the implementation of dual citizenship can ensure equality and reduce social disparities, then it can be seen as a step in line with the principle of justice and dignity.
2) Human Dignity and Protection of Human Rights
   The theory of dignified justice emphasizes the importance of respecting and protecting human dignity and individual human rights. In implementing dual citizenship, it is important to ensure that individual rights are protected without discrimination or unfair treatment. This includes the right to identity and citizenship that are recognized fairly and proportionately. States must ensure that dual citizens receive full protection of their rights, and recognize and respect their dual identities.
3) Legal Certainty
   The principle of legal certainty is an important element in the theory of dignified justice. In implementing dual citizenship, it is important to ensure that there is a clear and definite legal framework. The procedures, requirements and rights relating to dual citizenship must be clearly defined and accessible to all eligible individuals. This will provide legal certainty for individuals with dual citizenship and enable them to understand and organize their lives better.
4) Contribution and Responsibility
   In implementing dual citizenship, it is important to consider the contributions that dual citizens bring to their countries. This relates to aspects of responsibility inherent in both citizenships. States must ensure that dual citizens fulfil their responsibilities and obligations towards both countries to which they belong, including tax obligations, participation in society, and involvement in social and economic development. The implementation of dual citizenship that takes into account these contributions and responsibilities can be considered a fair and sustainable step.

It is important to note that the application of dual citizenship from a dignified justice perspective may differ depending on the context and social values prevailing in each country. Therefore, a more in-depth and contextual analysis is needed to consider the implications and consequences of implementing dual citizenship in each country context. In the context of Indonesian law, the application of dual citizenship is not recognized based on

the 1945 Constitution of the Republic of Indonesia and the Citizenship Law of the Republic of Indonesia. Therefore, the current application of dual citizenship in Indonesia cannot be said to be a legally recognized form of application. However, if we analyze the application of dual citizenship from the perspective of dignified justice theory by paying attention to two variables, namely certainty and benefit (Prasetyo, 2015), different arguments can be found.

1) Certainty
   Legal certainty is an important principle in the theory of justice. In the context of implementing dual citizenship, the aspect of certainty can be an important argument. If the application of dual citizenship is regulated and there are regulations governing the rights and obligations of dual citizens, it can provide legal certainty for individuals who have both citizenships. This allows individuals to better organize their lives, including in terms of access to the rights and benefits of citizenship.
2) Expediency
   Benefit is another important variable in justice theory. In the context of implementing dual citizenship, expediency arguments can relate to the economic, social and political benefits obtained by individuals and the country. Dual citizenship can provide broader economic opportunities, such as access to international markets and greater business opportunities. Additionally, in a social and political context, dual citizenship can allow individuals to have close ties to more than one community, expand networks, and contribute to the development of bilateral relations between related countries.

5. Conclusion

Implementing dual citizenship in Indonesia is a necessity. After upholding the concept of single citizenship for six decades, through Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, the Indonesian people are familiar with the new concept of limited dual citizenship. This concept then continues to become a discussion that is often raised by Indonesian diaspora groups so that it becomes a concept of dual citizenship that is fully implemented, especially for these diaspora groups. For this reason, academic discussion with a theoretical approach regarding the full implementation of dual citizenship in Indonesia is a very wide space. In terms of basic principles, the theory of dignified justice and the theory of sovereignty have their rationale which can justify the full implementation of the concept of dual citizenship in Indonesia.

However, it is important to note that implementing dual citizenship can also pose challenges and conflicts. Considerations such as national defence, political interests, and social justice considerations may also need to be taken into account in the context of the legal recognition or application of dual citizenship. From the aspect of dignified justice, the full implementation of dual citizenship in Indonesia is a fulfilment of human rights and dignity itself. This is of course in line with the noble values of Pancasila which are the foundation of the theory of dignified justice itself. However, the granting of citizenship and Indonesia's position in adopting limited forms of single and dual citizenship in positive law constitutes the full sovereignty of the Indonesian government which is full of political considerations and processes. It should be remembered that the discussion from the perspective of the theory of dignified justice and sovereignty and sovereignty theory above does not yet reflect the legal position currently in force in Indonesia. For this reason, it is important to refer to the nation's laws and cultural values as well as the country's long-term interests before fully implementing dual citizenship. Apart from that, national interest variables such as national defence, political interests, and social justice considerations are empty spaces that are very worthy of further study in terms of implementing dual citizenship in Indonesia.

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Investigating the Political, Economic and Geopolitical Role of Afghanistan's Wakhan Corridor in China's Belt and Road Initiative

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Abstract
As a buffer country between Central Asia and South Asia, Afghanistan has effective transit advantages to advance the economic goals of its surrounding countries. Among these countries, due to its economic strength at the international level (the second economic power in the world), China is trading with South Asia, West Asia and Europe through the One Belt One Road plan, as well as neutralizing India as its regional rival it is now. Therefore, Afghanistan's Wakhan Corridor, due to its land proximity and relative security compared to China's surrounding regions in its western part is considered a desirable solution for the implementation and establishment of the economic strategy of One Belt One Road. This article, by proposing the question of how the Wakhan Corridor plays a role in China's economic considerations, with an analytical-descriptive method, deals with the hypothesis that China, considering the security space that dominates Pakistan's Kashmir and the insecurity of other countries in Central Asia due to the movements of extremist groups, the choice of the Wakhan Corridor, despite being influenced by geographical factors and elements, especially its rough topography, in view of being close to the Great Near East (the world's energy center) and Europe, as well as international waters the long-term portfolio sets its own economic strategy.

Keywords: Wakhan Corridor, Economic Strategy, One Belt One Road, Afghanistan, China

1. Introduction

Afghanistan's geography has created a link between East and West countries due to its location as a transit point for commercial exchanges on the Silk Road, and during the last few years, gas and oil pipelines have been transferred from Central Asia through Afghanistan. This highlights the geopolitical and geoeconomic importance of Afghanistan.

However, because its proximity to the People's Republic of China, as the largest economic power in the world, Afghanistan has once again received the attention of this country in terms of timing for economic-commercial opportunities through land exchanges. It has been decided to use the geographical possibilities and potentials. Even the natural resources will rebuild its safer and more stable route to connect with the Great Near East, the Persian Gulf and even Europe.

Among this, the Wakhan Corridor as a strategic crossing forms the border between Afghanistan and China, which, due to its special topographical and climatic conditions, has formed a special situation to reduce internal conflicts in Afghanistan; it is part of safe areas from the perspective of influence and presence of extremist groups. And the Islamic foundation like the Taliban and Al-Qaeda is stratified, but it suffers from deprivation, underdevelopment and economic-political inequality compared to the central regions.

With this description, the Wakhan Corridor plays a significant role in the economic strategy of China, which is currently reviving the Silk Road under the new name of Belt and Road. Therefore, this article with analytical and descriptive method and using the researches of reputable scientific centers to examine the Wakhan[1] Corridor and China's interest in this strategic corridor in economic-security dimensions due to the supervision and control of competitors, regional as well as economic-commercial integration with others the surrounding spaces are based on the one-belt-one-way project.

And in the end, it is concluded that the Wakhan Corridor can provide business for China, especially with the development of transportation infrastructures in the land and rail sectors. The link with Afghanistan's Trans-Afghanistan railway and connection to Iran's railway also guarantees security capabilities for the revival of the power of the East, although some shortcomings can also be observed.

1.1 Problem Statement

The bottlenecks and limitations caused by the geographical environment are one of the most significant challenges of making and implementing economic policies, which play a very significant role in the decision-making of governments for economic-commercial relations between separate political units are bounded by borders, on the other hand, the behavior of players can be determined by geographic area, either national and transnational security or face crisis. At the same time, if the geographical situation and the coherence of communication networks are helpful, they create an appropriate support for increasing economic-commercial security.

This topic has a vital role for great economic powers like the People's Republic of China, which is reviving its regional and global power. Considering that approximately 60 percent of China's trade deals with Western and Near Eastern countries are through the Strait of Malacca, which are under direct control (China's international regional competitor). China has to create an alternative and safe route for its commercial-economic development from the land-rail route with its western areas.

With this description, the Wakhan Corridor in Afghanistan as the only transit passage and close to China to West Asia, the Persian Gulf, the Caspian (Caspian) Sea, and Europe is taken into consideration, and how to use the strategic resources. Its importance considering the situation, its geography and environmental-climatic features encourage China to use this corridor to implement its economic strategy, which is the One Belt One Road plan.
Therefore, in this study, we are looking for an answer to this question, how do the Wakhan Corridors play a role in China's economic strategy considerations?

According to this question, a hypothesis is formed in this way that considering the security space prevailing in Pakistani Kashmir and the insecurity of southern Tajikistan due to the movements of extremist and Islamic fundamentalist groups, China will choose the Wakhan Corridor option. Grief is affected by special geographical factors and elements. Its rough topography in view of being close to the Great Near East (the energy center of

[1] Wakhan Corridor

the world) and Europe also considers international waters in its long-term planning. Compared to other surrounding countries, from the perspective of better and balanced control and supervision for the establishment and implementation of China's economic-commercial strategy in the form of a belt, it is evaluated as an important way.

2. Research method

This article is analytical and descriptive, using scientific, research and university articles, as well as the archive of internationally recognized publications and news reports, to analyze the Wakhan Corridor in Afghanistan from the perspective of the policies of the economy of the People's Republic of China is a case study.

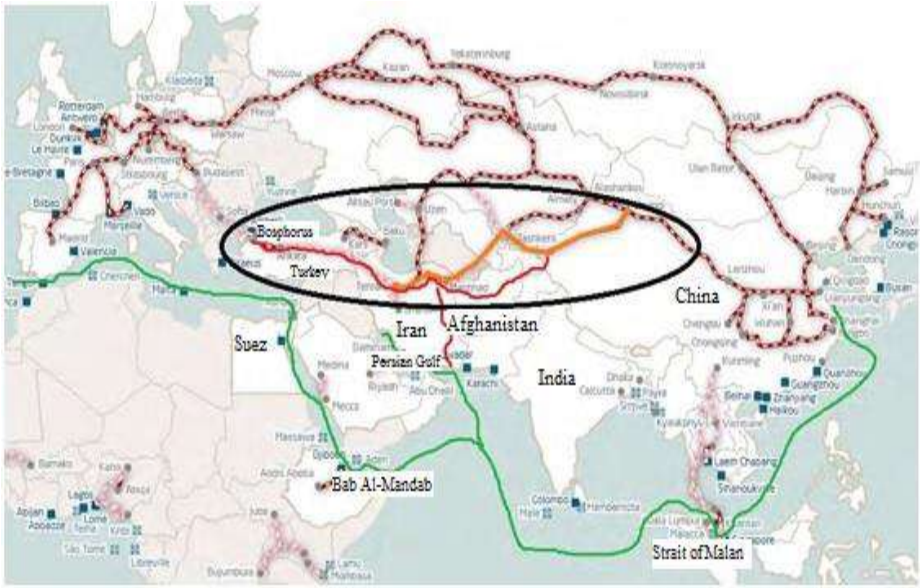
2.1 Research background

Comprehensive research and studies about China's economic-commercial activities, about the big one-belt-one-way project, easy access to energy sources, and a general discussion about the production and sales of factory products. The title of sub-sectors of China's economic growth and prosperity has been fulfilled. On the other hand, in the researches related to Afghanistan, focusing on religious radicalism and extreme fundamentalism, crisis and conflict between ethnic-tribal minorities is the research priority. In this article, we will focus specifically on the Wakhan Corridor, which has given the shape of a queue to Afghanistan, and considering that it is at the center of tension and conflict amongst India and Pakistan over Kashmir and the prevalence of extremism in Central Asia, also it has kept its relative stability it will be examined from the perspective of China's economic strategy.

2.2 Theoretical foundations

China’s economic strategy in providing security and stability in the surrounding space, taking into account the union and various economic-cultural formations, is an effort to reduce conflicts and crises arising from the ideology of extremism. The rapid economic growth along with the increasing rate of the population and the distance from the centers of low-cost energy suppliers of the Near East and the roads of the Western world, as well as the existence of regional competitors, especially India, which are some of the factors there are shortages and crises in China’s maritime transit-carriage principles (Green line in picture number one), they form China’s economic strategy in order to use the spaces with the least amount of damage.

As it is in the form of a number, the implementation of the One Belt One Road project as the biggest economic project of the 20th century and a China that has made huge investments requires passing through the countries of Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan (Orange line in picture number one). These four Central Asian countries face an insecure environment due to ethnic-tribal conflicts over water, and the presence of Islamic extremist groups and underground terrorist networks, which can provide security in the form of a border conflict threatens China’s economy, while the issue of China’s Xinjiang or Uyghuristan, which is located in the identity connection with Central Asia, also increases the pressure and violence. Therefore, China can guarantee its economic benefits directly and only by passing through one country, namely Afghanistan, while preparing for the creation of a new security system (Red line in picture number one).



Picture 1: 20th Century One Belt One Road Project

3. Research findings

3.1 The location of the Wakhan corridor

Afghanistan is a landlocked country, a part of which, i.e. the Wakhan Corridor, (Picture number two), it has formed a long narrow border region that arose from the political necessity of the late 19th century, under the name of It was a barrier between Tsarist Russia, India and England. (Clifford, 3:1368). The Wakhan Corridor is known worldwide as it is located in the north-eastern Badakhshan of Afghanistan, which was formed in an agreement between Afghanistan and Britain to act as a barrier between the British Empire in India and the Russian Empire (Rafiq, 2020). Wakhan Corridor is considered an ancient trade route and an extraordinary strategic crossing (Munir, Shafiq, 2019).

During the Great Game period of the 19th century, the Wakhan Corridor, before being divided into several countries, as an independent region between the Russian and British empires and having an autonomous government that included the Panj River[2]. In the year 1893, with the intensity of regional rivalries, the great regional powers divided this river and the families who lived as united communities for centuries were separated. For several decades, people along the river continued to cross the border freely until the Tajik Autonomous Socialist Republic of the Soviet Union (as part of the Soviet Union of Soviet Socialist Republics) was formed in 1924 under the Union of Soviet Socialist Republics and this gap made it permanent. After the World War Two, with the increase of Cold War tensions, it became more difficult to cross the border and people without a permit faced the risk of being shot or arrested. However, in the last few decades, Wakhan Corridor has experienced relative peace compared to other regions of Afghanistan (fao.org, 2003).

[2] Panj River

Picture 2: Wakhan Corridor

Wakhan is a region in the Badakhshan province of Afghanistan, which shares a 300-kilometer border with Pakistan in the south, more than 260 kilometers with Tajikistan and 74 kilometers with China in the north-east and west directions. Due to its special topography, the Wakhan Corridor is located between the mountains of Hindukush, Himalaya, Karakoram and Tianshan Mountains, and covers an area of 14,080 kilometers. This area is 220 kilometers long and its width is between 10 and 64 kilometers. The Wakhan Corridor has caused the expansion of the borders of Afghanistan and through this corridor, Afghanistan is connected to the country of China (Wakhjir Pass) and in this way it is connected to the world of East Asia. The Wakhan Corridor connects China to Afghanistan and Tajikistan to Pakistan.

This region is one of the sources of the Amu Darya River and Afghanistan's surface water due to being mountainous and having peaks above six thousand meters in height and lands covered with natural ice and snow. Over the years, this corridor has been considered as a national park, which is about 23% larger than Yellowstone (Compas, 2015) and tourists come to this corridor for a trip in Chashmandaz with the splendor of Wakhan, with local people who have an old way of life (Caravanistan.com) Wakhan has a population of over 12,000 people consisting of Wakhis and Kyrgyz who have been living there for centuries. And they accept Islam as a common religion and both groups speak in Wakhi language.

Wakhis are Shia Muslims and followers of the Ismaili group with a population of about 10,000 people and they live in the border areas with Tajikistan, China and Pakistan at altitudes of 2000 to 3000 meters. The Kyrgyz are also traditional Muslims who follow their groups and live in the eastern part of the Wakhan Corridor, which includes mountains and snow-covered lakes. The native people of Wakhan are of Iranian descent and unlike the majority of Sunni; they follow the Ismaili sect of Shia in Islam (Srebrnik, 2020).

Since then, the Wakhan Corridor has been considered the most important connection point of the Silk Road by the Europeans and Chinese to reach the plains of India and the maritime communication lines of the Indian Ocean through the coasts of the Arabian Sea. Marcopolo passed this route and the Portuguese traveled this route to reach China.

This corridor, which was formed in 1893 due to the Durand Line agreement between Afghanistan and India, followed the great game between Russia and England since 1838, the Chinese communist revolution in 1949, and the Soviet attack on Afghanistan for a decade. And even after the NATO attack on Afghanistan since 2001, this region is deprived of any kind of infrastructural development. Currently, there is only one rough road in the entire Wakhan Corridor that connects Sin Kiang with Wakhjir[3] Pass. Wakhan Corridor has three routes.

[3] Wakhjir Pass

1. The northern route: passing by the Panj and Pamir rivers in the north and at the end of the Esco river in China through Zorkol lake.
2. The southern route reaches China through the Wakhjir pass, but it is closed for more than half of the year due to snowfall.
3. It is a central route that connects both the northern and southern routes in Wakhan and leads to China through the Tegermanso[4] mountain pass with an altitude of 4,827 meters.

According to experts, due to the geography of the Pamir mountains, creating the infrastructure of this system will be difficult and expensive. However, there are many examples of projects that have been completed in similar and even more difficult areas in terms of geography in the region. For example, in the rough and rugged mountains of Karakoram, it was built with the use of modern technologies. Therefore, geographical complexity cannot be used as an obstacle to create a connection through construction, taking into consideration the transportation systems (Parsa, 2017). If this corridor is built, it can be the least expensive trade route between China, Afghanistan, Tajikistan and Pakistan compared to the existing options (Javed, 2018). The strategic value of the Wakhan Corridor has a direct impact on the economy of the three neighboring countries of China, Pakistan and Tajikistan, because these countries are politically connected to the Wakhan Corridor. Therefore, it is necessary to use this ancient commercial route for the economic and social development of the region.

Picture 3: Wakhan Corridor Route

The President of the United States, Donald Trump, has promised to reduce the US military presence in Afghanistan, and it is expected that about half of the US soldiers in this country will return home soon (Kelemen, 2020). Experts believe that in the event of the withdrawal of the United States of America and NATO, the power vacuums in Afghanistan will be filled with China's economic interests, and this will have an immediate and direct impact on the surrounding countries through the Wakhan Corridor. Such a scenario can improve China's geopolitical maneuver because the connection of Pakistan's Gwadar port with the Wakhan Corridor through the Karakoram Pass has a unique political-commercial value for China (Malik, 2014:27).

While China's security presence is increasing in Gorno-Badakhshan Autonomous Province, a strategically sensitive region of Tajikistan, (Shih 2019) the Ministry of Defense of Afghanistan has announced that it is building a military base in Badakhshan province. It is tense and China is waiting for the military base in full. It will provide Badakhshan and cover all material and technical costs including weapons and equipment. The agreement for the construction of this base was obtained in Beijing in December 2009, when a high-ranking delegation headed by the deputy Tareq Shah Bahrami made it a subject for review (Toktomushev, 2018).

[4] Tegemmanuu

The establishment of a Chinese base in this place highlights not only the participation of the Chinese in the fight against terrorism, but also the long-term goal of Beijing to gain a permanent position and control over the regional economy and security, it will also include the construction of military facilities and investment infrastructure projects (Levi-Sanchez, 2018). On September 6, 2018, the ambassador of Afghanistan in Beijing announced in an interview with Reuters that China intends to train Afghan soldiers on Chinese soil, this is to fight with the Islamic State of Daesh and Al-Qaeda paramilitaries (Pandey, 2018).

Security is the main priority for the leaders of China (Szczudlik-Tatar, 2014). Therefore, China is worried about the security situation in Afghanistan and does not want Afghanistan to be a safe place for militants and founders of South Central Asia. It can threaten the stability in its western provinces (Chawla, 2020). In 2016, China created a four-way cooperation and coordination mechanism with Tajikistan, Afghanistan and Pakistan to share information and training to fight terrorism (Mahalingam, 2020). On the other hand, about a thousand Afghan officials and technical personnel are currently receiving training in China. China enrolls more students than Afghanistan and the Confucius Institute has been reopened in Kabul University (Xiaoqiang, 2014). With these interpretations, the connection of Wakhan Corridor with the Sarshar region of the Caspian (Caspian) Sea basin and the establishment of energy transmission links with China in the form of oil and gas pipelines also increase the geopolitical and geoeconomic value of Wakhan.

Meanwhile, China has relatively more control over the Wakhan Corridor because it can control it through the Wakhjir crossing leading to the Arabian Sea through Pakistan, and on the other hand, it can be used for its own trade alternately for China through the Arabian Sea through Afghanistan and Pakistan made. The Wakhan Corridor can create many benefits for Pakistan as a transit economy and lead to the creation of a large number of jobs, foreign exchange income, and most importantly, the improvement of infrastructure development in the identified areas. (Shafiq, 2019).

Picture 4: Significance of Wakhan Corridor

In addition to this, India, a united region near Afghanistan, is not satisfied with Kabul joining this plan, India is against the initiative of one belt-one road, because Kashmir under the control of Pakistan, through which the China-Pakistan border passes, is a disputed area between Delhi and Islamabad, and India has direct access to Afghanistan, It has blocked Afghanistan and Central Asia. At the moment, the Aksai region of China, which was handed over by Pakistan to China on March 25, 1963, is subject to the solution of the Kashmir issue. China's effort to open its border with Afghanistan through the Wakhjir pass and to build a tunnel under the Pamir Mountains to connect Afghanistan as a geo-economic opportunity for China and a maneuver to prevent threats

with the potential of India is taken into account. This provocative action causes India to see Afghanistan and Pakistan under China's control, while these two countries form India's strategic depth.

On the other hand, India is worried about the construction of the 5800-kilometer Silk Road by the Chinese in the region adjacent to Siachen[5]. India has a trade link with Afghanistan only through Pakistan; hence India's investment in Chabahar port is evaluated as a result of China's provocative approach. The closing of the border by China and Afghanistan in the peace process of the Wakhan region is a concern for India because it is not in line with the policies of the United States of America, which is considered a partner of India. Considering the political geography of Pakistan, including the religious relations of the people with Afghanistan and Iran, and the withdrawal of the United States of America from Afghanistan, the presence of the Chinese in the port of Gwadar, Pakistan, which is also called a kind of Indian siege, worrying about its geopolitical and geoeconomic future with its neighbors have done it and it is not coming to fill the power vacuum caused by the absence of America in the region.

The widespread activity of the Indian secret service[6] in Afghanistan and the killing of at least 13 ISIS fighters with Indian citizenship during the United States bombing in the Tora Bora mountain cave complex in Nangarhar province are a sign of Indian activity. Not for the interests of Pakistan and China in the Wakhan Corridor and its surrounding areas. On the other hand, any kind of trade through this corridor will be beneficial for India's long-time rival Pakistan, and if the standard transit road is built in Wakhan, commercial activities in the region will increase, especially for Pakistan, Central Asia. And Afghanistan will be strengthened and prosperous and can take the shortest route. Provide business for Pakistan to reach Central Asia and China to reach Afghanistan.

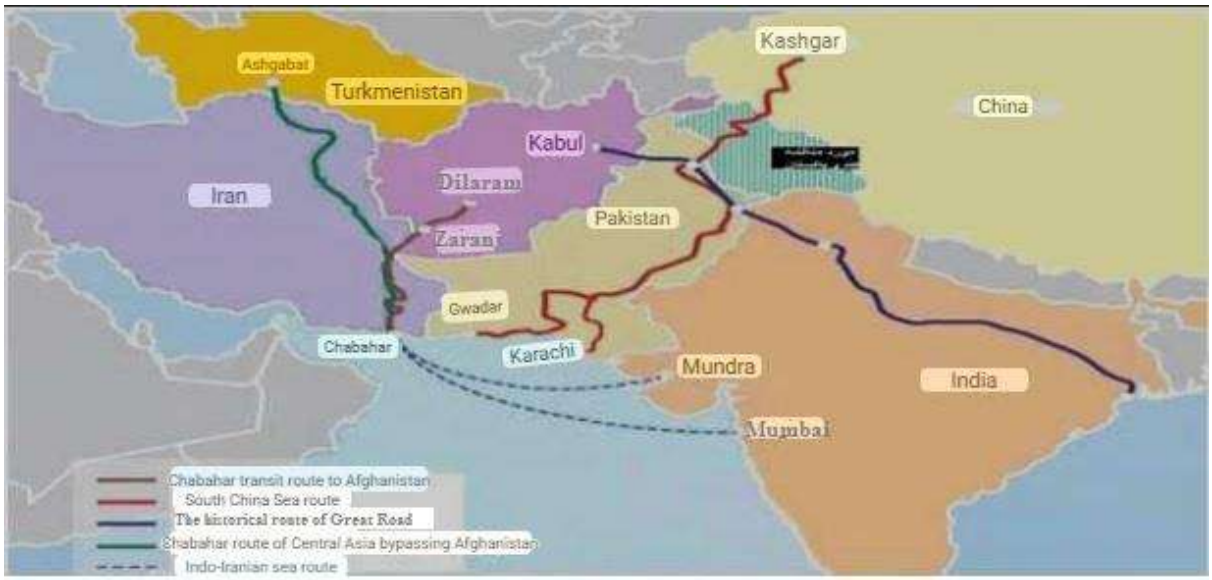
Cooperation in the construction of the Trans-Himalayan Corridor and the joint use of mountain resources such as water reserves, energy and tourism are evaluated in this direction. Also, it seems that Pakistan takes more care of its borders and various crossings leading to Chitral[7] and northern regions. Pakistan is strengthening its efforts to curb cross-border terrorism through border management and creating an economic interdependence with Afghanistan, so the economic interdependence between Pakistan and Afghanistan can lead to the end of the conflict. The economic development in Pakistan is due to the influence of Chinese capital, production capacity and knowledge of how to improve Pakistan's infrastructure and create a mechanism for economic growth (Mardell, 2020).

With these interpretations, Afghanistan can benefit from the Wakhan Corridor as an effective card in relation to Pakistan and India. Also, Afghanistan's strategic value is strengthened in regional organizations such as SACO[8] and SAARC[9]. There is no doubt that Afghanistan shows interest in China's Belt and Road[10] initiative and is taking steps to develop internal projects in the direction of connecting the region, such as the North-South corridors. This country will gain its political and economic importance by connecting the northern and eastern countries of South Asia with the southern and western countries of South Asia and become a regional pole. Of course, there are various challenges during the revival of the Wakhan corridor.

First of all, the unevenness of the land in the development of road infrastructure is very severe and it needs a huge investment.
Secondly, China is not very willing to open and build the Wakhan Corridor because of the issue of Uighurs and East Turkestan.
Third, according to its previous routine, India may be worried about the opposition to the economic corridor between Pakistan and China[11] (Picture number five).

[5] Siachen
[6] Indian Secret Service (ISS)
[7] Chitral
[8] SACO
[9] SAARC
[10] China’s Belt and Road
[11] China Pakistan Economic Corridor(CPEC)

Because this obvious maneuver to open the Wakhan Corridor will further integrate Afghanistan with China and Pakistan.



Picture 5: China Pakistan Economic Corridor

During the opening of the Tajikistan-Pakistan-China Corridor, Pakistan and China are negotiating the possibility of establishing pipelines and rail connections and even an oil pipeline through the Wakhan Corridor. This region is very important for Afghanistan, China and Pakistan. The opening of this corridor will have new applications for regional and global players in Afghanistan, especially India (Munir, Shafiq, 1999:333); because Afghanistan is the final key for China to completely encircle India (Ze Kai, 2015).

Also, China is trying to promote its Silk Road, at first, the Wakhan Corridor in the small Pamir should be turned into an important crossing point for the China-Pakistan Economic Corridor. It has created the development of China-Pakistan economic project, which aims to regional connection; mutual cooperation, economic growth and stability of the entire region of South and Central Asia have been taken into consideration (Changgang, Zahid Khan, 2019).

Gwadar Port in Pakistan marks the beginning of this corridor, and initially the Wakhan Corridor shows the entry point of Pakistan's economic corridor to China (Levi-Sanchez, 2018). With this description, although this region has been very peaceful in the past, but now some paramilitary groups are establishing their influence in the region and may take advantage of the dissatisfaction of the poor people. Especially the unstable border in Tajikistan next to the Wakhan Corridor may very soon turn it into a serious challenge for all Central Asian countries.

On the other hand, some insurgent groups such as Mujahid Tehreek Movement of Taliban, Jandale Pakistan and Islamic Movement of Turkestan[12] have used the Wakhan Corridor to carry out their attacks. Afghanistan works very poorly in terms of fighting terrorism, and the authorities are worried about the renewal of Taliban activity, but they cannot do anything about it without the help of the United States of America, China and other countries (Chan, 20 18) China is trying to help Stabilization of the country and as a result of reducing the internal security risks caused by the continuation of the conflict there, it seeks to strengthen its economic relations with Afghanistan (Kelemen, 2019). China is worried about the future of Afghanistan and will do its best to reach a positive result. If the situation in Afghanistan becomes bad, China will suffer from this area (Tao, 2009).

Therefore, after opening a base in Djibouti in the Horn of Africa, China will build its second military site outside its country in Afghanistan, and about 500 soldiers will be stationed in the base to support their Afghan

[12] Islamic Movement of Turkmenistan (IMT)

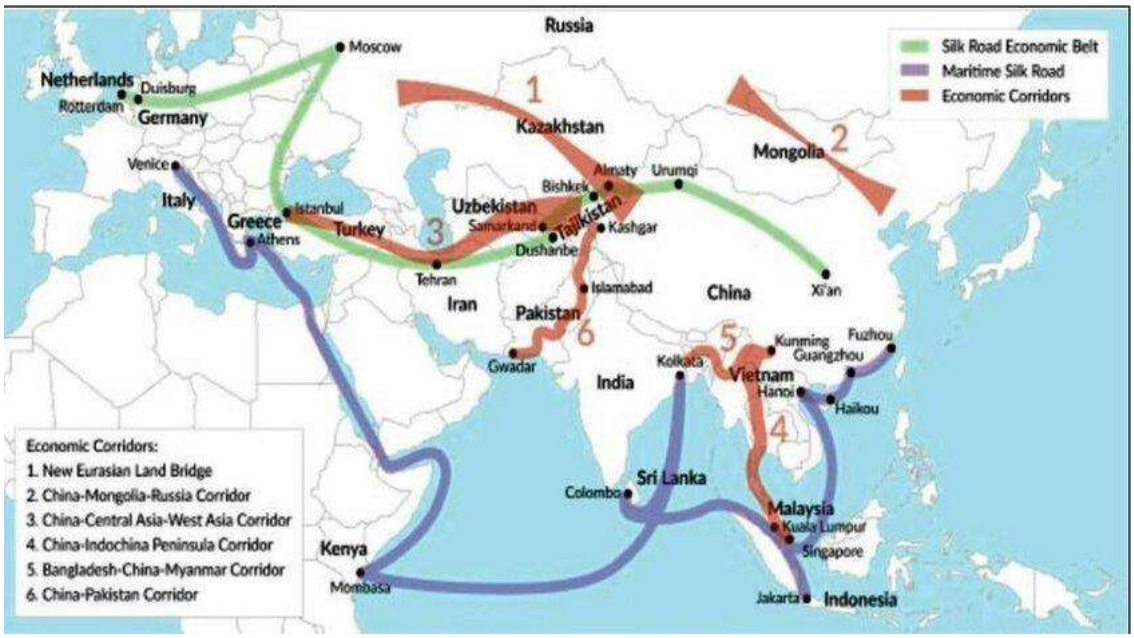
counterparts in the corridor. Wakhan in the northeast of Badakhshan province supports to carry out anti-terrorism training missions. Of course, in this report, which was denied by the Chinese government, it is stated that this project has been started in the place for a long time (Faemer, 2018).

In December 2019, new evidence has been observed about the training camps of the Islamic Party of Turkmenistan, which operate in the north of Afghanistan, which is a direct threat to China. Therefore, it is not surprising that China has a more diplomatic role in the war in Afghanistan and has open communication channels with the Taliban and the central government, as well as seeking mediation. China's increased involvement in Afghanistan may include a change in its security situation in Afghanistan as well, in the event that its economic strategy and efforts to promote peace, reconciliation, and forgetfulness are not allowed to simply sit back. be done in America.

Although China's security role is currently evolving, this includes security oversight of the Tajik border as well as efforts to assist Afghanistan in strengthening its counter-terrorism capabilities through the Shanghai Cooperation Organization and Quadrilateral Cooperation and Coordination Mechanism that is China-Afghanistan-Pakistan-Tajikistan. The main concern of the Chinese government is the separatist movement of the Taliban in the Xinjiang Autonomous Region. The movement of terrorist groups and the possibility of establishing contact with Taliban separatists in Xinjiang was enough for Beijing to keep the border closed for several decades. However, it seems that these concerns are disappearing due to China's extensive investments in Xinjiang region, where job opportunities and improvement of living standards have created more stability and peace.

4. Corridor of Wakhan on the route of New Silk Road

In September 2013, exactly six months after the election of the President of the Republic of China and one month after the election of the General Secretary of the Communist Party of China, President Xi Jinping traveled to Central Asia and gave a speech at Nazarbayev University. On the threshold of Kazakhstan for the first time of the "One Belt One Road[13]" project - He declared a "way" for the unification of Eurasia along with the integration with the New Silk Road and the Maritime Silk Road. This plan, which is known as China's long-term global geopolitical ambition, appeared as the cornerstone of political and economic cooperation to Eurasia, Africa and beyond (Picture number six).



Picture 6: Maritime Silk Road

[13] One Belt One Road

Based on the plan of the President of the Republic of China, this project consists of two main parts.
(1) The Silk Road Economic Belt, (2) The Maritime Silk Road. The goal of the revival of the Silk Road is to create an integrated, coordinated economic region based on a win-win economic policy along the path of the ancient Silk Road countries. It has been covered, but it is not limited to it, and it is to expand to the countries of South East and South Asia, including Pakistan. The goal of the revitalization plan of this route is to increase the transit and transportation of goods between the countries located in this area. The One Belt One Road project requires an investment of five trillion dollars in infrastructure in 65 countries (Observer, 2017).

One belt-one road has four development corridors which includes Eurasia-China New Economic Corridor, China-West Asia Economic Corridor, China-India Economic Corridor, and China-Pakistan Economic Corridor (Menafn.com). According to the existing plan, the new Silk Road consists of three routes, the northern, central and southern routes, each of which has its own economic, transit, political and social importance. The area that is located in this area includes nearly 45 percent of the world's population (more than three billion people).

Since 2013, the Chinese government has signed agreements with twenty countries and dozens of international organizations in the field of development and creation.
1- The northern route section connects China to Russia, Europe and North Africa through Central Asian countries (Tajikistan, Kazakhstan, Kyrgyzstan, Afghanistan, Uzbekistan and Turkmenistan).
2- The central route from Central Asia reaches Iran and the Persian Gulf, as well as Turkey and the Mediterranean Sea, through Afghanistan and Turkmenistan.
3- The southern route will start from China and will end in Southeast Asia, South Asia, Pakistan and the Indian Ocean.

The countries of this path are mostly members of the Asian Infrastructure Investment Bank, which was established by the initiative of the Chinese government and can be effective in the events of this path. Based on the plan of the President of the Republic of China, the amount of 124 billion dollars will be invested for the construction of roads, railway lines, reconstruction and construction of ports in the countries located in the area of the new Silk Road. Based on the promise of the President of the Republic of China, nine billion dollars will be allocated as economic aid to developing countries and institutions located on the route of the new Silk Road. China's One Belt One Road along with the China-Pakistan Economic Corridor aims to connect Central Asia, Pakistan and Afghanistan to the Middle East, Africa and Europe through the necessary infrastructure and roads for strategic-economic goals. China is being tested (Jafari, 2020).

The Wakhan Corridor was one of the important gates of the ancient Silk Road, and before, the exports and imports of the East and West world took place through it, and played an effective role in Afghanistan's imports. The initiative of a belt-way provides an ideal opportunity for the Afghan government to experience its historical potential in cooperation with China and other countries in the region (Cowan, 2018:12). In this view, one of the most significant centers of commercial activities is Yiwu[14] city in Zhejiang province of China. Although the Wakhan Corridor as the common border between China and Afghanistan is only a few kilometers long, this small port opens up to a wide area of roads and needs for the economic development of China. This new route, like the old silk road, will turn Afghanistan into a transit center for world trade, and Afghanistan's exports, including carpets and rugs, marble, saffron, and dry goods, will enter the world market without intermediaries. (Garland, 2016).

On the other hand, the trade routes built through the Wakhan Corridor, if they are connected to the China-Pakistan Corridor and the Karakoram Mountain will provide a much cheaper and easier route for Pakistan, while to Tajikistan Permission to access the ports of Pakistan in Karachi gives Gwadar. This will allow Pakistan to join the China-Eurasia Economic Corridor and as a result, change the economic outlook of the entire region (Farrukh, 2019). As it is obvious, these transit projects are important for Afghanistan and Pakistan as well for Central Asia. For Central Asia, transit through Afghanistan is a vital hub that connects dryland economies to an important world market. In particular, two networks can be analyzed at this time: one of Afghan businessmen who move

[14] Yiwu

goods officially and unofficially within Afghanistan, Tajikistan and Pakistan, and the other is made up of Uzbek businessmen who belong to Tajik. Who has goods that are made in Tajikistan, Uzbekistan and Russia (Tirado, Marsden, 2020:135).

Undoubtedly, one of the main goals of Afghanistan's foreign policy is to reduce interstate conflicts by creating regional economic relationships for common development. By connecting the East-West Shining Hills through the Silk Road to the traditional North-South Pertkapoi Corridor, the entire region can realize the full potential of the Silk Road by transforming Afghanistan into a regional trade and transit hub. can be benefited by using the silk road of Afghanistan It has exports to the Far East and European countries, and by using the projects related to the Silk Road, Chinese and Afghan investors can ensure investment in both countries.

In this way, Afghanistan, by being in the heart of the Silk Road, will activate the economic channels of the region, and in this way, it can connect the interests of the countries of the region with the interests of Afghanistan and these countries for cooperation. With these interpretations, the expansion of the Belt and Road from China to Afghanistan can play a significant role in the economic development of this country. The cornerstone of this initiative is the development of infrastructure that strengthens the transit network. The memorandum of understanding signed between China and Afghanistan in 2016 shows a commitment to joint cooperation in order to promote cooperation in the One Belt One Road initiative (Safi, Alizada, 2018).

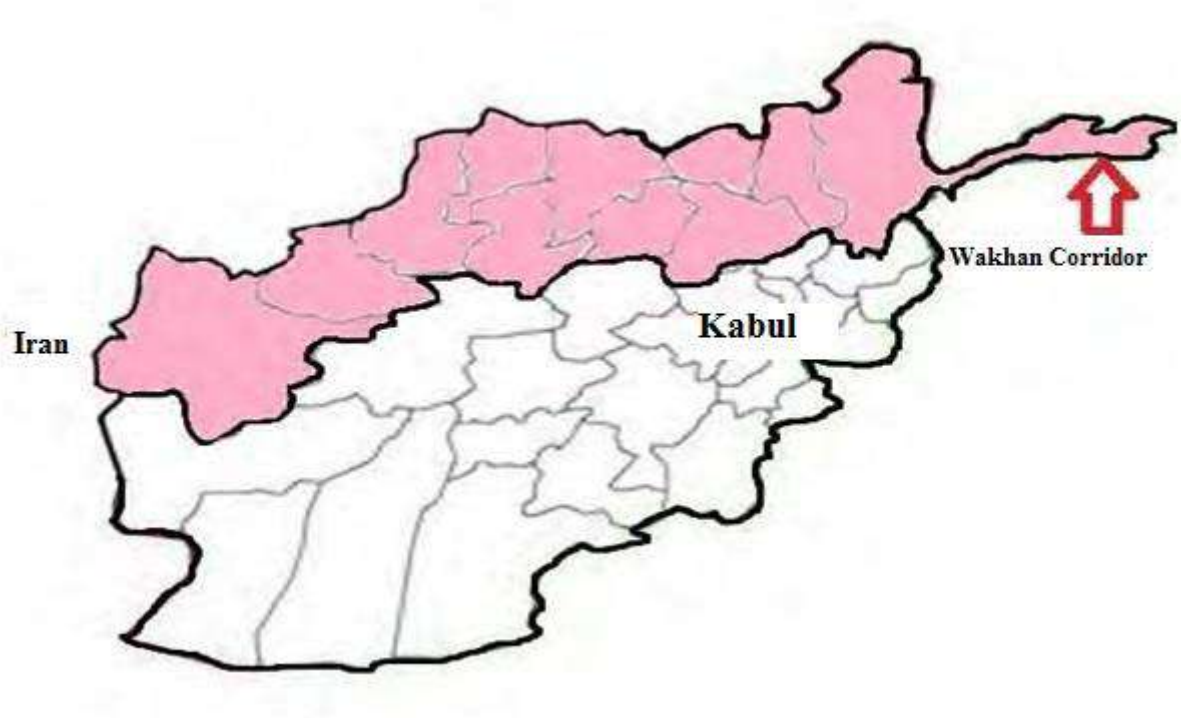
In this sense, the Chinese companies ZTE[15] and Huawei have been operating in Afghanistan since the early 2000s. Since the beginning of 2017, both companies have been working on the introduction of the third generation of Afghanistan's mobile phone[16] network, the provision of global[17] mobile communication system equipment, and multiple code[18] division access for the Afghanistan Telecommunication Company. In 2017, under the framework of the Belt Plan, new deals were signed to create an optical fiber network.

The Kabul Silk Road project is a promising potential avenue for cooperation between China and Afghanistan, although it has yet to materialize. By investing in the development and expansion of Afghanistan's optical fiber networks, China can provide significant support to Internet users there and in neighboring countries. The World Bank estimates that Afghanistan needs between $6 billion and $8 billion in international financial assistance to fund basic services in order to maintain any potential reduction in violence, thus benefiting all stakeholders, to help Afghanistan in foreign investment (World Bank, 2019). Of course, it is clear that in the absence of security in Afghanistan, the new silk project will never be completed; therefore, one of the basic requirements of the new Silk Road is the existence of security in Afghanistan.

5. Conclusion

According to the research findings, the Wakhan Corridor plays an important role in strengthening the trade links of the Republic of China with the international economy in the form of implementing infrastructure plans for the development of the network of communication routes. Taking a defensive position on the issue of security (especially the discussion of Islamic extremist groups in Tajikistan -Uzbekistan-Turkmenistan), as well as an effective investment, can strive towards its economic goals by giving cohesion and harmony to the northern provinces of Afghanistan (Picture number seven).

[15] EEE
[16] G3
[17] Global
[18] Multiple Code



Picture 7: Advantages of Wakhan Corridor

The Wakhan Corridor gives old advantages and new opportunities to China in the new big game, one belt-one road, which requires the geographical space of the Central Asian republics, which is under pressure due to instability and potential violence.

Through the Wakhan Corridor, China has direct access to Iran, the Persian Gulf, and finally to Europe, and it will succeed in implementing the One Belt One Road project, which is called the biggest economic project of the Chinese century. With these interpretations, the Wakhan Corridor can provide business for China, especially with the development of transportation infrastructures in the land and rail sections of this corridor and the link with the road across Afghanistan and connecting to Iran's railway, it also guarantees security for the revival of the power of the East (picture number eight), although some shortcomings can also be observed.

Picture 8: Revival of the power of east

In any case, turning this corridor into a safe path for economic-commercial exchanges will require a large investment and relative stability in Afghanistan. Of course, it is not far from the mind that with the expansion of

China's development plans in Badakhshan province, especially the Wakhan corridor, the activity of extremist groups will increase as an obstacle to the implementation of China's economic plans in the region.

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Research on the Social Significance of the Han Dynasty Carved Dragon Pillars in Haining Tombs

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Abstract
The coiled dragon pillars found in the Han Dynasty carved stone tombs in Haining are among the earliest artistic representations of coiled dragon pillars unearthed to date. They can, to a certain extent, reflect the socio-ideological landscape of Haining during the Eastern Han period. The research involves a stylistic analysis of the unearthed coiled dragon pillars in Haining, employing methods such as image analysis, comparative studies, and typological classification. The paper initially explores the stylistic characteristics of the coiled dragon pillars in the Han Dynasty carved stone tombs in Haining. By integrating comparative studies with the Longtu pattern in Zhejiang, it analyzes the ancient social significance of dragon patterns in the Han Dynasty. Ultimately, the study speculates on the ancient and contemporary social significance of the coiled dragon pillars in Haining. This research project is closely tied to the local cultural development of Haining, and while investigating the customs and traditions of the Eastern Han period in Haining, it enriches the source materials for compiling local historical records.

Keywords: Haining, Pictorial Stone, Coiled Dragon Pillar, Eastern Han

1. Introduction

In 1973, during the expansion of the playground at Haining Middle School, a stone tomb with portraits from the Eastern Han Dynasty was accidentally discovered. This tomb showed traces of being stolen in the early years, and fewer utensils were retained; however, the stone portraits in the tombs were relatively completely preserved. In 1983, *the Brief Report on the Excavation of Stone Tombs of the Eastern Han Dynasty in Haining, Zhejiang Province*, written by Pan Liukun, was released through the magazine *Cultural Relics*. In the excavation briefing report, the utensils and relief stones unearthed in the tombs were arranged in detail, which provided early original evidence for the present study. As shown in the excavation briefing, there were eight carved dragon pillars in the tomb, which were located on the four sides of the anterior chamber of the tomb, with a pair in the middle of each wall.

In 1984, in the article *Portrait Stone of Chang'an Town, Haining*, written by Yue Fengxia and Liu Xingzhen, a special study was conducted on the tomb for the first time. Subsequently, Zhang Xiaoru from the Institute of Chinese Painting at Hangzhou Normal University conducted identification and analysis of the identity of the

owner of the tomb. It is preliminarily speculated that he was a low-level official or a powerful landlord. To date, *the Stone Tomb of the Eastern Han Dynasty in Chang'an Town, Haining*, has been systematically studied by Mr. Huang Yafeng. Another scholar studied the geomantic omen and schema of this tomb and studied the schema. Five papers focused on describing the specific content of the images and rarely investigated the specific shape and social significance of the four pairs of carved dragon pillars.

This research project aims to investigate the coiled dragon pillars in the Han Dynasty pictorial stone tombs unearthed from Haining Middle School, from the perspectives of history, image studies, typology, and intellectual history. Using comparative research methods, the study will analyze the form, characteristics, and connotations of the coiled dragon pillars, with a particular focus on revealing the social significance of the dragon's image in the traditional culture of Haining.

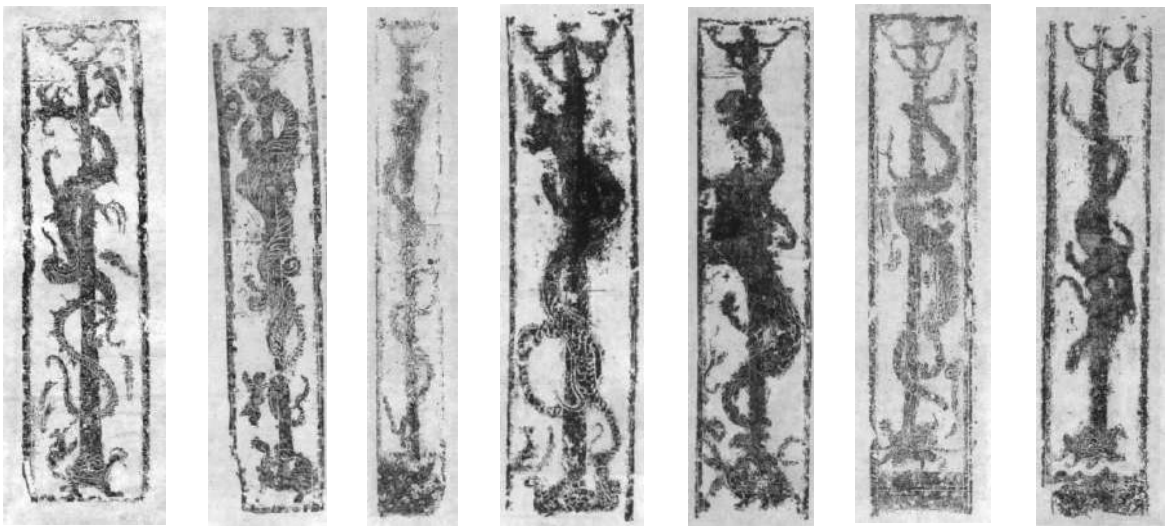
2. The shape of the coiled dragon pillars in the Han Tomb in Haining

The research object of this project is located in Haining Middle School, Chang'an Town, Haining City, Jiaxing City, Zhejiang Province. According to the report on *the Excavation of Stone Tombs with Portraits of the Eastern Han Dynasty in Haining, Zhejiang Province*, "there are four pairs of carved dragon pillars in this tomb, which are located in areas 5 and 9 on the east wall, areas 11 and 14 on the south wall, areas 6 and 10 on the west wall, and areas 6 and 9 on the north wall. The columns are all symmetrically distributed and have similar shapes (Pan, 1983). However, the details are slightly different, as shown in the table below:

Table 1: According to the Brief Report on *the Excavation of Stone Tombs with Paintings of the Eastern Han Dynasty in Haining, Zhejiang Province*

Number	Direction	Dimensions (cm)	Image
East 5	West side of the north wall of the east ear room	Height 105, Width 26	The dragon is in the shape of a snake and a beast, with its mouth open, with horns, scales, and four legs. It wraps around the column for three and a half weeks.
East 9	West side of south wall of east ear room	Height 105, Width 21	The dragon is a combination of snake and beast, with its head held high, with horns, scales, four legs, and a thick body. It wraps around the column, with a turtle-shaped column base at the end of the column.
South 11	West side of the east column of the tomb gate	Height 118, Width 16	The dragon is a combination of snake and beast, with its head held high, with horns, scales and four legs. It wraps around the column for three and a half weeks, with a turtle-shaped column base at the end.
South 14	East side of the west column of the tomb gate	Height 118, Width 16	The dragon is a combination of snake and beast, with its head held high, with horns, scales and four legs. It wraps around the column for three and a half weeks, with a turtle-shaped column base at the end.
West 6	East side of the south wall of the west ear room	Height 107, Width 24	The dragon is a combination of snake and beast, with its mouth open, no horn, scales, and four legs. It wraps around the column for one and a half times, with a turtle-shaped column base at the end of the column.
West 10	East side of the north wall of the west ear room	Height 107, Width 24	The dragon is a combination of snake and beast, with its mouth open, no horn, scales, and four legs. It wraps around the column for two weeks, with a turtle-shaped column base at the end of the column.
North 6	West side of north wall of anterior chamber	Height 117, Width 23	The dragon is a combination of snake and beast, with no horn, scales and four legs. It wraps around the column for two weeks, with a turtle-shaped column base at the end of the column.
North 9	East side of the north wall of the anterior chamber	Height 117, Width 24	The dragon is a combination of snake and beast, with no horn, scales, four legs, and a slightly shorter body length. It wraps around the column for two and a half weeks, with a turtle-shaped column base at the end of the column.

An examination of the eight columns revealed that the L.L. columns were concentrated in the anterior chamber of the tombs and were of similar height in the east–west and north–south directions. The heights of the columns in the east–west ear chambers were 10 cm shorter than those in the north–south passage. The eight coiled dragon columns are similar in shape and are thick at the bottom and thin at the top. The lengths and thicknesses of the dragon-shaped patterns wrapped around the columns are slightly different, but they all incorporate the characteristics of snakes and beasts, revealing the state of opening their mouths and bending their necks. All the participants had four legs, some had long horns on their heads, and there were scale patterns on their bodies. The number of circles around the column varies from one to four weeks. The bases of the columns were carved in relief in the shape of a turtle. Only Coiled Dragon Pillar in East District 5 has a heavy arch. A monkey pattern hanging on a single arm is carved on the side. Although these eight carved dragon pillars are the same theme, they exhibit a free and unrestrained artistic style in terms of management position, line direction, and shape shaping.



East 5 East 9 South 11 West 6 West 10 North 6 North 9

Observing the form of the dragon coiled pillar, it can be noted that while the dragon patterns wind upwards around the pillar, there are significant gaps between the dragon's sculpted body and the pillar itself. Furthermore, the coiled dragon pillar does not serve a load-bearing function in the burial structure. Instead, it appears as a decorative column on both sides of the entrance, complementing themes of auspicious mythical creatures, chariots and horses, joyful dances, and various other motifs in a unified decorative image.

The earliest recorded documentation of the coiled dragon pillar's style is found in Volume Twelve of the Song Dynasty's "Yingzao Fashi": "There are eight categories of carved works... The eighth is the coiled dragon pillar. Coiled dragons, sitting dragons, toothed fish, and similar. They are applied to canopies, above scripture storage pillars, coiled around precious mountains, or entwined within decorated ceilings (Cheng, Tian, Shu et al., 2024)." It can be observed that during the Song Dynasty, the coiled dragon pillar style had already achieved a certain universality, and a mature set of architectural standards had been established. However, the coiled dragon pillars unearthed from the Haining Han Dynasty pictorial stone tombs were constructed much earlier than the writing of "Yingzao Fashi," and no similar archaeological remains have been found in the Zhejiang region. Therefore, to study the stylistic characteristics and symbolic significance of the coiled dragon pillars in the Haining pictorial stone tombs, it is necessary to conduct further comparative research, considering other dragon motifs from the same period in Zhejiang and the coiled dragon pillar styles in neighboring regions.

3. Zhejiang dragon schema from the Han Dynasty

3.1. The dragon schema in stone relief

There are other dragon-shaped patterns in this tomb. Auspicious images are carved and painted on the upper level of the lintel on the north wall (Figure 1). From left to right, a white tiger marching rightward, a three-tiered potted plant, and a dragon sprinting toward the left are arranged in this tomb. Qinglong, a jumping monkey-like animal; a tianlu with its feet tilted back; an upright Golden Harvest; a phoenix spreading its wings to the left; an upright scorpion; a rosefinch standing to the left; a Tianma running to the left; and fields and auspicious plants from the left to the galloping knight. In the stone portrait, the green dragon and the white tiger face each other. The green dragon is sinuously shaped, its neck is arched, and its body is slender. The inscribed lines move elegantly, as if the dragon has descended from the fairyland. Compared with the dragon-shaped diagram on the carved dragon pillars, the two have similar shapes that are similar in height.

Figure 1: The lintel on the north wall

3.2. The dragon diagram in the bronze mirror

At the same time, the remains unearthed from Eastern Han tombs in Zhejiang Province also have dragon-shaped schemas, but they are significantly different from the carved dragon pillars in the stone tomb with Han portraits in Haining. The most common form of dragon pattern in Eastern Han tombs in Zhejiang is the theme pattern in portrait mirrors and mythical and animal mirrors. In portrait mirrors, the images of dragons and tigers are mostly combined, and they are placed in a symmetrical arrangement at both ends of the mirror button. In some portrait mirrors, the dragon image appears alone in the themed patterns, separated from the images of the East Prince, the Queen Mother of the West, and the chariots and horses, e.g., the Qinglong chariot and horse unearthed in Zhongguan Ganshan, Deqing County in 1983. Portrait mirror (Figure 2). In the mirror of divine beasts, dragon-shaped images exist in the form of four gods, and the four gods on the double-ranked mirrors of divine beasts are arranged according to their azimuths, which fully shows that the image of dragon in the mirror of divine beasts specifically points to the blue dragon in the four directions.

Figure 2: Partial view of the unearthed divine figure, chariot, and green dragon pictorial mirror from Zhongguan Ganshan in Deqing County, 1983.

In terms of shape, in the Eastern Han bronze mirrors unearthed in Zhejiang, the image of the dragon was mostly based on the body of an animal. Compared with the dragon-shaped diagrams on the carved dragon pillars, the dragon on the bronze mirror had a shorter body, with an appearance between a tiger and a lion. The neck was lengthened, most of which were in the posture of looking back and roaring; the rear of the limbs was decorated with feather patterns, showing the shape of sprinting from left to right; and the tail was slender and curled. Bronze mirrors from different regions showed great variation in the schematic expression of the same mythical beast.

The image of dragons is constantly developing in tomb art. According to the analysis of the distribution of the images of *the Four Gods in Han Paintings* by Cheng Wanli, “From the Xinmang period to the early Eastern Han Dynasty, the images of the four gods matured, and the images of the four gods that appeared in the original combination began to be disassembled.” A large number of images of the four gods on the bronze mirrors began to appear, and related inscriptions gradually increased, it can be found that in the bronze mirror, the combination of the four gods appeared earlier than the single dragon-shaped schema (Cheng, 2012). Combined with the list of green dragon shapes compiled by Cheng Wanli, the winged beasts that look back appear in the late Western Han Dynasty and the early and mid-Eastern Han Dynasty; the composite blue dragons of the snake and beast were mostly unearthed in the tombs of the middle and late Eastern Han Dynasty, based on which it can be speculated that the dragon-shaped schema in the Han pictorial stone tombs in Haining was created later than the pictorial mirrors and the beast mirrors.

4. Ancient social significance of the dragon schema in the Han Dynasty

The image of the dragon has gradually changed from a powerful symbolic totem that protects humankind to a divine medium that can communicate between heaven and earth. In the late Eastern Han Dynasty, the diversification of the image of dragons in the Zhejiang region also corresponded to its multiple social factors. According to the literature, the dragon-shaped schema has the following three universal social significances in the tombs of the late Eastern Han Dynasty in Zhejiang:

4.1. Fantasy about the afterlife

Qinglong is the name of a constellation and comes from the four gods popular in the Western Han Dynasty. In ancient times, the "four gods" were the name of the four directions of the stars; these words refer to the gods who guard the four directions and are related to the yin, yang and five elements. The *Lunheng·Wushi* written by Wang Chong of the Eastern Han Dynasty stated, “The wood in the East is also its star, the Canglong star. The metal in the West is also the white tiger, its star. The fire in the south is also in its star, the vermilion bird, and the water in the north is also in its star, the basalt. There are four essences of the four stars in the sky, who are born with the bodies of four beasts. The bloody worms take four beasts as their growth (Mei, 2000). The four gods are the product of human totem belief in ancient times and reflect people's initial understanding of the unknown world of gods and celestial phenomena at that time. In the pictorial stone tombs of the Han Dynasty, the top of the tomb was shaped like the sky, and the murals on the walls are scenes of heavens surrounded by immortals. The dragon pattern often appears in the upper layer of murals and is juxtaposed with images of white tigers, red birds, and grass jelly. It is used to express the fantasy and magnificence of the fairy world and satisfies people's beautiful imagination of the afterlife.

4.2. Tomb guarding against evil spirits

An image of a dragon is very special in tomb art. It is not only one of the four spirits (dragon, phoenix, tortoise, and lin) but also one of the four gods (blue dragon, white tiger, red bird, and basalt). In the Kuaiji area of the Eastern Han Dynasty, where the thoughts of gods and immortals were full, the dragon was not only regarded as a star but also as a very intimidating animal in the mythological world. Miao Xiyong said in *The Burial Sutra Wings·Four Beasts Sand Water*, "There are two dragons next to the body, the left and right two dragons." The sand is named dragon and tiger, which protects the acupoints of the area, prevents the wind from blowing, and embraces the sentient beings, neither forcing nor suppressing nor bending or fleeing. Therefore, the blue dragon meanders and the white tiger tames (Dong, 1990). The inscription on the Han mirror unearthed in the Echeng, Hubei, provides physical evidence for this.

4.3. The ascension of souls and people to heaven

The image of the dragon also leads the soul to the heaven in the tombs. Dragon plants have been used as mounts for a long time. The *Picture of Character Yulong* unearthed in the Changsha Bullet Library reflects the process of soul ascending to heaven with the help of dragon. In *The Tomb of the Dragon and the Tiger* in Xishuipo and

the Origin of the Four Elephants, Li Xueqin proposed that riding a dragon and a tiger is the way and means of ascension to heaven (Zeng & Liu, 2007). The three groups of clam shell sculptures with dragon and tiger patterns on and around tomb No. 45 in Xishuipo, Puyang, and Henan suggest that dragon and tiger were put in the tombs as tools for souls to ascend to heaven as early as the Yangshao Culture Period. This concept is recorded in Baopuzi·Zaying by Ge Hong of the Jin Dynasty: “If you can ride a ride, you can travel around the world, regardless of mountains and rivers. There are three ways to ride a ride: one is called the dragon’s ride, and the other is called the tiger’s ride. and the third is Luyu.” In Taoist culture, dragon, tiger and deer are the mounts that carry people to the sky and to the earth. However, when these images were placed in the tomb, people were more likely to help people eliminate the shackles of the body, guide the ascension of the soul, and reflect the divinity of the person riding it.

5. The Social Significance of the carved dragon pillars

The ancient social connotation of the abovementioned dragon diagram is also reflected in the Beautiful Dragon Column in the stone tomb of the Han Dynasty in Haining. In addition, the carved dragon pillars in the stone tombs of the Han Dynasty in Haining have unique modern social significance.

5.1. The ancient social significance of the Lehman Pillar

5.1.1. Construction of a celestial scene

Coiled Dragon Pillars in the stone tombs with Han portraits in Haining are located in the middle, south, and northwest directions of the tombs, and they are located in the middle of the wall; therefore, they cannot refer to a specific orientation, and the meaning of Coiled Dragon Pillar as a symbol of orientation can be ruled out. On the upper level of the north wall of the front room, there are relief carvings of animals such as green dragon, white tiger, red bird, and phoenix, which clearly indicate that the murals have the function of describing scenes of the fairy world. The carved dragon pillars distributed around them seemed to vividly show the lively scene of the heavens constantly attracting souls.

5.1.2. Tomb guarding against evil spirits

In the tomb, four pairs of coiled dragon pillars are intricately carved and painted, tightly affixed to the walls of the burial chamber. The design intention bears resemblance to the common depiction of "Two Dragons Playing with a Bi Disc" found in Shandong, Northern Jiangsu, and other regions. In the context of the "Two Dragons Playing with a Bi Disc," the homophonic character "辟" is used, symbolizing warding off evil and guarding the entrance. Similarly, the coiled dragon pillars in the Haining Han tombs are positioned against the walls, and the homophony between "壁" (wall) and "辟" can be further extended to convey the notion of averting evil. Additionally, a pair of coiled dragon pillars stands on both sides of the southern wall at the entrance of the tomb chamber, serving a distinct deterrent effect on those entering the burial space and fulfilling the functions of guarding and overseeing the tomb.

5.1.3. Connect and communicate with the world

On each wall, Coiled Dragon Pillars are in a gesture of hovering upwards, and they appear in pairs. A similar schema also appeared in the silk paintings. The silk painting unearthed from Mawangdui Tomb No. 1 (Figure 3) completely depicts scenes of the fairy world, the human world, and the lower realm, with an image of two dragons piercing a wall running through it. The dragon's tail extends to the bottom of the picture, the dragon's head looks up at the Heavenly Gate, and the dragons’ bodies meet in the jade disc. The two dragons seem to become the sedan chair for the tomb owner to ascend to heaven and fly toward the Tianmen. The schema structure in the Diagram of Two Dragons Wearing the Bicycles is highly similar to that of Coiled Dragon Pillars in the Haining Han Tomb (Figure 4), except that the jade bib between the two Coiled Dragon Pillars was replaced by a concrete door, both constructing a This structure shows the imagination of the owner of the tomb flying to the heavenly gate by double dragons.

Figure 3: Part of the silk painting in Mawangdui Tomb No. 1

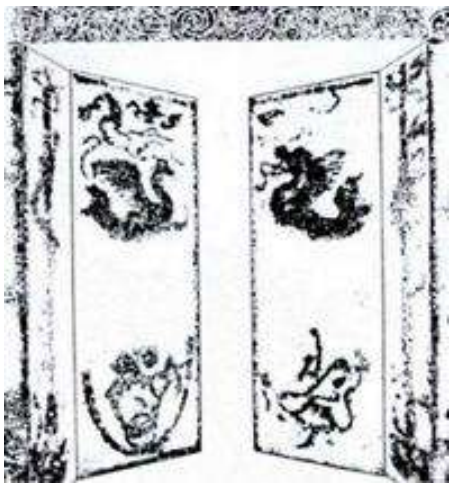


Figure 4: Part of the stone rubbings on the southern wall of the Haining Han Tomb

However, although the traditional impression of the dragon in today's society is that of a symbol of imperial power, the dragon has the mystery and sanctity that transcends class. However, the embroidering of dragon patterns on yellow robes began to occur during the Ming Dynasty. Previously, the dragon pattern was not monopolized by the royal family. Therefore, using the carved dragon pillars in the tomb as evidence to speculate on the identity of the tomb owner is not in line with the social background of the Eastern Han Dynasty.

5.2. The significance of the carved dragon pillars in modern society

5.2.1. It is speculated that the buildings in Haining in the Eastern Han Dynasty already had the shape of dragon columns

The forms of ancient tomb art were often further processed and deformed on the basis of real-life reference to artworks. “Death is like life” between people. Most underground tombs are part of the component forms that imitate the long-term aboveground residence of the owner of the tomb, and it is rare that aboveground buildings imitate the tombs in the opposite direction. Accordingly, it can be speculated that the style of the carved dragon pillars in the stone tombs of the Eastern Han Dynasty in Haining was the imitation and reproduction of similar decorative patterns on the columns of the local ground buildings in Haining during the Eastern Han Dynasty; that is, the carved dragon pillars already existed in the actual buildings of Haining in the Han Dynasty. The basic rudiment, or the similar wood architectural style with relief-covered decoration on the column shaft, was later used for reference in the construction of tombs in the middle and late Eastern Han Dynasty.

5.2.2. Explore the cultural exchanges between Haining and the North in the Eastern Han Dynasty

The shape of Coiled Dragon Pillar in the stone tombs of the Han Dynasty in Haining is obviously unique, and there is no similar tomb art form in other parts of Zhejiang. In the Xuzhou Han Dynasty Stone Art Museum to the north of Haining, a stone pilaster from the Han Dynasty is preserved. On the body of the column, two dragons stand facing each other in a style similar to that of the carved dragon pillars but with a relatively rough shape. In 1992, a stone central column very similar to Coiled Dragon Pillar in Haining was excavated from a tomb of the Eastern Han Dynasty in Tongshan County, Xuzhou. The image of the Panlong was carved in the bas-relief on the stubby column. Further north, stone pillars with reliefs of animals were also discovered in stone tombs of the Han Dynasty in Linyi, Pingyin, Tai'an, Jiyang and other places in Shandong, and the images were wound in a manner similar to that of the carved dragon pillar. According to Liu Guan, “In the brick and stone chamber tombs of northern Jiangsu and Shandong in the Eastern Han (middle and late period), the basic method of relief carvings of dragon columns had clearly appeared, but the specific decorative images and themes were not uniform, and the molding process was also unstable; therefore, it should still be in the relatively diversified early embryonic stage (Liu, 2021). The *tubb art form of the Beautiful Dragon Column* appears mainly in northern Jiangsu and Shandong, and some tombs were earlier than the Haining Han Dynasty Stone Tombs. The author speculates that the shape of the beautiful Dragon columns in the pictorial stone tombs in Haining or in its cultural and trade exchanges was influenced by the neighboring northern region and then recreated in combination with local totem worship.

6. Conclusion

In summary, tomb art is an important part of traditional Haining culture. Studying the shape and social significance of the Beautiful Dragon Column in the stone tomb of the Han Dynasty can shed light on local dragon culture, the concepts of life and death, and funeral etiquette and customs in Haining during the Eastern Han Dynasty. This study provides direct supporting materials and relevant physical information for modern people to use to trace the architectural styles of Haining before the Han Dynasty.

In addition, this study, through comparative research, has found the possibility of integration and reconstruction between the coiled dragon pillar styles in the Eastern Han tombs in Haining and the dragon pillar styles in some areas of Northern Jiangsu and Shandong. However, this speculation is solely based on the visual and stylistic similarities of the coiled dragon pillars, lacking direct and robust supporting materials. Further exploration is needed by delving more deeply into relevant textual materials and archaeological artifacts. The author presents this paper as a preliminary contribution, hoping to stimulate scholarly attention to the study of coiled dragon pillars.

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Investigating the Role of Political Culture in the Political Development of Afghanistan after September 11, 2001

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Abstract
Democracy has not yet been institutionalized in Afghanistan, and this nation has a significant journey ahead before the establishment of a fully institutionalized democracy. One of the major internal obstacles on the way to the realization and institutionalization of democracy in this country is the presence of tribal and ethnic political culture of some of its residents. In this country, the attitudes, values, beliefs, feelings, beliefs, looking at the past, orientations, social traditions and some social structures of a number of the inhabitants of this land are ethnic and tribal. Of course, it should not be denied and ignored that many of the young generations of Afghanistan have trampled many beliefs, red lines and ethnic taboos. In the third presidential election in Afghanistan, observations indicate that the political culture among some of the youth in this country is characterized by active participation. Hence, the primary objective of this article is to ascertain how effective the political culture has been in the political development of Afghanistan. Since the Afghan society is a traditional and tribal society, its political culture is also a tribal political culture. The research method in this article is descriptive-analytical and the method of collecting information is library. The results indicate a clear correlation between elections and the political culture in each respective country. Elections mirror the prevailing political culture within the country. If the political culture is moving towards democratization, it is evident that the elections in Afghanistan are also moving towards democratization.

Keywords: Political Culture, Afghanistan, Elections, Traditions, September 11

1. Introduction

After the Second World War, we witnessed a huge wave of decolonization and the emergence of different countries whose main concern was the emergence of political and legal independence. After gaining independence, perhaps the most important issue for all the newly independent countries and so-called third-world countries is the issue of development. Due to the presentation of the development of the third-world countries, different theories and models regarding development were formed.

More emphasis on the initial theories and models was formed in the development of countries. It was becoming westernized, but later theories were modified to some extent and new models were presented for development. In most of the theories, the role of internal forces and capacities of countries has been considered as the basic and important element for development.

This issue was raised that development happens in a platform and societies that want development should provide that platform. In the framework of this issue, we can analyze the influence of political culture on development. Political culture is considered as a platform in which the forces and orientations of individuals are identified, and the political system is located in its framework and exercises power.

Hence, it is crucial to scrutinize the impact of political culture on the country's development. Culture is a set of customs, morals, values and beliefs that are transmitted from one generation to the next through the process of socialization. Values are generalized concepts of legitimate and valuable goals that guide human behavior in a particular direction. Values come through norms in the form of regulations and laws.

Political culture is about views and attitudes towards power, government responsibilities and patterns related to political acceptance. In this process, the level of knowledge of the goals of political institutions and structures, beliefs, emotional aspects, and ultimately the existing criteria for judging power and politics is important. If we want to define political culture in a simple way, we can consider it as the way people look at power, politics, government and various institutions and their functions.

People can have different orientations regarding power, politics, government and various institutions and the rules and regulations that govern institutions can be categorized into three distinct groups.
First, cognitive orientations that are related to people's knowledge and beliefs about power and government, and also people's knowledge of regulations, roles and institutions.
Second, emotional orientations show people's feelings towards political systems, rules, and roles, and the third orientation is a mixture of the first and second orientations and includes most of people's judgments regarding political goals. Understanding the orientations helps to understand how the political systems are supported and therefore the legitimacy of the political systems can be evaluated with the orientations.
Three, if people are not sensitive to the decisions and behaviors of institutions and elites, it is likely that the political elites will be inclined towards a totalitarian and authoritarian system.

In Afghanistan, however, the political culture is of a limited type, that is, people do not have the essential and sufficient awareness regarding the political system, power structures, various institutions and workers, and regarding their influence in the course of decision-making.

Hence, whatever decision they make, the political elites will not face any resistance or pressure from the people. In other words, the people cannot put government and private institutions in the direction of development.

2. The role of political culture in development

Political culture is considered as a platform in which the forces and orientations of individuals are identified, and the political system is located in its framework and exercises power. Therefore, it is crucial to investigate the influence of political culture on the development of the country. Culture is a set of customs, morals, beliefs and values that are transmitted from one generation to the next through the process of socialization. Values are generalized concepts of legitimate and valuable goals that guide human behavior in a particular direction. Values come through norms in the form of regulations and laws. (Qadri, 1:2012).

Elmound's definition of political culture was gradually accepted by others, and from this time on, the notion of political culture was linked with the behaviorist approach that was based on numbers and quantity and a kind of abstract modeling. A new approach, a new level of analyzing political issues and developments. This new approach, contrary to the common approach in political science, which focuses on the study and analysis of official institutions and their working structure, is more focused on the study of informal behaviors and actors'

attitudes as the basis of political behaviors. They emphasized (Zareei, 2009:96). It is a high -profile that is the case, the fact that it is in the lights, and the facts that are in the face of the present and the same. The assessment is made based on the nature of the work and the subject matter (Rafi, 27: 2018).

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3. Political culture and elections in Afghanistan

The presidential, parliamentary and provincial council elections in Afghanistan have been examined from various dimensions and angles in the press, media, and scientific and university circles. But it is imagined that these democratic processes have been studied less from the perspective of sociology. For the first time, the American "Gabriel Elmond" used the term "political culture" in political science.

According to Elmond, political culture refers to the pattern of individual attitudes and orientations toward politics within a society and its issues within a system or a society. In addition to the use and definition of this knowledge term, Elmond has also dealt with its classification, which we will briefly describe each one.

A) Participatory political culture, which exists in advanced societies. In these societies, people participate relatively in political life. In a participatory political culture, people are aware of their citizenship and pay attention to politics. In these societies, citizens are sensitive to the behavior of political elites.
B) Citizen's political culture: Elmond calls citizens who are aware of the various roles of the government such as taxation and law-making as political citizens. In this model of political culture, people may be conscious of the being of the political system and its data, and they may be interested in it or hate it, but due to the lack of institutions to express and collect their wishes and demands, or the weak structures of the institutions, people cannot It has a lot of political efficiency be The political elites are the mouthpieces of the people's wishes. In this way, in this model of culture, people have no place in the political process for themselves.

C) Limited political culture: This cultural aspect pertains to individuals who have limited knowledge about their political system. In such political culture, there is no ability to compare the changes initiated by the political system. People with limited political culture have no expectations from their political system.

Also, "Lucin Pai" considers political culture to be a set of attitudes, beliefs, and feelings that provides structure and significance to the political process and identifies the assumptions and regulations that preside over the behavior of the political system. According to what was said, political culture can be regarded as a set of principles, approaches and beliefs that show people's position on political issues.

In fact, the political culture of every human society is made of elements and elements with the passage of time and historical processes, such as: values, attitudes, beliefs, beliefs, feelings, traditions, social structure, and historical experience (Khatibi, 1:2014).

4. The role of elections in the democratization of political culture in Afghanistan

Since the Afghan society is a traditional and tribal society, its political culture is also a tribal political culture. Due to the division of the political culture from Gabriel Elmond's perspective, the political culture in Afghanistan today is mostly a limited and subordinate political culture. Democracy has not yet been institutionalized in Afghanistan, and the institutionalization of democracy in this country is a distant goal that requires significant progress. One of the major internal obstacles on the way to the realization and institutionalization of democracy in this country is the presence of tribal and ethnic political culture of some of its residents. In this country, the attitudes, values, beliefs, feelings, beliefs, looking at the past, orientations, social traditions and some social structures of a number of the inhabitants of this land are ethnic and tribal.

In this third presidential election in Afghanistan, observations indicate that some of the young people in this country exhibit a participatory political culture. It was observed that many young people and middle-aged people participated in this process knowingly and wanted to make accurate decisions in this field, and they used their opinions with expectations and expectations of participation. In fact, the political culture in Afghanistan is becoming democratic. Elections in Afghanistan are part of the political culture of this country, and there is a direct correlation between the elections and the political culture of each country. Elections have the same situation as the political culture of the country. If the political culture is moving towards democratization, it is evident that the elections in Afghanistan are also moving towards democratization.

On the contrary, if some of the signs and symbols in our political culture are ethnic, the same issues were observed in the elections. The presidential elections of the last republic showed the political culture in the country that is rapidly changing from being ethnic to becoming democratic, but in addition to the many good things that the elections had in different areas for Afghanistan, one and its positive effect on political culture refined in the country and strengthened the democratic values in the political culture. This national process has created positive and extensive changes in the views, behaviors, norms and thoughts of the people and political players regarding political issues, changes that are needed by our society and for the institutionalization of democracy in the country. It is considered very necessary (Khatibi, 2014:2-3).

5. The role of political culture in Afghanistan's political participation

Political culture, as a system of experiential beliefs, symbols, values, and norms, which is considered the basis of political action and the platform of political behavior of members of the society, parties, and statesmen, is one of the fundamental topics that is considered in the modern era. The subjects of his research are many thinkers in the field of politics. The consistency and stability of any kind of participation depend on the origin of the political culture of the society. Because the political culture is also a factor in determining the socio-political nature of the people of the society and they determine the beliefs, values and norms of the society about politics and power. Political participation in Afghan society is faced with social context, threats, and special ideological obstacles.

From sociological perspective, a stable political system is achieved by the general and informed partaking of nation as a wide-ranging project. What is considered as political participation in the current society of Afghanistan and the process of citizens' participation faces a problem is the lack of equal opportunities for all citizens in the matter of political participation. Ideological and cultural barriers to political participation in Afghanistan are mainly derived from the traditional culture of the society.

Traditional values and hand-holding, patriarchy and whiteness, determining the place of social housing based on ethnic attribution, authoritarianism and ethnocentric rejection of any effective contribution in the formation of culture of partaking and a serious obstacle regarding the collective partaking of the people in the country's political arena, there is a lack of effective institutions to express their wishes, elitism, mythologizing, and leadership, people's lack of awareness, communication failures such as radio and television and comprehensive and national press, reluctance of the country's political system to hand over roles and commitments to established institutions.

It is evident that fostering a culture of societal engagement is one of the key solutions, which means that our point of reliance should be more on the commons than to spread a new culture in which there is tolerance and political tolerance in the society. Political participation only takes shape in societies that have a culture of participation, so that achieving a democratic society will remain elusive as long as the political system's structure persists, and complicity based on a particular ethnicity, is not transformed (Hosseini. 2008:3). Political engagement in the contemporary world is essential and unavoidable thing, as even the most extensive political systems globally and the limited totalitarian systems that are still in existence also deprive themselves of the participation of their people, although in some form. They do not need political participation in various fields.

As Nohlen also states, today democracy as a way of governance has global dimensions it's evident that political involvement is crucial and indispensable in democracies. Political participation involves the voluntary engagement of community members in choosing leaders and participating directly or indirectly in political activities (Nasiri, 2004:99).

5.1 The political participation of women before September 11

Afghanistan is a country that, from an optimistic perspective, one could argue that there is limited prior involvement in the realm of democracy and the presence of democratic institutions is relatively new. As Dalton states, in 2001 and before the collapse of the Taliban regime, every country in the world was considered more suitable for democratization than Afghanistan.

For more than three decades, this country has been ruled by authoritarian governments, especially Zahir Shah's monarchy, the absolute government of Dawood, the communist government under the supervision of the Soviet Union, and finally, the Mujahideen regime, after that Taliban rose in the country. When they arrived, the situation became even worse. The Taliban came in with a religious appearance and they use religion to justify their government. (Dalton, 2007: 13). Mullah Mohammad Omar, the first leader of the Taliban regime, considered respecting the rights of women and girls against Islam and assumed that the social involvement of this generation in the society would cause moral corruption in the society (Kashani, 1998:58).

5.2 Women's political participation after September 11 (in the new power structure)

The events of September 11th mark a crucial moment in the establishment of a new government in Afghanistan. Following the assault by NATO forces, led by the United States, and the subsequent collapse of the Taliban's Islamic Emirate, a new plan was made at the Bonn Conference for the establishment of a government in Afghanistan. The outcome of the international community's coalition and collaboration with internal forces in the Afghan war was the Bonn Agreement. This agreement signaled a new era of political and social advancements for the country. At the core of the Bonn Agreement was the advancement of democracy, manifested through mechanisms like the approval of the constitution, presidential and parliamentary elections, and the Bonn Agreement underscored fundamental principles such as human rights, freedom of expression, a

free press, and women's rights. as a new system plan in Afghanistan It was poured on this basis. Among the 61 official and unofficial members, five women participated in the meeting (Dupree, 1998:211).

In the Bonn agreement, which is known the beginning of the current developments in Afghanistan, the following issues have been presented concerning the women's role in the future of the country:
(1) In the eighth paragraph of the preamble, which contains the goals of the agreement, it is stated that "with the understanding and acceptance that these provisional arrangements are viewed as the initial stride toward the formation of a comprehensive, inclusive, and pluralistic government that represents all citizens, and this arrangement and the government should not stay on the power for more than a particular time.
In the composition of the interim administration in Article (3), it is mentioned that the chairman, deputy chairman and other interim government members were appointed by the participants of the United Nations Negotiations Council on the issue of Afghanistan. The selection of these people has been made based on their individual merit and competence, and certainly, Afghanistan's ethnic, regional, and religious factors, along with the significance of female participation in the government, have been duly considered.
Hence, the cabinet included two women, with Sima Samar serving as one of the five vice presidents and ministers of a newly founded ministry called the Ministry of Women and Suhila Sediq, the first woman who reached the rank of general during the communist era, she was appointed as a minister of public health of the temporary government.
(2) In the fourth section related to the special independent commission for the formation of the emergency general assembly level in article (2) clause (c) in relation to the appointment of representatives, it is emphasized that a significant number of Afghan women participate in the emergency general assembly (Kazem, 2005: 508-507).

5.3 The position and political participation of women in the new constitution

In principle, the discourse on women's political involvement in Afghanistan or any other nation was absent prior to the establishment of a democratic or, at the very least, a semi-democratic political system. Political participation for both women and men has not been much discussed in Afghanistan. These conditions changed after the collapse of the Taliban administration and the establishment of a new political system, and Afghanistan took a step towards democratization (Kazem, 2005: 516-517).

The new government of Afghanistan drafted and approved the constitution on January 4, 2004 in line with the Bonn agreement, this movement placed a significant emphasis on advancing women's rights, marking it as a pivotal reform initiative, and in the new constitution, with the approach of bet on women's rights has dedicated several articles to this topic.

Evidently, the new constitution of Afghanistan is founded on the principles of honoring democratic values, encompassing human rights and equal citizenship rights. The preamble of the constitution articulates the aspiration of the Afghan people to establish a civil society devoid of oppression, tyranny, discrimination and violence and based on legality, social justice, protection of dignity and human rights, ensuring freedoms and basic rights. The people have approved this basic law (preamble of the law) the new constitution of Afghanistan approved, 2003-1382), in article (1) of the Afghanistan constitution, the form of government "Islamic, independent, united and indivisible" is mentioned.

This article comprises two components: the republic and Islam. The governmental foundation is rooted in the dual principles of a republic and Islam. Both of these elements have people's participation in their heart. (Manouchehri and Mazari, 2009:314). In Article (22) of the new constitution, it is emphasized that "discrimination and preferential treatment among the citizens of Afghanistan are expressly prohibited." In Afghanistan, both men and women enjoy equal rights and status under the law. Article (33) of the Constitution of Afghanistan states: "Every citizen of Afghanistan possesses the right to participate in elections and stand as a candidate." (the text of the new Constitution of Afghanistan, approved 2003-12:15). The legality of the people, 2003, in 2003 (67), which is the case of a high -profile house, has come up with the community. And it should be of the way and the other should not be the case. "Therefore, we see that there is no barrier for women to be

candidates for this post, given the general conditions. Also, in Article (72), there is no limitation for the membership of women in the cabinet, and only the condition of Afghan nationality is proposed. Article (83) of the constitution regarding the election of parliament members has again presented a special situation.

The election law should incorporate measures to guarantee an electoral system that ensures equitable and transparent representation for all citizens across the country, proportionate to the population of each province; at least two female representatives are members of the parliament. “In this article, the principle of positive discrimination has been used for the benefit of women, and on this basis, they consider a special quota for women in the parliament to support them.” Article (84) regarding the appointment of senate advisory members, which is one-third of these members, is chosen by the President and the President has also allocated half of this number to women.

6. Globalization and political development in Afghanistan after 2001

In contemporary times, globalization is recognized as a pivotal aspect of social and political existence in the history of human societies, and it is because of the influence of the growths that occur in various fields of political and social life at small scales. And macro is turning into one of the basic topics of social sciences and at the moment it has become political. This topic has gained special importance in connection with discussions such as social, political and development changes, as of now, it has not been thoroughly examined in terms of both structure and substance.

6.1 Globalization and political development from a liberal point of view

The proponents of globalization, who are labeled more liberal, believe that globalization is a course that has placed countries in the development process. Globalization has eased the feeling of isolation in the developing world and allowed the citizens of this country to gain knowledge that was not available to even the most knowledgeable people of any country a century ago (Joseph, 2003:26). Stieglitz believes that "globalization has strengthened the communication and link between countries that is often referred to as interdependence." Globalization has increased the connection and communication between countries and this connection has provided the background for the general pressures coordinated at the world level, such as ignoring the debts of some poor countries and foreign aid. It is (Joseph, 2003:26).

Stiglitz adds that the globalization of great benefits such as the success of East Asia; Especially for the sake of using business opportunities and more access to markets and technical knowledge. Globalization has contributed to advancements in healthcare and medical treatments, while concurrently influencing political developments in countries that have not developed; there is no people's government. According to Samir Amin, multipolar globalization can help social and political development and evolution, and through this process, it is poised to expand social democratization and reduce the motivations for conflict and conflict (Samira, 2001: 68).

Globalization can be transformative, and when it is done properly and specifically, so that all countries have a role in the policies that affect them, it creates the possibility for the global economy to thrive or there will be a new one to grow in it, it is not only more stable and more invulnerable, but the fruits of this growth should be shared among all in a fairer way. (Stiglitz, 2003:28). Among the things that are mentioned as the positive consequences of globalization in the fields of political development by liberal scholars is the increase in the awareness of political and social activists in different local and national fields regarding the rights and roles of It is social and political.

In other words, the role that this course has played in the resurgence of human activity and in the end political and social development occurs in a manner that fosters heightened global awareness and expanding the new political culture means paying more attention to the masses of people in all societies. Development and democracy and the subject of human rights, the effects of explanation It will be decisive and important to change the power relations in these societies, and since the issue of non-development is mainly related to the power relations in these societies, this change is probably a part of the obstacles to expansion and at the same time

political power in these societies It will be taken or reduced in some way. (Zahedi, 2003:344-37). As a result of the positive results achieved in various parts of the globe, the supporters of globalization emphasize the belief that globalization does not only lead to an increase in poverty, but also the main solution for underdevelopment. Eradication of poverty is political development and development.

According to them, instead of hindering development and increasing inequality, globalization will improve the development prospects of governments and help to reduce inequality in the globe. Due to the relocation of production and investment by multinational companies to the countries that are just becoming industrialized, a new global division of labor has been created, which increases new opportunities for development. The neoliberal saying shows that the globalization of the economy is the only real way to reduce global poverty, and here this saying emphasizes the democratization or democratization of the government in the world for the political development of developing countries.

7. Globalization and political development in Afghanistan

With the arrival of the international community in Afghanistan, it has naturally followed the process of globalization and the development of Afghanistan's political structures; this process actually has supporters on its side, which are addressed in the present research.

7.1 Civil society

After the collapse of the Taliban administration in Afghanistan, citizenship, freedom of expression, civil society organizations and political parties became the focus of discussion. Civil society refers to the set of voluntary civil and social organizations and institutions that build the foundation of a dynamic society, and from the being voluntary perspective, they are in conflict with the imposed structure of the government and commercial and market institutions. Civil society is one of the organizations that has defended most of the civil liberties of the citizens of Afghanistan and is called the leader of the protection of the rights of the people of the country. Civil society has a necessary relationship with democracy because in democracies they are the source of people's power. Power is exercised by the people, and the goals of power are the welfare and benefits of the people. Therefore, we can deduce that civil society stands as one of the most advanced institutions that has a strong and inextricable relationship with globalization and political development, and this grounds it to be more globalist and developmental than isolated.

7.2 Political parties

Afghanistan is actually a country where no political party has been created in the true sense of being the driving machine of democratic governments, so the parties that have been created and established in Afghanistan are mostly based on ethnicity. Name, direction, religion and other issues have been created and established. But besides all these issues, there are parties in Afghanistan that after the fal of the Taliban, they supported globalization and political development in the country. 3 based on changing the type of political system He knew that you can name and there are liberal parties that operate under the line of liberalism and are mostly in favor of the presence of foreign countries and political development after a decade of the Islamic Emirate regime.

7.3 Western technocrats

After laying the foundations of the Taliban administration in the country, Afghanistan actually became the place of arrival of people who lived mostly in the West and there, during the many years of war and lawlessness, killing and blood flowed in the country. And learning science in those countries, the creation of a temporary government and finally an elected government caused these people to return to the country and find a share in the political power. Because these people are considered from the cluster of people, that are in favor of globalization and political improvement of the country.

7.4 Jihadi commanders

Another group that witnessed more globalization and political development in the defeat of the Islamic Emirate, and the globalization or the presence of westerners the reconstruction of the country can be viewed as the outcome of the endeavors of this particular group, were actually the Jihadi commanders who put aside the weapons. The decision to rebuild the country and create a country that meets the global standards is a must (Noori, 2013: 6).

8. Challenges of political development in Afghanistan

From some researchers' perspective, political development is the political methods and policies that smooth the economic growth in the developing countries. Another number of researchers consider political development to be the study of new regimes, the expanded role of governments, increasing political participation and the ability of regimes to uphold order in the face of rapid changes, as well as competition between political factions' classes and ethnic groups over power and competition in social housing and they define wealth. According to others, political development is how revolutions happen, especially the conditions for replacing capitalist or socialist systems. For a developed political system, thinkers have listed many factors and many features.

Among these, democratic institutions and the improvement of civil society are among the basic and important features that have been emphasized in various theories. Multiple definitions and concepts of political development do not necessarily indicate dogmatic rules for all societies. The experiences of societies in the course of political improvement are different and special, and according to the social values, natural factors, economic system, culture and politics of each society, it is under the influence of these variables.

But what is common about the process of political development among all societies is the increase of the society's mobility and efficiency, the limitation of the government's power, the increase of civil liberties and rights, and in the final analysis, the intensification of the civil society. Some of them, with an emphasis on civil society, consider political development it represents a continuous dynamic process of interaction between the government and civil society, leading to an augmentation of wealth, per capita income; transformation of the economic structure, this dynamic interaction has contributed to an overall enhancement in the standard of living for the majority of people.

But the main discussion of political development from the perspective of political philosophy, about the rationalization of actions and goals, political, provides a meaningful rationality and establishes a reasonable level of autonomy. This issue becomes more important when individuals serve as both the means and the ultimate objective of development. Generally, from this group's perspective of pro-democracy thinkers, important indicators are the intensification of civil society and, accordingly, civil and political freedoms, people's sovereignty, civil rights, equality, law and rule of law, political participation, parties, parliament and parliamentarism are the main components and it is considered part of a developed political system.

Primary challenge of political development in Afghanistan is the lack of accurate and clear studies of political development. It can be asserted with confidence that the agents of the political system do not have an understanding of political development, indicators and theories of political development. Without an understanding of political improvement, it is not probable to attain it in theory. Therefore, there is no understanding of political development and we need to discuss this issue in an organized and systematic way.

Secondary challenge is the tribe and ethnic and tribal traditions. The theories of political development were formed in the framework of the conflict between tradition and modernity, which is an important part of tradition, ethnic and tribal harmony. If further studies show that all traditional ethnic organizations are not obstacles and challenges to political development, however, the existing tribalism and nationalism in Afghanistan is a serious obstacle to political development, because tribal and ethnic organizations are against modern mechanisms and organizations and indicators of political development. But another part of traditions can create more capacity for

development and political development. For example, some religious teachings can help us to achieve political development.

The third challenge of political development is the hostile view of political development. As in the primary studies of political development, development was considered to be the process of westernization. In Afghanistan even now, the development and political development of the westernization process is understood. This hostile view causes tribal and religious mechanisms to oppose political development and prevent it. At the same time, this issue causes a part of the force to be used against traditional mechanisms. This challenge is somewhat serious, because political development must be accepted by the people and elites.

As long as the people do not have an understanding of development and do not consider it as something against religious and tribal teachings, it is not feasible to attain political development. For this reason, the hostile view is a challenge for political development in Afghanistan. Getting rid of this kind of view can help achieve political development in the country.

In the end, it should be said that political development post World War Two has entered political and sociological studies, but it is an unknown thing in our country. No coherent study has been done on it. There is no clear understanding of it. This issue has caused us to not have a picture of it and to be unable to carry out work towards its realization. In addition to this issue, the tribal and ethnic traditions and the hostile view of our people and elites towards the category of political development have made it difficult to achieve it. (Sample, 2014: 1-2).

Afghanistan is facing various obstacles in the path of political improvement, one of the most significant of which is nationalism in this country. The existence of different ethnicities is a shaping feature in the multiplicity of the Afghan society and the state-nationalization process in this country has faced a problem. The lack of coordination and compromise of transnational identities in the framework of the country's borders and the absence of a sense of harmony has led to the failure to form a unified government according to Max and as an organization of the exclusive use of legitimate power in this country.

Post collapse of the Taliban, a good opportunity was provided to establish a national government and follow the path of development in this country, but we still see that the ethnic differences in this country continue with ethnic policies. The parties that were formed after 2001 were parties that did not pursue national and general interests, but rather pursued the interests of their nation and tribe. In this way, partisanship in Afghanistan, instead of causing the political development of the country, had more negative consequences and made the ethnic divisions more colorful (Qadiri, 2020: 2).

9. Conclusion

Political culture can be understood as people's attitude towards power, politics, government and the structure of political institutions and its mechanisms. Political culture in Afghanistan is incomplete. In simpler terms, individuals lack the essential knowledge about the political system and its workings. In a limited political culture, people do not have any expectations from the government, and the decisions of the political elites do not face the reaction of the people, while in the first world countries, people play a prominent role in controlling the behavior of the leaders of the system. In spite of the reality that the political culture in Afghanistan is limited, it is evident that in some instances we are witnessing a participatory culture.

Today, many people of the new generation and young people of Afghanistan have a political culture of participation, and many of their beliefs, red lines and ethnic taboos are violated. In this third presidential election in Afghanistan, it was seen that the political culture of some of the youth of this country is participatory. It was observed that many young people and middle-aged people participated in this process knowingly and wanted to make accurate decisions in this field, and they used their opinion with the expectations and expectations of participation. In the new constitution of Afghanistan, which was approved in 1382, the political participation of women like men was mentioned in it.

With the entry of the international community in Afghanistan after 2001 and the establishment of a new political system in Afghanistan according to the constitution, the public was granted the privilege to exercise fundamental rights and freedoms, including the right to vote, run for office, and similar entitlements. These rights and freedoms could establish the infrastructure of a democratic society. What is considered as political participation in the current society of Afghanistan and the process of citizens' participation faces a problem is the lack of opportunities for all citizens in the matter of political participation. Ideological and cultural barriers to political participation in Afghanistan are mainly derived from the traditional culture of the society.

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The Legal Regulation for the Management of the Coastal Area in Lima Island by the Traditional Law Community Unity in *Ohoi* Warbal

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Abstract
The MHA Unity in Ohoi Warbal as a community entity that lives together in an alliance as a traditional village (called Ohoi) has the right to manage the other four islands. These islands are Lik Island, Labulin Island, Waha Island, Tarwa Island and Warbal Island. Historically, these four islands belonged to Ohoi Warbal to manage. In the management of Lima Island, there are two islands, namely Lik Island and Tawa Island, which are rented as pearl cultivation sites. However, this management is not undertaken by the customary law community, thus, the research problem is how the management rights of the coastal area of Lima Island are implemented by the customary law community unit in Ohoi Warbal, and how the legal protection for management rights of the coastal area of Lima Island is implemented by the MHA unit in Ohoi Warbal. This study was conducted using empirical legal research methods with interview and observation instruments to obtain primary data. The conclusion is that the implementation of the management rights of the Lima Island coastal area by the MHA in Ohoi Warbal is undertaken by individuals or groups independently and it is used for the welfare of the Ohoi Warbal customary law community. The regulation of legal protection for the management rights of the Lima Island coastal area by the customary law community unity in Ohoi Warbal is hampered by the absence of written law in Ohoi.

Keywords: Lima Island Coastal Area, Warbal

1. Introduction

The Constitutional Unity of Customary Law Communities (hereinafter abbreviated as MHA) in Indonesia has been recognized in the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated to the 1945 Constitution of the Republic of Indonesia), and has been described in the provisions of the legal and regulatory products in Indonesia. The recognition, respect and promotion of MHA unity in the 1945 Constitution of the Republic of Indonesia, is contained in the provisions of Article 18B paragraph (2), which regulates:

> "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law."

The regulation of Article 18B paragraph (2) can be understood as constitutional recognition of the existence of the MHA unit in the context of relations with the state. This constitutional recognition is also a constitutional basis for state administrators in relation to the MHA unity. This basis is basically about how the state should treat the MHA unit. Referring to the provisions of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, there is a declaration that:

1. The state is constitutionally obliged to recognize, respect and promote the unity of the MHA, and also
2. The MHA unit constitutionally has the right to obtain recognition and respect for the traditional rights of the MHA unit.

The constitutional mandate in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia is an obligation for the state to obey and implement it in the administration of state government. In this regard, the state regulates the recognition, respect and promotion of the existence of the MHA unity by establishing laws and other implementing regulations. The regulation of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia also means that the state recognizes, respects and promotes the MHA unity as well as the original and traditional rights of the MHA unity as long as it is still alive and does not conflict with the Republic of Indonesia and statutory regulations.

Further regulations regarding MHA unity as an elaboration of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia are contained in Law Number 6 of 2014 concerning Villages (hereinafter abbreviated to Law Number 6 of 2014). Law Number 6 of 2014 specifically regulates MHA units in the provisions of Chapter , by fulfilling certain requirements, as regulated in Law Number 6 of 2014 Article 97. Furthermore, regulations regarding MHA unity are also contained in the Minister of Home Affairs Regulation Number 52 of 2014 concerning Recognition and Protection of Customary Law Community Units (hereinafter abbreviated as *Permendagri* Number 52 of 2014) which firmly and clearly regulates the substance and technicalities regarding the MHA unity and its recognition in the regent/mayor's decision.

Recognition, respect, protection and promotion of MHA unity is also found in coastal area management. This recognition, respect, protection and promotion is contained in Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands (hereinafter abbreviated to Law Number 27 of 2007). MHA units in Indonesia mostly depend on farming and fishing. Since ancient times, the ancestors of the Indonesian people have been famous in the maritime sector, exploring the seas.

The MHA unit in Maluku has a slightly different character from other MHA units in Indonesia. This is because the majority of MHA units in Maluku live and reside and carry out activities in coastal and marine areas. In fact, ownership of coastal areas by MHA units is a right that has been passed down from generation to generation since their ancestors. In the Kei Islands, the MHA unit is a community of people who live in a living association in a traditional village called Ohoi. The unitary ownership of the MHA does not only cover the coast, ownership also of islands and coasts, which are owned by an association of several Ohoi, (such as Nguhufit who has the right to Manir Island, in Kei Kecil) or ownership by one particular Ohoi. One of them is the ownership of Lima Island by the MHA unit in Ohoi Warbal. Lima Island consists of Lik Island, Waha Island, Labulin Island, Tarwa Island and Warbal Island itself.

Management of Lima Island by the MHA unit in Ohoi Warbal has many tourist attractions and pearl cultivation sites. Pearl cultivation is found on Lik Island and Tarwa Island, while on Waha Island there is a tourist spot that is well known abroad, namely the *Ngurtavur* beach tourist attraction (in Indonesian it means raised sand). In Ohoi Warbal there is also a beautiful beach which has not been developed as a tourist attraction. Coastal management in Ohoi Warbal is still managed independently by MHA unitary groups in Ohoi Warbal. So sometimes there is a conflict of interest between MHA in Ohoi Warbal and MHA in other Ohoi. The customary

law which is used as a benchmark by the MHA unit in Ohoi Warbal often cannot have binding force on other parties, for the reason that it is not a written law. So other parties feel that this customary law only applies and has binding force to the MHA unit in Ohoi Warbal, apart from that it does not apply to other parties. This writing raises legal issues to be studied and analyzed, namely:

1. How are the management rights of the Lima Island coastal area implemented by the MHA unit in Ohoi Warbal?
2. How are the legal protection arrangements for the management rights of the Lima Island coastal area by the MHA unit in Ohoi Warbal?

2. Method

Regarding to the substance of the legal issues to be studied namely examining the implementation of management rights for the coastal area of Lima Island by the MHA unit in Ohoi Warbal, this study was empirical legal research, namely research based on field data by collecting data according to samples and carry out studies of positive legal provisions and legal principles. It is due to this research is legal research in which the legal science has a special character (it is a sui generis discipline) (Philipus M. Hadjon 1997). Thus, the aim of this study was to analyze the form and legal protection in the management of the coastal area of Lima Island by the MHA unit in Ohoi Warbal.

The approach used was a statutory approach and a conceptual approach. According to Peter Mahmud Marzuki, the legislative approach is carried out by examining all laws and regulations relating to legal issues (Peter Mahmud Marzuki 2019). The conceptual approach departs from the views and doctrines that develop in legal science to find ideas that give rise to legal concepts, legal understanding and legal principles needed to complete research.

3. Discussion

3.1 The Implementation of Management Rights for the Lima Island Coastal Area by the Customary Law Community Unit in Ohoi Warbal

The term MHA comes from the term indigenous peoples. The term indigenous people in Indonesia are not translated as “original people, however it is also translated as “Indigenous People”. Because it is feared that the use of the term indigenous people could give rise to strong polemics, and could even cause or become a source of conflict. The use of the term indigenous peoples in terms of its use is considered more popular. The Alliance of Indigenous Peoples of the Archipelago in its First Congress held in March 1999, agreed that Indigenous Peoples are groups of people who have hereditary ancestral origins in certain geographical areas, and have a system of values, ideology, economics, politics, culture. , social and territorial itself (Indigenous Community Alliance of the Archipelago 1999).

The existence of the MHA unit was further described in the constitution by the founding father of the Unitary State of the Republic of Indonesia (hereinafter abbreviated to NKRI). The 1945 Constitution (hereinafter abbreviated to the 1945 Constitution) explains the recognition of the existence of the MHA unit in Explanation Number II Article 18 of the 1945 Constitution which states:
"In the territory of Indonesia there are 250 *"Zelfbesturende landschappen"* and *"Volksgemeenschappen"*, such as villages in Java and Bali, lands in Minangkabau, hamlets and clans in Palembang and so on. These areas have an original structure, and therefore can be considered as special areas.
The Republic of Indonesia respects the position of these special regions and all State regulations regarding these regions will remember the rights of the origin of these regions."

The explanation of Number II Article 18 of the 1945 Constitution above shows that the Republic of Indonesia recognizes that there are 250 *"Zelfbesturende landschappen" and "Volksgemeenschappen"*, as in Java and Bali they are known as villages, in Minangkabau they are known as hamlets, and in Palembang they are known as

clans or in Maluku (especially in Ambon and Central Maluku) is known by the term Negeri as well as other terms known in other areas. These areas have an original structure, and therefore can be considered as special areas. The Republic of Indonesia respects the existence of these special regions and all regulations made by the State regarding these regions will remember and respect and recognize the rights of origin of these regions.

With the decentralization of authority to regions, regions implement regional autonomy in accordance with the mandate of the law. The implementation of regional autonomy is closely related to the management of all available regional potential, including the sea which is an integral part of management. The authority of regional governments in the context of regional autonomy itself is reflected in the autonomous rights attached to villages or other names as genuine autonomy from local communities based on customs and traditions that are deeply rooted in that community.

The MHA unit in Maluku has a slightly different character from other MHA units in Indonesia. This is because the majority of MHA units in Maluku live and reside and carry out activities in coastal and marine areas. In fact, ownership of coastal areas by MHA units is a right that has been passed down from generation to generation since their ancestors. In the Kei Islands, the MHA unit is a community of people who live in a living association in a traditional village called Ohoi. One of them is Ohoi Warbal, which has ownership of Lima Island, if referring to Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, then as MHA residing in Ohoi Warbal they are constitutionally obliged to be recognized, respected and promoted as MHA unity by the state. and the MHA Ohoi Warbal unit constitutionally has the right to obtain recognition and respect for the traditional rights of the MHA unit.

Most of the population of Southeast Maluku Regency lives in coastal areas, so the ocean is the main priority in earning a living, and so does MHA Ohoi Warbal. This is of course inseparable from the characteristics of the islands that Maluku has, apart from that, the MHA unity in Indonesia is largely dependent on fishermen apart from farming. Remembering that since ancient times, the ancestors of the Indonesian people were famous in the maritime sector, exploring the seas. The unitary ownership of the MHA does not only cover the coast, ownership also of islands and coastlines, which are owned by an association of several ohoi, (such as Nguhufit who has the right to Manir Island, in Kei Kecil) or ownership by one particular Ohoi. One of them is the ownership of Lima Island by the MHA unit in Ohoi Warbal. Lima Island consists of Lik Island, Waha Island, Labulin Island, Tarwa Island and Warbal Island itself. Management of Lima Island by the MHA unit in Ohoi Warbal has many tourist attractions and pearl cultivation sites.

Regulations related to coastal area management are based on Law Number 27 of 2007, where in Article 1 Number 2 of Law Number 27 of 2007, coastal areas are defined as transitional areas between land and sea ecosystems which are influenced by changes on land and at sea. . Furthermore, based on Article 1 Number 1 of Law Number 1 of 2014 concerning Amendments to Law Number 7 of 2007 concerning Management of Coastal Areas and Small Islands (Law Number 1 of 2014), the Management of Coastal Areas and Islands Small is a coordination of planning, utilization, supervision and control of coastal and small island resources carried out by the Government and Regional Government, between sectors, between land and sea ecosystems, as well as between science and management to improve people's welfare. In order to improve people's welfare, of course marine factors, if utilized as optimally as possible, can be beneficial for development and Indonesian society. Article 60 of Law Number 1 of 2014 states that in the Management of Coastal Areas and Small Islands, the Community has the right to:

a. obtain access to parts of Coastal Waters that have been granted Location Permits and Management Permits;
b. propose traditional fishing areas into RZWP-3-K;
c. propose the territory of Indigenous Peoples into RZWP-3-K;
d. carry out management activities for Coastal and Small Island Resources based on applicable customary law and do not conflict with the provisions of statutory regulations;
e. obtain benefits from the implementation of Management of Coastal Areas and Small Islands;
f. obtain information regarding the Management of Coastal Areas and Small Islands;
g. submit reports and complaints to the authorities regarding losses that befell him related to the implementation of Management of Coastal Areas and Small Islands;

h. express objections to the management plan that has been announced within a certain period;
i. report to law enforcement due to suspected contamination, pollution and/or destruction of Coastal Areas and Small Islands which is detrimental to their livelihoods;
j. file a lawsuit with the court regarding various problems in Coastal Areas and Small Islands which are detrimental to their lives;
k. obtain compensation; and
l. receive assistance and legal assistance regarding problems faced in the Management of Coastal Areas and Small Islands in accordance with the provisions of statutory regulations

Thus, the community is given the right to obtain benefits from coastal area management, and indigenous communities can carry out management activities based on applicable customary law and do not conflict with statutory provisions.

To manage the Maluku coastal area, the provincial government issued Regional Regulation Number 10 of 2013 concerning Management of Coastal Areas and Small Islands (Regional Regulation Number 10 of 2013). This Regional Regulation states that in accordance with Regional Regulations concerning Management of Coastal Areas and Small Islands, autonomous regions obtain broad, real and responsible authority, which is realized in the regulation, distribution and use of regional resources. It was also explained that one of the biggest challenges in the era of globalization and regional autonomy is the rapid development of information in accordance with developments in science and technology as well as high mobilization of human resources (Elsa Rina Maya Toule, Deassy Jacomina Anthoneta Hehanussa, Vica Jillyan Edsti Saija).

Regional Regulation Number 10 of 2013 regulates that autonomous region obtain broad, real and responsible authority, which is realized in the regulation, distribution and use of regional resources. Based on Article 35 of Regional Regulation Number 10 of 2013, it is stated that the rights of indigenous communities to cultivate coastal areas and small islands which have been used for generations and sustainably are still recognized, respected and protected. The rights of local communities who are not included in indigenous communities can be recognized as long as they have demonstrated management that is in accordance with the principles of sustainable management. Marine water exploitation rights are granted to communities in coastal areas and small islands allocated for public use, except in marine conservation areas, fisheries reserves, shipping lanes and certain areas. Furthermore, the rights of coastal and small island communities in the context of managing coastal areas and small islands are further regulated in Article 36 of Regional Regulation Number 10 of 2013 as mandated by Article 60 of Law Number 1 of 2014. Therefore, there is a guarantee of management of the coastal areas and small islands of Lima Island by the MHA unit in Ohoi Warbal, Southeast Maluku Regency, which has been used for generations and continues to be recognized, respected and protected.

The sea waters around Southeast Maluku Regency are useful as life-givers because they provide a source of protein for the community. The management and use of the sea is always based on rules and values that regulate the position, function and role of each member of society in accordance with the agreements made by the Kei indigenous people who inhabit the area. The use of marine resources in a region is not only utilized by community groups that inhabit the region but also involves certain community groups outside the territorial area (Hellen Nanlohy, Natelda S. Timisela).

Likewise, on Lima Island, in terms of managing and utilizing the coast and sea, there are several tourist attractions and also pearl cultivation sites. Pearl cultivation is found on Lik Island and Tarwa Island, while on Waha Island there is a tourist spot that is well known abroad, namely the Ngurtavur beach tourist attraction (in Indonesian it means raised sand). In Ohoi Warbal there is also a beautiful beach which has not been developed as a tourist attraction. Meanwhile, coastal management in Ohoi Warbal is still managed independently by MHA unitary groups in Ohoi Warbal.

These five islands are owned by Ohoi Warbal, so they are managed by the Ohoi Warbal community to benefit the welfare of the village community. This ownership cannot be separated from history or genealogy, where the Tethol family was the landowner in Ohoi Warbal, then people from Kei Besar, such as Ohoinangan, came and

settled in Warbal. Apart from that, the ancestors who stopped at Debut had disagreements so they came to Warbal. Ownership in Warbal was not through war but because when the island was still empty, the ancestors sailed from Warbal Island to the other four islands to check the results on these islands, so that Warbal had five islands, and Debut had ten islands. The management of the five islands is given to all MHA Warbal, whether they are landowners or immigrants, who have settled in Warbal (Semuel B E Masbaitubun 2023). This is in accordance with the statement from Chief Ohoi Warbal (Village Head), that the management process has not yet been implemented. well organized, but sasi had previously been carried out (Semuel B E Masbaitubun 2023). Sasi is local wisdom, in the form of a tradition in carrying out efforts to conserve the environment, natural resources and the ecosystem within it, which is carried out traditionally, and has been continuously implemented from generation to generation until now. The Sasi tradition is a customary law that prohibits the harvesting of certain natural resources in customary areas, as a form of nature conservation and protecting the ecosystem within it. Sasi is a customary regulation that prohibits people from taking specified natural resource products in a customary area within a certain period of time until the ritual of opening the Sasi. This prohibition aims to protect the environment, natural resources and ecosystems within it from extinction so that they can still be enjoyed by the following generations. Within this time period, it is hoped that living creatures will have sufficient time to reproduce well so as to produce more harvests (Benjamin Carel Picauly, Jemmy Jefry Pietersz, Victor Juzuf Sedubun, Vica Jillyan Edsti Saija).

Currently the Ohoi government is currently partnering with the World Wide Fund (WWF), an international non-governmental organization that handles issues regarding conservation, research and environmental restoration, and is also collaborating with the Maluku Protestant Church Classis and coordinating with the District Government's Legal Department to designing village legal products that are related to regional management. Collaboration was built between the Ohoi government, together with the church, WWF and universities (Tual State Fisheries Polytechnic), to sow sea cucumber seeds. According to Chief Ohoi, the distribution of seeds must be organized using sasi so that it is maintained, with the first step being outreach to the community regarding sasi, so that it can increase community knowledge in managing natural resources (SDA) in the form of sea cucumbers whose seeds will be distributed, so that the community can look after them. until harvest time. As for sasi in Ohoi Warbal, it is carried out by three hearth stones known in traditional villages, namely elaborating between custom, government and church.

The utilization of the results on Lima Island is carried out freely by all MHA Warbal, for the sake of their welfare. The other four islands are not inhabited except for Warbal and there are immigrants in Tarwa which is a place for pearl cultivation. Apart from sea products in the form of sea cucumbers, previously there were also many sea products in the form of jelly, lola, seven eye, bia and fish (Manu Renjaan 2023). The products used by MHA Ohoi Warbal include coconuts (produced by two islands), apart from that there are three islands which are used for gardening. On average, all five islands have good marine products, such as sea cucumbers, fish, pearls and marine products as well as a very famous emerging sand tourist attraction (Semuel B E Masbaitubun 2023). Currently, this tourist attraction is managed by the church to help in building the Warbal Congregation Pastory.

3.2 Rules for Legal Protection of the Management Rights of the Lima Island Coastal Area by the Customary Law Community Unity in Ohoi Warbal

Regarding to the cultural roots of the Maluku people, which are a unit of indigenous communities, their inherent authority to manage the sea from a cultural perspective, better known as customary rights, requires organic regulations under the law that are able to answer significantly and firmly regarding social phenomena. so that they are able to regulate their marine area management authority, and at the same time avoid management disputes which often arise as quite complex problems. This is because most of the area consists of sea areas that separate one land area from another, which is different from almost all other areas which have land areas that are wider than sea areas (Maluku Provincial Government 2004).

Our national legal instruments regulate the protection of coastal area management, where the rights, obligations and roles of the community are regulated in Law Number 27 of 2007, after which it was amended by Law Number 1 of 2014, which is in Article 60 of the Law. -Law Number 1 of 2014 states that in the Management of

Coastal Areas and Small Islands, the Community has rights, such as carrying out activities for managing Coastal Resources and Small Islands based on applicable customary law and not in conflict with the provisions of statutory regulations; obtain benefits from the implementation of Management of Coastal Areas and Small Islands. The latest changes regarding protection arrangements for coastal area management can be found in Law Number 11 of 2020 concerning Employment Creation (Law Number 11 of 2020), where in one of the regulations on community obligations it is stated that implementing coastal area management programs and small islands agreed at the village level. In this way, villages are given authority by attribution to implement agreed programs relating to coastal area management.

In regional legal instruments, related to the protection of the management of the Maluku coastal area, the Provincial Government issued Regional Regulation Number 10 of 2013. This Regional Regulation states that autonomous regions have broad, real and responsible authority, which is manifested in the regulation, distribution and use of resources. regional power, where based on Article 35 of this regulation it is stated that the rights of indigenous peoples to cultivate coastal areas and small islands which have been used for generations and sustainably remain recognized, respected and protected. The rights of local communities who are not included in indigenous communities can be recognized as long as they have demonstrated management that is in accordance with the principles of sustainable management. Marine water exploitation rights are granted to communities in coastal areas and small islands allocated for public use, except in marine conservation areas, fisheries reserves, shipping lanes and certain areas. Furthermore, the rights of coastal and small island communities in the context of managing coastal areas and small islands are further regulated in Article 36 of Regional Regulation Number 10 of 2013 as mandated by Article 60 of Law Number 1 of 2014.

In line with this, in accordance with the mandate of Law Number 6 of 2014 concerning Villages (Law Number 6 of 2014), the Village Head and Village Consultative Body (BPD) or other designations can make Village Regulations which constitute the legal and policy framework in the implementation of Village Government and Village Development. One of the things that can be regulated in Village Regulations is regarding the management of coastal areas, this is important considering that the use of resources in coastal areas can result in resource use conflicts and dangers for the coastal environment that must be faced by the people living around them, it is expected that this regulation will also protect coastal areas.

Regarding the management of coastal areas in Ohoi Warbal in terms of their use, it turns out that they are still managed independently by each person or MHA unitary groups in Ohoi Warbal. So sometimes there is a conflict of interest. The customary law which is used as a benchmark by the MHA unit in Ohoi Warbal often cannot have binding force on other parties or from outside Warbal, for the reason that there is no written law. So other parties feel that this customary law only applies and has binding force to the MHA unit in Ohoi Warbal, apart from that it does not apply to other parties.

According to historical accounts, there was a conflict over the management of Lima Island with neighboring Ohoi, because they claimed ownership of the other four islands, but it ended over time without any resolution process (Semuel B E Masbaitubun). For example, the problem between Warbal and Wab, where people from Wab made sasi on Lik and Tarwa Islands, which are pearl cultivation areas, then the sasi media was revoked by the Warbal people and provided provisions for them to pay a fine in the form of lela. However, until now the sasi has been left until it is damaged and there is no further resolution. Even though there are no Ohoi Regulations or Village Regulations that regulate the management of coastal areas, their protection has so far been carried out by sasi, which still uses customary sanctions, namely paying lela. With the hope that casual payments will be accommodated in the regulations so that they are strictly binding on everyone, both MHA Warbal and everyone who comes from outside Warbal and carries out activities on the Lima Island petuanan. Apart from that, there was a conflict with Dullah Island in the past, and then it was agreed that Lima Island belonged to Warbal and Dullah was given the right to eat (Manu Renyaan 2023).

Recognition by MHA who live in Kei Besar and Kei Kecil, that Lima Island is under Ohoi Warbal Ownership, but up to now there is no Ohoi Regulation for the management of Lima Island. If regulations are made later, the focus will be on managing marine resources, which includes the five islands. With these regulations it is hoped

that they can prevent damage caused by outsiders from Ohoi Warbal. Thus, these regulations are generally binding on anyone who carries out activities on the Lima Island petuanan. Apart from regulations to prevent undesirable actions, regulations will also be made using customary sanctions for violators, such as lela fines (ancient cannons), and also other fines, thereby providing a deterrent effect for violators and preventing repeat violations. For this reason, cooperation and synergy with the District Government are highly expected.

4. Conclusion

Dealing with the description above, the conclusions of this research include:

1. The implementation of the rights to manage the coastal area of Lima Island by the customary law community unit in Ohoi Warbal is undertaken by individuals or groups independently to be utilized for the welfare of the Ohoi Warbal customary law community. Currently, the Ohoi Government is building cooperation with the World Wide Fund (WWF), the Church, and the Regional Government of Southeast Maluku Regency for the management of coastal areas on Lima Island.
2. The regulation of legal protection for the management rights of the coastal area of Lima Island by the customary law community unity in Ohoi Warbal is hampered by the absence of written law in Ohoi, which can result in a conflict of interest regarding the management of Lima Island. The regulation has used to Provincial Laws and Regional Regulations.

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The Accelerated Military Withdrawal of the United States from Afghanistan and its Turn to East Asia: Changing the Path of Forced and Political Hegemony

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Abstract
In continuation of Obama and Trump's strategy, Joe Biden's government considered America's withdrawal from Afghanistan as one of its foreign policy priorities and quickly withdrew the country's soldiers from Afghanistan by September 2021. The objective of this article is to analyze the worldwide strategy of the United States in leaving Afghanistan and the strategic turn to East Asia. This article answers the question with a descriptive-analytical method, why did America end its 20-year military presence in Afghanistan after bearing large financial and military costs? In response to the mentioned question, this hypothesis has been proposed that "the rise of China's economic and military power in the shadow of the transfer of global security responsibility to America poses an unprecedented threat to America's perceived global hegemony and the international order." Hence, from the American decision-makers perspective, the withdrawal of the military forces of this country from Afghanistan is a strategic opportunity to move to East Asia and create a new coalition in the Asia-Pacific region in terms of control. "The most significant finding of the research is that, in order to maintain its hegemonic position against China's threat, the United States is trying to divide the huge burden of global security responsibility among its partners, using a forced hegemonic strategy with a focus on East Asia. The method of data collection was library and using specialized magazines and reliable internet resources.

Keywords: Afghanistan, China, United States, Demilitarization, Forced Hegemonic Path

1. Introduction

In July 2018, the Trump administration started negotiations with the Taliban authorities in Doha in order to withdraw US troops from Afghanistan, and these negotiations concluded in February 2020 with the Doha Agreement[1] on guarantees against terrorism and the withdrawal of forces. An American from this country died in September. 2021, the government should withdraw all American military forces from Afghanistan based on this agreement.

The withdrawal of U.S. troops from Afghanistan coincided with the resurgence of the Taliban in reclaiming power can be analyzed as a strategic issue from various angles. After the incident of September 11, 2001, Afghanistan was transformed into a model for the spread of the interventionist strategy in the global strategy of the American government.

The government of George Bush considered Afghanistan to be the center of the spread of terrorism, and by creating a relationship between the two variables of "terrorism" and "failed governments,"[2] he assumed the direct responsibility of fighting terrorism in Afghanistan.

America started state building in Afghanistan with the premise that state building could be the basis of accountability and a new order in this country. But the geopolitical, political and ethnic structure characteristics in Afghanistan caused the governments of George Bush, Barack Obama and Donald Trump to be caught in Afghanistan for years.

America's military occupation in Afghanistan imposed billions of dollars in military costs along with lost opportunities on the economy of this country and did not provide a suitable space for China to emerge as a strategic rival of this country in the world. The long-term and attrition American military presence in Afghanistan provided a time to rethink America's foreign policy priorities and recognize new threats in America's security strategy.

In this regard, Asia Pacific, as the most important center of threat against American hegemony, is the decision-making apparatus of this country is giving special attention to the subject, aiming to identify and control the threat posed by China as a "strategic rival[3]" of this country. Despite the extreme polarization of politics in America, the two main parties of this country, i.e. Democrats and Republicans, have the same point of view regarding the threat of China and the need to control it.

This article examines the issue of leaving Afghanistan and America's turn to East Asia from the hegemony's perspective and as an attempt to revive America's global influence. The main question of the article is why America ended its 20-year military presence in Afghanistan after bearing large financial and military costs.

The hypothesis of the article is that "China's powerful economic and military rise in the shadow of the transfer of global security responsibility to America has posed an unprecedented threat to America's perceived global hegemony and the desired international order of this country." Therefore, in the perception of American decision-makers, the withdrawal of this country's troops from Afghanistan is a strategic opportunity in the field of foreign policy to turn to East Asia and create a new coalition in the Asia-Pacific region. China provides the threat of trolls.

2. Research background

In relation to the withdrawal of American forces from Afghanistan and the issue of turning to East Asia, a few scientific-research articles have been written. In the article called "America and the reconciliation strategy in Afghanistan; from Kaari Neoconservatism to Neo-Hamiltonism. (Hamidi et al., 2022: 29-59), America's

[1] 2020 Doha Agreement
[2] Failed State
[3] Strategic Competitor

presence in the reconciliation process in Afghanistan during the last two decades has been analyzed under the headings of intervention, reconstruction and backwardness strategies, and the government's policy should mean an effort to revive the return of America.

In the article "America's withdrawal from Afghanistan; Reflecting on the rebalancing strategy" (Soleimani Pourlak, 2022: 233-258), the author discussed the issue of the American military withdrawal from Afghanistan in the framework of "balancing" and believes that America's war of attrition in Afghanistan It has led to the analysis of the strategic power of this country. This timely issue revived the debates about redefining the prioritization of threats in America's foreign policy. These discussions concluded with the conviction that the fate of the world will not be shaped in the Middle East but rather in the Asia-Pacific region. And America's effort to play an effective role in the Asia-Pacific regional order is understandable.

In the article "Strategy of turning to Asia; The rise of China and America's national security policy in East Asia (Jamshidi and Yazdanshenas, 2020: 91-116), the authors have discussed the issue of America's turn to East Asia from the perspective of the wheel of power and by examining the changes The power of the United States, they believe that it is the same time the increasing decline of the relative power of America and the increasing growth of the relative power of China, and the time when these two countries are getting closer to the turning points on their power cycles, is the main reason for the priority of the Asia-Pacific region.

In the article "Policy against America and China in Asia and the Pacific (Ayesha Zafar, 2022: 1-13)", the author believes that China's geopolitical dynamism has caused the United States to become a superpower after C from Afghanistan, Change the focus to the Asia Pacific region. This transfer of power, with the emergence of China as a responsible key player and the United States playing a more active role, has opened a new arena for the future of Asia-Pacific geopolitics. Both countries in the Asia-Pacific region are striving to shift the balance of power in their favor. In relation to America's withdrawal from Afghanistan and turning to East Asia, many articles have been written.

The most significant difference among the present article and the previous articles is the approach of the article to this topic, which tries to analyze it from the perspective of forced hegemony. This is the first time that America's behavior in the discussion of leaving Afghanistan and turning to Asia will be discussed from this analytical angle, which in turn can be considered as an innovation of the article.

3. Theoretical framework: from "hegemonic stability[4]" to "forced hegemony[5]"

Hegemony in international relations refers to the extraordinary ability of an actor in shaping the international system through compulsory and non-compulsory instruments. According to "Len Clark," the discussion of hegemony mainly revolves around two main concepts: power and leadership[6] (Clark, 2011: 18-19). In realist literature, hegemony is usually mistaken for unipolarity; those who equate hegemony with unipolarity emphasize the superior material power of the hegemony and ignore the leadership element of hegemony. According to this formula, hegemony and unipolarity are synonymous with superior material power; while this approach to hegemony is rejected by many theoreticians. Material power must be able to give leadership power to the enemy.

Leadership power refers to abilities such as "soft power" or ideological power that can make the behavior of others under the influence of one's own normative and value system (Fettweis, 2017: 432). From these theorists' perspective, hegemonic power tries to combine hegemonic terms, i.e. "superior power" and "leadership." In fact, the hegemony power as a superior and dominant power, by creating rules, norms, institutions and international regimes in the framework of the principles of liberalism, has the task of preserving the liberal world order and towards that. that the enemy takes the most benefit from the existing situation. It opposes any change in the international order with all its might (Schubert, 2004).

[4] Hegemonic Stability Theory
[5] Coercive Hegemony
[6] Leadership

From this theory perspective, the existence of a hostile power is an essential and not a sufficient condition for maintaining stability in the liberal international economy. In this regard, the "hegemonic stability theory" used by some political thinkers such as Charles Kindleberger[7], Stephen Krasner[8], Robert Gilpin[9], and Robert Cohen[10] to explain the mechanisms of the new economic order in the world after World War II presented, argues that the international system, it is high time that an "individual-only" government, as the dominant power in it, can solve the problems of collective action and provide expensive global public goods, according to its political, military, economic and cultural capabilities, security, economic, life fields environment, health[11], etc., which is necessary for the dynamics of global trade.

The theory of hegemonic stability with a benevolent hegemonic approach claims that the hegemonic power does not have to accept the costs of public goods in order to pursue its short-term benefits against other power centers; but what is important is the long-term benefits of the hegemonic power in maintaining the stability of the international system and strengthening hegemony.

According to Kindleberger, hegemonic leadership is responsible for providing "public interests" in the international system and must prevent actions against "public interests." Such a function can lead to the establishment of hegemony in the long term (Stokes, 2018: 7).

Contrary to Kindleberger, Gilpin presents the argument of forced hegemony and argues that hegemony provides public goods, but it has little tolerance for governments that try to free ride. Therefore, there is no Kindleburger-style transfer of resources from Hajmon to the international community at all, and the provision of public goods is desirable for Hajmon when other states are willing or able to pay for them.

The significant point is that the use of coercion to cover the costs of public goods may gradually reduce the legitimacy of the hegemon's power (Schutte, 2021:8) and lead to an increase in the gap between it and the suspect.

In the conditions that the financial obligations of the hegemonic power do not have much proportion with its economic capacity, moving towards forced hegemony is the most important security strategy to prevent the decline of hegemony.

The frequent costs of benevolent hegemony (non-compulsory) and the revelation of the inability of the host power to bear these costs will inevitably push the host power towards a forced approach in order to be able to transfer some of the security responsibility. yeti to guarantee the continuation of his hegemony to his allies. Forced hegemony is the last chance of the hegemonic power to preserve hegemony.

At this stage, the power of the hegemon loses its past generosity and makes non-stop efforts to preserve its hegemony by making its allies share in the costs of the hegemony. The effort to maintain the hegemonic stability since the Second World War has imposed a heavy financial burden on the American economy and the balance of the budget of this country, especially after the war in Afghanistan and Iraq and the cost of economic incentives during the Yes, Obama's republic is messed up and has an unprecedented budget deficit imposed on this country and increased its foreign debts more than before.

For this reason, in the Trump era, with the aim of lightening the financial burden of maintaining hegemony, the US government expressed its objection to allies and countries that are used to free riding. In fact, Trump's foreign policy was based on two principles: fewer international costs and more domestic benefits (Marchetti, 2017).

[7] Charles P. Kindleberger
[8] Stephen D. Krasner
[9] Robert Gilpin
[10] Robert Keohane
[11] For example, at the beginning of the spread of the Corona virus, the mass production of masks, ventilators, oxygen capsules, special clothes, and corona identification kits had become a global problem.

In fact, America has been forced into a period of hegemony since Trump's arrival. During this period, this country has seriously wanted to reduce the security responsibility of America in the world and to have its allies in NATO, East Asia and the Persian Gulf share in the costs of international security. In this framework, he started negotiating with the Taliban leaders to leave Afghanistan and as a chain of some international agreements such as the Pacific Trade Agreement[12], the American Free Trade Agreement. The North, known as NAFTA[13], withdrew from the Paris Climate Agreement[14] and at the same time exerting pressure on NATO member countries increased their share from the military budget of this military union for the fair sharing of the wealth of this military union[15], and South Korea and Japan also agreed to increase the costs of hosting the military forces.

While the United States remains the most powerful country globally, possessing essential components of power, some political researchers argue, based on available evidence, that the hegemony of America is declining and the actions taken by America forced hegemonic framework to maintain its hegemonic position and control China As a hegemonic competitor, it will only accelerate this decline, but it cannot prevent this decline.

The US Information Council, which is an official agency of the US government and one of the 16 information agencies, has predicted that by the year 2030[16], there will be no enemy power in a report published under the title of Global Trends in 2030. There will not be a future security system based on balance in the world (National Intelligence Council, 2012). Emanuel Wallerstein, an American theorist who believes in the irreversible decline of American hegemony, believes that a world without hegemony will be created earlier than 2030. (Wallerstein, 2014: 19)

4. The history of the presence of American soldiers in Afghanistan

After September 11, 2001, with the establishment of neoconservatives in America under the leadership of Bush, an aggressive policy with the aim of removing international challenges to America's interests as a priority to preserve hegemony was on the agenda of the political agenda.

From the neo-conservatives' perspective, America must be able to respond properly to the current global crises and the disturbing elements of the existing system in order to establish its hegemony. For this reason, during the Bush era, the fight against international terrorism in the form of the doctrine of "preemptive war[17]" became the top priority of America's foreign policy. There was no difference between the terrorists and the governments that sheltered them (the axis of evil) in the strategy of the preemptive war, so Afghanistan and Iraq were the two main targets of the preemptive war in 2001 and 2003, respectively.

From the American government perspective, failed governments have the greatest capacity for terrorism, so during the post-war period, state building became one of the most important strategies of America in this country. The Bush administration pursued the fight against terrorism and peace building through state-building in Afghanistan.

The implementation of this strategy in Afghanistan was successful in the first stage, which was accompanied by the military defeat of the Taliban, but it failed in the final stage, which aimed to create stability and help Afghans to create a modern state. (Rahman, 2018: 3). In fact, all subsequent American governments were caught in the wake of the Afghanistan war, from which America's exit was not easily possible. For this reason, it is called "endless war" (Walt, 2019).

The extensive military presence of America in Afghanistan and the start of the state building project imposed huge military costs on the economy of this country. The reputable Watson Institute of Brown University, in

[12] Trans-Pacific Partnership
[13] North American Free Trade Agreement
[14] Paris Agreement
[15] In this regard, Jens Stoltenberg, the Secretary General of NATO, announced in November 2019 that NATO members agreed to increase the defense costs of the European Union and Canada from 300 to 400 billion dollars by 2024. (NATO, 11/29/2019)
[16] 2030 Global trends
[17] Preemptive War

relation to the military expenses of the United States in the war in Afghanistan, stated that from 2001 to 2020, the United States has spent more than 2300 billion dollars to fight terrorism in this country (Crawford and Lutz, 2021).

Considering the costs incurred, the next president, that is, Obama could not stop the process of government building in Afghanistan, nor was he inclined to bear the costs incurred. It was in such conditions that the Afghanistan file was handed over to Donald Trump, the next president. Trump believed that America should avoid making troublesome foreign commitments so that the American economy does not get hurt.

The most important element of Trump's strategy in Afghanistan was the transfer of responsibility to the people of Afghanistan, especially the Taliban, as the only possible option, which was achieved within the framework of the Doha Agreement. In the end, Trump announced that state building in Afghanistan will never be successful; he believed that it is the duty of the people of Afghanistan to take their own future and America will not build a nation in this country again.

Hence, following unconditional negotiations between the United States and the Taliban, the Doha Agreement was signed in February 2020. In this agreement, the representatives of the stable government of the Islamic Republic of Afghanistan were removed and the Taliban, without being officially recognized by the US, was handed over to the Afghan Affairs Department. The analysis of the spirit of the Doha agreement is an indicator of America's evasion of responsibility in Afghanistan and the transfer of responsibility to the group that Bush invaded Afghanistan 20 years ago to destroy them.

The non-threat of the national security of America from within the soil of Afghanistan in the different parts of this agreement, especially the 5 clauses of the second part, is the most important concern of America and another of the international responsibilities and duties of the enemy to fight against terrorism and threats. There is no global news. (2020, State Govt.)

Biden's government, which completed the official withdrawal of American soldiers from Afghanistan in its own name, denying the goal of state-building in Afghanistan, announced that America was pursuing two main goals in Afghanistan, which it has succeeded in: first, killing Ben Laden, to eliminate al-Qaeda; but "nation-building in Afghanistan never meant anything to me" (Washington post, 2021).

5. The perspective of American hegemony and China's threat

5.1 China's rise and America's strategic turn to East Asia

China faces the most hegemonic tendencies in the Asia-Pacific region. Of course, the strategic competition between China and America is more from the Asia-Pacific region. The change in America's Middle East strategy from a military presence to a balance from afar[18] and focusing on East Asia has changed the security equation in this region. In this regard, China seeks to fill the existing security gap by asking for the opportunity and concluding military contracts with the countries of the region, especially Arabia and the United Arab Emirates.

Although China's view of the region is economic rather than security, and in terms of security, it still has a habit of free riding. And it is not expected that he will involve himself in the security equations of the Persian Gulf region in a short period of time. Today, China is mainly an economic player rather than a political or security player, as well as the United States in the first half of the 20th century, although it was the world's first economic power, but compared to Britain, it lacked the ability to play a political role.

Therefore, in the short term and at the tactical level, China tries to behave in the foreign policy, even if possible, within the framework of the rules written by the United States. A good illustration of this is the country's compliance with the US sanctions regime against Iran and Russia.

[18] Offshore balancing

This has been a topic that many of Iran's decision makers have been completely unaware of. The statesmen of Iran like to see the power play in the international system in the framework of their ideological thoughts and on this basis they expect China to start a behavior that is more anti-American than anything else.

In the long term and at the strategic level, it seems that with the economic and military development of China, the playing field will change for this country and, of course, the rules will also be played around the axis of balance with America and "partnership in the axis of hegemony."

In other words, during the 1990s, the United States accepted China as a trading power in the hope that it would become a responsible stakeholder at the international level and a multilateral regime at home by integrating it into the liberal world order. Be heartbroken; however, in 2018, the United States abandoned this hope and prepared to confront China from a geopolitical and economic point of view (Mastanduno, 2019: 52).

During the past years, China has narrowed its distance with America in terms of military and economy. China's military budget has reached 252 billion dollars since 2011 with a growth of 76 percent, while the US military budget decreased by 10 percent during this period and reached 778 billion dollars this year (Sipri, 2021: 4).

China's military expenditures in 2021 will reach 293 billion dollars with an increase of 4.7% this country, with a share of 14 percent of the world's military budget, still ranks second after America with 800 billion dollars (38 percent). China's military expenses have grown for 27 consecutive years (Sipri, 2022: 3).

In terms of military, China is rapidly strengthening its air force and navy by producing stealth fighters, ships and new nuclear submarines in order to increase its competitive power with America. The US Department of Defense estimates that the number of submarines carrying Chinese ballistic missiles has increased from 1 submarine in 2001 to 6 submarines in 2021, and it is predicted to increase to 8 submarines by 2030 and reach 10 submarines by 2040. China's nuclear attack submarines 6 submarines in 2001 to 9 submarines per year 2021 has increased and it is predicted to reach 12 submarines by 2030 and 16 submarines by 2040.

And the number of Chinese diesel attack submarines has increased from 51 submarines in 2001 to 56 submarines in 2021, and the number of this weapon platform is expected to increase to 55 by 2030 and to 46 submarines by 2040, because Beijing is putting more emphasis on its nuclear submarine capabilities.

These emerging nuclear submarines include Shang-class nuclear[19] attack submarines and Jin-class ballistic missile[20] submarines equipped with 12 JL-2 ballistic missiles each and air dragons to trick them into killing. Superficial tees are difficult (Chapman, 2022: 6).

Economically, China's gross domestic product is growing rapidly, so that it has grown from about 1200 billion dollars in 2000 to about 20 thousand billion dollars in 2022, that is, about 1700 percent (Statista, 2022). While the gross domestic product of the United States has reached from about 10,200 billion dollars in 2000 to about 25,000 billion dollars in 2022, which has grown by 150 percent (Statista, 2022).

The British consultancy center for economic and business research[21] has predicted that China's gross domestic product will grow by 5.7 percent per year until 2025 and then by 4.7 percent per year until 2030, and this country will be able to grow by 2030 with Taking something from the economy America should become the first economy in the world (Ceber, 2022).

Considering that economic power can be converted into political and military power, China has the potential to not only challenged the economic supremacy of the United States but also its military power in the future. The most significant factor altering this trend can be seen in the global financial crisis of 2008-2009. After this crisis, China became economically stronger and narrowed its distance with western countries.

[19] Shang-Class Nuclear-Powered Submarine
[20] Jin-Class Ballistic Missile Submarine
[21] British consultancy Centre for Economics and Business Research (CEBR)

In terms of export value, China overtook Japan as the leading Asian exporter in 2004, i.e. three years after joining the World Trade Organization, and in 2007 overtook the United States and in 2009 overtook Germany and became the world's largest exporter It was changed (WTO, 2015).

In 2020, China has maintained a meaningful gap with America with exports of about 2500 billion dollars (Statista, 2021). Foreign direct investment[22] has played a significant role in the economic development and social transformation of China and has turned this country into a global factory. According to available statistics, in 2020, despite the Corona crisis, China became the largest recipient of capital in the world. This year, despite a 42 percent decrease in foreign direct investment in the world, it reached 163 billion dollars in China with a growth of 4 percent (Unctad, 2021).

The upward trend of foreign investment in China after Mao and with the open economy policies of Deng Xiaoping, the architect of China's reforms, has reached a level from 1.43 billion dollars in 1984 to 173.5 billion dollars in 2021. Over the past few decades, the influx of foreign investment has propelled China to become the second-largest economy in the world (Scrmp, 2022).

One of the most important effects of China's economic power is the "Belt and Road" initiative, through which China is trying to include more than 100 countries in four different continents in its economy. Some researchers have tried to introduce China's "Belt and Road" initiative as a new "Marshall Plan" through which this country is trying to gain military, political and economic advantages around the world.

The Marshall Plan and the Belt and Road Initiative were presented in a situation where the world system after the Second World War and the 2007 World Financial Crisis has been dysfunctional, imbalanced and has a "global power vacuum" along with "hegemonic opportunities." (Mirnezami and Gholizadeh, 2023: 16).

Through leveraging its substantial economic power and advantages, Beijing has managed to enhance its influence, even in the Asia-Pacific region, extending its reach even over the United States. Beijing's institutional approach, such as the creation of the Shanghai Cooperation Organization and the Asian Infrastructure Investment Bank[23], are considered the most important steps of Beijing in increasing its regional influence in challenging the American system (Ramezanpour Shalmani and Hedayati Shahidani, 2019: 83).

China's economic power has been the basis for increasing its political influence in different regions of the world, especially in the strategic region of the Middle East. In this regard, the successful mediation of China between Iran and Arabia (after 7 years of political conflict between the two countries) and the decision to reopen the embassies, after warning of the dangers of isolation to Iran in the framework of the visit of the president. the country to Saudi Arabia in December 2022 and implicit support from the claim of the United Arab Emirates about the three islands can be seen as a sign of China's increasing political influence in the region and a sign of the weakening of American hegemony.

5.2 The United States and the strategy of maintaining hegemony

Usually, the end of hegemony is marked by a "final crisis",as the rival state begins another period of material expansion. However, before this happens, there is a relatively long period of "dual power" between the rival centers. There are different scenarios as to what stage of the hegemonic cycle we are in.

The first scenario is that China will replace the United States as an emerging adversary. Each hegemonic cycle is started by a capitalist state with a larger scale (eg population, geography) than the previous period. Each hegemonic cycle has been noticeably shorter than the previous one. Each enemy was a naval power that could control the world's most important maritime trade routes. All these can strengthen this scenario that shows China as the next aggressor. It is noteworthy that historical hegemony has consistently played a role in bolstering the

[22] Foreign Direct Investment (FDI)
[23] Asian Infrastructure Investment Bank

power of succeeding hegemony, offering them financial support. Similarly, the United States has provided financial support to China through foreign investment and technology transfer.

In the second scenario, there is also the possibility that the history of hegemonic cycles has come to an end. In this scenario, the United States has become very powerful and is able to integrate rival centers into its global capital network.

The third scenario is that a rival system is emerging in East Asia. Although this scenario considers America's hegemony to decline, it still considers this country powerful enough to be able to maintain a balance with its emerging rival. In this scenario, the future of the international system can be examined based on the balance of power system or the bipolar system between China and America (Theme, 2019: 2).

According to these scenarios, China considers the threat against America's interests to be serious, so with America's withdrawal from Afghanistan, this country will find more capacity to strengthen military coordination with its allies. In fact, withdrawing from Afghanistan and transferring responsibility to the Taliban has been justified due to creating more opportunities to focus on other areas of concern, especially the competition with China in the Indian and Pacific regions. Today, the "China threat theory" which considers the Chinese aggressor in Asia as a threat to the liberal world order (Soleimani Pourlak, 2022: 240).

The most important challenge is the American foreign policy. For this reason, on September 15, 2021, i.e., about a year after the withdrawal of American forces from Afghanistan, with the aim of maintaining hegemony and strategic focus on East Asia, AUKUS[24] agreement should be signed with the membership of America, England and Australia is the foundation.

This agreement seeks to increase the "security and defense capabilities" of the members in East Asia with the aim of placing China in a strategic dilemma. In fact, the member countries of this agreement pursue three main goals.

1. Preservation of America's hegemony through the strengthening of security alliances in the Asia-Pacific region and economic empowerment of the United States against the rapid emergence of China in the region.
2. Australia's growing awareness of China's threat, which prompts this country's urgent need to join the nuclear submarines club
3. The more noticeable international security presence of Britain and the creation of the vision of "Global Britain" as the main player in India and Oceania after Brexit. (Panda and Swanstrom, 2021: 19).

Also, the United States after leaving Afghanistan in the framework of the agreement (QUAD[25]). Or the Quadrilateral Security Forum[26], which was established in 2007 with the membership of America, Australia, India and Japan to ensure security in the Indian Ocean and the Pacific Ocean, called the largest joint campaign Malabar[27] 2021 in the Bay of Bengal with 25 thousand marines and using A ship and a submarine to simulate the occupation and control of the islands of the western Pacific Ocean.

America's attention to these maneuvers and security alliances shows how much the concentration of the American army has changed since the invasion of Afghanistan two decades ago. With this campaign, which was carried out with the aim of countering China's territorial ambitions, the United States was looking for some reassurance to its allies who had doubts about America's military commitments after the fall of Kabul. (Gale, Wang and Norman, 2021). Preserving the hegemony of the United States hinges on its ability to effectively address the security concerns facing the nation.

After the Second World War, America, by accepting the costs of hegemony, carried the main burden of preserving the existing liberal order and provided strong security for its allies and even its competitors; While

[24] AUKUS
[25] Quad
[26] Quadrilateral Security Dialogue (QSD)
[27] MALABAR 2021

today the heavy costs of maintaining hegemony on the general budget of America are felt more than in the past, and the United States, realizing this issue and in order to reduce the costs, put the strategy of forced hegemony on its agenda. It is given that in that hegemonic alliance must be responsible, part of the costs for maintaining the existing order.

From America's point of view, there are two countries in the international system: they are either "hegemonic allies" or "hegemonic rivals." In spite of this, at least in the short term, the United States will not accept any state, even its closest allies, as a hegemonic "partner" because from America's point of view, it is an indivisible axis of hegemony and this is America's will. is that the international agenda and the rules of international politics will be born.

In such a space, it will be possible that China, as a strategic competitor of America, in the long term, with the rapid increase of its military and economic power, wants to be a partner in the axis of the hegemony based on the rules of politics. The international community is no longer based on the individual will of America, but on the basis of bilateral will is defined and China's will become one of the defining elements of the international agenda.

The report of the National Defense Strategy Commission[28], taking China's threat seriously and acknowledging the gradual decline of American power, stated that "America is facing a severe crisis of national security and national defense, because the military advantages of the United States will disappear and the strategic dimension will be it becomes more and more threatening.

If the United States does not show more urgency and innovation in its response to this crisis, if it does not take decisive steps now to restore its military advantages, the damage to America's security and influence could be devastating" (USIP, 2018:99) China's huge economic benefits thousands of projects are being implemented in different parts of the world, so China's economy is highly vulnerable to global crises. Therefore, entering into security conflicts will greatly affect the global economic interests of this country.

Since the military capability is based on the economic infrastructure and China is growing faster than America in terms of economy, technology and technology, so it is expected that in the future, it will decline at the same time. As America's power grows, or in other words, the power of this country grows. Due to China's rapid growth, this country can also become a powerful political and security player in the international scene, and the international developments revolve around the axis of bilateral balance. Although America tends to enter this country into a security game in order to control China, and to repeat Russia's quagmire in Ukraine for China.

In this regard, the trip of some high-ranking American officials to Taiwan, such as the trip of Nancy Pelosi, the Speaker of the House of Representatives, as the highest American official after 25 years on October 2, 2021, can be in the direction of China's movement. And the scenario of this country is one conflict the security of the region should be evaluated so that the international conditions for curbing this country are also provided.

Meanwhile, before the trip, China had held the largest military exercise in its history, but in response, it was enough to impose a Nancy Pelosi sanction and a few limited economic sanctions. China's intelligent response to this historic trip has been worthy of reflection and shows that it will not intend to engage in a security conflict with the West until the vital interests of this country are seriously threatened. Even in the conditions where the ACOUS agreement was formed as one of the strongest signs of the United States against China, Beijing's response to this security alliance has been very measured.

In fact, Beijing knows that under the current conditions, entering into any kind of security and geopolitical conflicts with the United States will be the starting point of its economic decline and lead to a serious decrease in foreign investment, which is the basis of its development. It has been popular since the 1970s, it will continue. In

[28] National Defense Strategy Commission

general, there is this prevailing idea in the American political apparatus that this country should pull itself out of the Great Middle East in order to be able to take the threats in India and the Pacific Ocean seriously.

Also, at the same time as the withdrawal of America from Afghanistan, the need to focus on the priority of Washington's foreign policy, that is, China emphasized and announced that when an autonomous superpower is emerging, it is looking for this. the interests of the United States from a technical, military and economic point of view Al-Shaa'a decides that we cannot be captured in an endless war.

From his point of view, ending the war in Afghanistan allows America to direct its energies towards new and more urgent challenges, the most important of which is the "severe" competition with Beijing (Paul et al., 2021: V).

In fact, the military withdrawal of the United States from Afghanistan has created new opportunities for this country to focus on East Asia. Getting out of Afghanistan's quagmire, which has imposed military costs on the American economy for two decades, can be achieved by saving money and freeing the military resources in Afghanistan and directing them towards Asia-Pacific, the strategic advantage of this country against its powerful rival. The three-way security agreement of ACOS and the strengthening of the QUAD agreement in the form of new military maneuvers is an obvious form of strategic empowerment after the withdrawal from Afghanistan.

6. Conclusion

The failure of the state-building process in Afghanistan and the imposition of heavy costs of the war against terrorism in Afghanistan and Iraq on the American economy, which is still feeling the consequences of the 2008 financial crisis, is the global strategy of this country. It has changed the international system from hegemonic stability to forced hegemony.

America sees itself in a situation where on the one hand it is witnessing the economic and military rise of China and on the other hand it is witnessing its own economy being mired in the swamp of hegemonic stability. In these conditions, the United States, by adopting a forced hegemonic approach and dividing the heavy burden of the responsibility of maintaining the world order among its allies, has tried to consolidate and strengthen its military and economic capabilities and push them towards Asia Pacific to control China.

Transformation and displacement in America's foreign policy priorities were seriously pursued with Obama's Asia-oriented strategy[29]. Obama considered the main threat to be emerging Asian powers that challenge America's hegemony, and he believed that preventing the expansion of China's geopolitical influence should become America's most important security concern.

This required a change in America's strategy from a military presence in Iraq and Afghanistan to a strategic focus in Asia-Pacific. Some thinkers considered the long-term US military presence in Afghanistan to be a strategic trap, whose beneficiaries were countries like China and Russia.

With the understanding of this issue and with the revision of its global military presence, the United States is reorganizing the large group of foreign forces, bases and military capabilities of this country with the aim of reducing its presence in Afghanistan and the Middle East. Pay more attention to the Asia-Pacific region.

According to observers, the United States sees the decline of its hegemony vis-à-vis China in a long-term process; therefore, in order to preserve its position, it is inevitable to take the approach of forced hegemony and division. It is a huge responsibility of global security. America's security alliances in the form of ACOS and QUAD in East Asia can be evaluated in this direction to exert strategic pressure on China.

[29] Pivot to Asia

China's strategy in international politics in a long-term perspective, along with the increase of its economic and military power, is a partnership in the hegemonic axis and the creation of a power structure with America; but in the short term, he doesn't want to have sensitive behavior by ignoring America's security concerns and breaking norms against the liberal order.

Since the time of Deng Xiaoping, China's main strategy has been to avoid costly and unnecessary conflicts with the US and try to accumulate power within the framework of the liberal order. China knows very well that if it wants to participate in the global hegemonic axis, contrary to its domestic policy, it has no other way than to accompany the liberal order in foreign policy. He doesn't like the liberal order, for America it has become much more difficult.

Today, if China has changed from a weak country in the 70s to the second largest economy in the world, it has been due to behavior within the framework of existing rules, despite tactical conflicts. China knows the rules of the game with America very well. If it is to be presented as a superpower on par with America in the future, it should avoid conflicting policies with the West that imposes unnecessary costs on this country. China's cautious policy towards Russia after this country's attack on Ukraine in February 2022 showed that this country is not willing to confront the West even for the sake of its closest allies.

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Copyright Infringement in the Information and Communication Technology (ICT) Era

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Abstract
Information and communication technology promote intellectual property in literary and artistic works. This has made the owners of copyright to enjoy the economic and moral rights of their creation and to become popular. It is also in this context that intellectual property industries tend to expand and innovate. Nevertheless, the spread of communication technology particularly through the digital space has become a threat to the intellectual property industry. The expansion of information and communication technology enabled the violation and infringement of intellectual property rights. This article will help owners and holders of copyright to have some hint on, the notion of copyright protection, copyright infringement in information and communication technology, and copyright infringement, the foundation of copyright infringement, infringement of literary and artistic works, and infringement of related neighbouring rights. This is because knowledge of the fundamentals of intellectual property can help, forestall, to a greater extent copyright infringement through cyberspace. States and the International Community are also invited to regulate the domain by devising new strategies to protect copyright owners and holders against any infringement of their rights.

Keywords: Copyright, Infringement, New-Information, Communication, Technology Era

1. Introduction

Intellectual Property infringement has to do with the violation of the rights of intellectual property creators. Infringement of intellectual property rights starts when a literary, artistic work or a trademark and industrial design protected by Intellectual Property Laws is used, copied, pirated, or otherwise exploited without proper authorization from the owner of the rights. A good example of intellectual property infringement is piracy, counterfeiting, and subconscious copying. Copyright infringement in the new information and communication technology era became alarming when the copyright industries received the dot com boom but later encountered problems from the technological setback which the copyright industries are still to heal from. Infringement of copyright in the new information and communication technology era started when internet adventurers began applying illegal techniques to duplicate the literary or artistic works into numerous copies quite enough to

damage and disrupt the market of the owners of the copyright thereby, depriving the copyright creators of the rights. The development of information and communication technology facilitated the violation of intellectual property rights at a high level. This is because several websites that permitted uploading and downloading of video and audio files were created and pirates used the opportunity to use this website illegally to the detriment of intellectual property rights owners[1]. A sad situation is the fact that most people do not upload or download their videos and audio files but infringed the rights of others by uploading film clips and music files of others.

2. Copyright Protection

Copyright is the branch of Intellectual Property Law that seeks to protect the rights of intellectual property creators from the infringement of their original literary and artistic creations (Fishman, 2008:10). [2]. Copyright is concerned with all forms or methods of communication and writings such as printed publications, films for public exhibition in cinema, sounds and TV broadcasting, novels, musical compositions, photographic works, drawings, just to name a few. Copyright is the protection by law for innovative works of creators fixed in a concrete standard of expression. Copyright protects whether published or unpublished literary and artistic works[3]. Copyright law is a set of intellectual property laws, which protects innovative works of copyright holders including musical, literary, dramatic, and artistic work, such as songs, novels, poetry, movies, computer software, and style. Copyright does not protect systems, facts, ideas, or methods of operation, although it may protect the way these things are expressed[4].

The reason here is that the expression of an idea in an identity form capable of being attributed to a person is of great importance for the purported intellectual property creator to seek for his rights. That is, the idea should be manifested or be in a visible form or fixed on something tangible. This means copyright law will not protect just the idea but how such idea is expressed. Section 3 (2) states that "Copyright shall relate to the expression through which ideas are described, explained, and illustrated. It shall cover the distinctive structures of works, such as the plan of a literary work insofar as it is materially linked to the expression." Subsection 3 of the Copyright law in Cameroon protects only expressions of original distinctive features resulting from creation.

The position of the TRIPS Agreement is that copyright will extend only to expressions and not ideas, procedures, methods of operation, or precise concepts as such[5]. It drives further to describe computer programs, whether, in source or object code as a literary work under the Berne Convention, Article 10(2) likewise seeks to protect compilations of data or other material, whether in machine-readable or another arrangement, which by motive of the selection plan of their content comprises intellectual creativity and will be protected as such. This protection, which will not cover data or material itself, shall be without bias to any copyright subsisting in the data or material itself[6].

Copyright is however distinct from patents as it protects the original work of intellectual property creators, while a patent protects discoveries or inventions. Inventions or discoveries and ideas are not protected by copyright law though their manner of expression may be protected. The Cameroon Copyright law is clear in section 3 (2) that Copyright is related only to how ideas are expressed, described, explained, and illustrated. It shall cover the distinctive features of works, such as the plan of a literary work insofar as it is materially linked to the

[1] The term ―Internet‖ is used throughout this Article as a generic term for any type of electronic communication, even if it is not based on the Internet protocol. For a discussion of the current use of the term, see Marketa Trimble, The Future of Cybertravel: Legal Implications of the Evasion of Geolocation, 22 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 567, 575 n.25 (2012).
[2] Fishman (2008) describes copyright as a legal device that provides the creator of a work of art or literature, or a work that conveys information or ideas, the right to control how the work is used. The intent of copyright is to advance the progress of knowledge by giving an author of a work an economic incentive to create new works. It is a legal regime that provides a limited form of monopoly protection for written and creative works fixed in a tangible (material) form.
[3] Definition of copyright. Available at: http://www.copyright.gov/help/faq/faq-general.html. accessed on September 11, 2021
[4] Ibid.
[5] See article 9(1) TRIPs Agreement, part ii- standards concerning the availability, scope and use of intellectual property rights, available at: http://www.wto.org/english/docs_e/legal_e/27-trips_04_e.htm< accessed on September 11, 2021
[6] See article 10(2) TRIPs Agreement, part ii- standards concerning the availability, scope and use of intellectual property rights, available at: http://www.wto.org/english/docs_e/legal_e/27-trips_04_e.htm< accessed on accessed on September 11, 2021

expression. A trademark protects symbols, phrases, words, or designs identifying the source of the services or goods of one party and distinguishing them from those others[7].

Nevertheless, though copyright is attributed to an intellectual property creator and related or neighbouring rights to a performing artist, Copyright and Neighbouring rights[8] are some of the key components of Intellectual Property Rights Protection. Today, Copyright is used as a tool to protect the patrimonial and paternity, and integrity rights of intellectual property creators in their creations and community access to these creations' copyrights and neighbouring rights also promotes creativity and disseminates the cultural heritage of a nation. This means copyright and neighbouring rights are significant for Cameroon's development process and should be protected from infringement.

Copyright extends to all varieties of literary, artistic, and musical works. To be eligible for copyright protection, however, such works must satisfy additional criteria, which find their source in the constitutional provision empowering Congress to enact copyright legislation[9]. Copyright is a bundle of rights. Copyright in a work includes the exclusive right to:

- Reproduce the work (this includes reproducing it in sheet music or on records or synchronizing it in films, television programs, and advertisements)
- Publish the work (e.g., by lawfully supplying copies of it to the public)
- Communicate the work to the public (examples include live performances, playing recorded music in public, playing music on the radio, television and, vitally to the modern music economy, via the internet) and
- Make an adaptation of the work (e.g., arrangements, transcriptions, parodies).

2.1. The notion of copyright protection

The creative work of an author gives him/her a right over such work as ―property rights. The exclusive rights or the restricted acts are granted to the author by copyright law. These rights can be either assigned or licensed by the owner of the copyright. Any invasion of this right we refer to in law, as infringement entails action. Infringement occurs when the exclusive rights granted to the owner by the copyright laws have been violated[10]. As already discussed in the previous chapter, there are economic rights granted to an author having exclusive rights and any person who interferes with these rights will be liable for infringement.

The infringement of the authors' work may be of a right of reproduction, distribution, adaptation, communication, public performance, display, rental and lending rights, and on-demand availability rights. The owner of a copyright can bring an infringement action against the person involved in the invasion of rights. An exclusive right to do an act lies with the owner and it follows that any third party attempting to do such acts to which only the owner is entitled, will be liable for infringement. The action for infringement of copyright will entail the perpetrator not only to a civil suit but also criminal action. Infringement may be committed by those engaged in the production or supply of infringing copies for commercial purposes (Lloyd, 1997:306)[11]. Simultaneously, when an infringing copy is made available to the public, the owner will have a right to restrain such acts.

[7] Definition of copyright. Available at: http://www.copyright.gov/help/faq/faq-general.html< accessed on September 02, 2021.
[8] Neighbouring rights according to Article 56 (1) of 2000 Copyright Law in Cameroon are the right of performing artists in their performances, right attributed to producers of phonograms and video grams in their phonograms and video grams, and the right attributed to audio-visual communication companies. This right comprises the activity of broadcasting organizations in their radio or television programs. This means related or neighbouring protect those who assist intellectual property creators to facilitate the communication of their literary or artistic works to the entire public. Thus, Articles 57 and 58 of the 2000 Copyright Law in Cameroon gives a related right to performing artist.
[9] Article I, section 8, clause 8 of the Constitution gives to Congress the power ―to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. Not only does this provision ensure that federal copyright may not be of perpetual duration, but it also requires by other person(s) other than the author himself, thus the creativity of human mind must be Seen that the congressional grant of copyright be to ―authors for their ―writings.
[10] Infringement is an act that interferes with one of the exclusive rights of a patent, copyright or trademark owner. Black"s Law Dictionary, 8th ed., Thomson & West.
[11] See Ian J Lloyd (1997) *Information Technology Law*, 2nd ed. Butterworth.

Copyright also vests in authors of sound recordings, films, broadcasts, cable programs, and typographical arrangements of published editions. Several copyrights can exist in one work[12]. Bainbridge (2009) argues that copyright is a property right that subsists (exists) in the various " works", for example, literary works, artistic works, musical works, sound recordings, films, and broadcasts.[13]

While balance is at the heart of copyright theory, in practice, modern copyright law is fundamentally tilted in favor of copyright owners. Overall, the accommodation of the interests of rights holders and users reflected in current copyright systems focuses overly strongly on owners' exclusive rights while giving insufficient weight to the interests of users (Lessig, 2004; Benkler, 2003; Boyle, 2003)[14]. Part of the explanation for copyright distributional problems is that the main theoretical justifications for copyright are themselves usually skewed in favor of stronger copyright. As a utilitarian bargain, copyright provides incentives to investors to produce and distribute knowledge and cultural goods (Cited in Fisher, 2001:168)[15]. This is said to advance the public interest by promoting progress and the dissemination of new works.

Copyright is a legal concept, enacted by most governments, giving the creator of an original work exclusive right to it, usually for a limited time (WIPO, 2016:11)[16]. Generally, it is "the right to copy," but also gives the copyright holder the right to be credited for the work, to determine who may adapt the work to other forms, who may perform the work, who may financially benefit from it, and other related rights. It is a form of intellectual property (like the patent, the trademark, and the trade secret) applicable to any expressible form of an idea or information that is substantive and discrete.

The concept of expression of ideas of copyright and infringement in Cameroon as well as many other African countries are not well understood by most people especially underground artists. Most of their songs have been stolen by either music producers or prominent artists. The underground artist provides lyrics to the music producer, producer later on giving the same lyrics to the prominent artist who automatically became the first person to express it to the public and granted copyright protection leaving the underground artist claiming the ownership of the lyrics without legal basis.

3. Copyright Infringement in Information and Communication Technology

A creator of a literary or artistic work has exclusive rights over his work to copy, modifier, display, and distribute his work as he deems fit. Therefore, anyone who does any of the above without the authorization of permission from the original owner is said to have infringed the copyright of the creator. However, to allege or prove infringement, the plaintiff must, first of all, demonstrate a practical resemblance existing between his creation and the alleged infringed work and also, that the perpetrator of copyright infringement had access to their original work. Music and movies are the two highest forms of entertainment that suffer from substantial volumes of copyright infringement. Infringement situations may lead to liabilities, which are sums set aside in the circumstance of a likely claim.

Copyright infringement characteristically includes somebody not being the author using another person's original artistic or literary work, or a copyrighted work, without authorization from the owner. That is the use or reproduction of copyrighted material with no authorization from the copyright owner or holder. Infringement of copyright signifies that the rights afforded to the copyright owner, for example, the exclusive right to use his work for a specified time are being breached by another person not being the author.

[12] Section 5 of the Copyright and Neighboring Rights Act, [Cap.218 R.E.2002] 1999.
[13] Section 5 of the Copyright and Neighboring Right.0s Act, [Cap.218 R.E.2002] 1999.
[14] 234 Analysis in scholarship on this point is very extensive. Some of the most important scholarship in this area includes: Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (Penguin Press, 2004); Yochai Benkler, "Freedom in the Commons: Towards a Political Economy of Information" (2003) 52 Duke *Law Journal* 1245; Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (Yale University Press, 2006) 23; James Boyle, *The Second Enclosure Movement and the Construction of the Public Domain* (2003)
[15] See Neil Weinstock Netanel, _Copyright and a Democratic Civil Society '(1996) 106 Yale Law Journal 283, 288, quoted in William Fisher, "Theories of Intellectual Property" in Stephen R Munzer (ed), *New Essays in the Legal and Political Theory of Property* (Cambridge University Press, 2001) 168, 173.
[16] See World Intellectual Property Organization. "Understanding Copyright and Related Rights". *WIPO*. pp. 6–7. Retrieved January 26, 2013

To understand the factors influencing the extent of copyright infringement, the scope and intensity of copyright protection is the best measurement. Again, with only a few exceptions, the studies have focused on a single industry—software, music, or films. In software, the practice has been found to vary inversely with the level of economic development and income, the strength of the legal and judicial system, and retail prices of authorized products, although not consistent with education. Several empirical studies find that the perceived probability and severity of penalties have a strong effect on file-sharing. Moral considerations also play a role in the sense that concern for rights holders and artists reduces the propensity to engage in file-sharing, and this varies by country. Most studies conclude that students, young adults, and young males, in particular, are more likely to engage in infringing copying than other demographic groups.

For there to be copyright infringement in the new information and communication technology era, it is essential to ensure that the work is within the category listed by national or international law, for there are different requirements mandatory for different categories of works. There are many types and forms of copyright infringement in the new information and communication technology. An example of actions that may be accepted as copyright infringement is when the perpetration of the act carries out his illegal activities without seeking authorization from the rightful holder, author, or owner of the copyrighted literary or artistic work. For instance:

a. The circumstance of unauthorized or illegally downloading of music or films without paying for their use to the copyright owner or holder;
b. The recording of a film in a movie theater by a third party without permission from the creators;
c. Cases of use of a copyrighted image found on a company's website;
d. Modifying an image and then displaying it on a third-party company's website;
e. Posting a video on a third-party company's website which topographies copyrighted words or songs;
f. Using a musical group's copyrighted songs on a third-party company's website;
g. Copying any literary or artistic work without a license or written agreement authorizing the copying and;
h. Creating merchandise for sale which features copyrighted words or images.

4. Information Communication Technology (ICT) and Copyright Infringement

ICT refers to an extensional meaning for information technology (IT) that regulate the role of combined communications and the incorporation of telecommunications (wireless signals and telephone lines) and computers as per the International Federation of Global and Green IC (IFGICT)[17], as well as essential enterprise storage software, audiovisual, and middleware, that enable users to access, transmit, store, understand and manipulate information as per the international federation of ICT.

ICT particularly the electronic media via digitalization has facilitated copyright infringement through the process of copying or downloading, spamming, publishing, and even the distribution of numerical copies with ease. The rapid increase of ICT has raised several worries about the strength of our present copyright laws in avoiding copyright infringement through cyberspace and other media outlet.

The speedy expansion of cyberspace in all parts of the globe has encouraged almost everyone with a computer a potential publisher. The evolution of cyberspace has had major insinuations for the action and protection of copyright works and other associated intellectual property rights that are published in digital form in cyberspace (Mambi, 2010:12)[18].

[17] IFGICT is an independent organization created takes the lead and set industry standards for the talent development profession in ICT and business technology.
[18] ICT Law Book a Source Book for Information and Communication Technologies & Cyber Law 2010 Edition by Adam J. Mambi, Mkuki na Nyota Publishers.

Technological developments have made copyright work easier to access and reproduce and more problematic to protect. Recently with the implementation of the two WIPO cyberspace treaties in 1996[19], that is, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), countless changes have occupied the minds of authors and some other persons involved in the copyright field, as a result of digital technology, opening new horizons for composers, artists, writers, and others to use the cyberspace with confidence to create distribute and control the use of their works within the digital space.

5. Foundation of Copyright Infringement

Copyright is one of the important pillars of the doctrine of Intellectual Property[20]. My understanding as a thinker, intellectual property simply means the works that result from the emanation of the human mind. Thus, it incorporates the following; first, the human mind, second the manifestation of the human mind, and last the results of the creativity of the human mind[21]. The aspect of Copyright in the digital environment is widely and extensively discussed in most Intellectual Property and Information, communication, and Technology Law texts. This article describes different methods that are used for copyright infringement in the digital environment, whether accidentally or intentionally, and at the end to see whether or how the Act has responded to the said online activities. The attempt here is simply to familiarize the reader with a careful understanding of the term copyright and its brief history in Cameroon, also copyright infringement, and how these copyright infringement activities have affected the protection of copyright in Cameroon and the eligibility of the concerned law.

5.1. Infringement of Literary Works

As a general rule, for there to be an infringement of a literary work, two things must be shown that is access and similarity of the original copy. Though, there are several additional complications to demonstrating infringement of a literary work than another category of infringement, such as a musical work. Several fundamentals of a literary work may be recurrent from one work to the subsequent and may be common to many works. Judges in some courts have tried on several occasions to characterized common elements and those unique or original to an author. This is due in part to the fact that courts must differentiate between the idea of the author and the form of expression for the idea, also known as the idea-expression dichotomy.

Two types of infringement are envisaged under copyright law, one where alleged infringement occurs or is committed by the person copying, and secondly, it occurs where the infringement has purported to authorize a third party to do any act which is within the scope of the copyright or a related right or has in some way contributed to the infringing act of a third party. In India and the U.K, the copyright law provides a specific provision stating that any authorization to commit an act which infringes copyright is itself an infringement of copyright. Copyright is infringed by a person who without the license of the copyright owner does, or authorizes another to do, any of the acts restricted by the copyright[22]. Infringing copy means a copy of a work made without the authority of the owner of the reproduction right in a work[23]. An infringer is a person who interferes with one of the exclusive rights of patent, copyright, or trademark owner. As Louis Brandeis in International News Service v. Associated Press (1918)[24] put it at the beginning of the previous century: 'The general rule of law is,

[19] The organization administers the WIPO Copyright Treaty and the WIPO Performances and Phonogram Treaty (known together as the "Internet Treaties"), which set down international norms aimed at preventing unauthorized access to and use of creative works on the Internet or other digital networks.

[20] Bainbridge argued that, intellectual property is concerned with the legal rights associated with creative effort or commercial reputation and goodwill. It is very wide and includes literary and artistic works, films, computer programs, inventions, designs and marks used by traders for their goods and services. David I. Bainbridge, Intellectual Property, Seventh Edition, Pearson Longman, Ashford Colour Press Ltd, Gosport, 2009. p.3.

[21] For example, in copyright ideas are not protected but the expression of ideas. The ideas is expressed when seen

[22] See Section 51 (India) & U.K Copyright, Design and Patent Act, 1988 (herein after referred as CDPA), Section 16(2), Falcon v Famous Players Film Company (1926) 2 K.B. 474 (authorize means ―sanction, approve, countenance)

[23] Though Berne Convention does not define the term infringing copy but provides for seizure of infringing copies of a work.

[24] See the Columbia Symposium, Product Simulation: A Right or a Wrong, 64 Columb. L. Rev. 1178 (1964), for a group of articles on INS and related case law. See also Dennis Karjala, Misappropriation as A Third Intellectual Property Paradigm, 94 Colum. L. Rev. 2594 (1994) (arguing for application of INS misappropriation doctrine to data retrieval systems); Leo J. Raskind, The Misappropriation Doctrine As A Competitive Norm of Intellectual Property Law, 75 Minn. L. Rev. 875 (1991) (criticizing misappropriation doctrine); Richard H. Stern & Joel E. Hoffman, Public Injury and the Public Interest: Secondary Meaning in the Law of Unfair Competition, 110 U. Pa. L. Rev. 935, 966-971 (1962) (arguing that misappropriation doctrine is anticompetitive and too vague to serve any predictive function).

that the noblest of human productions knowledge, truths ascertained, conceptions and ideas become, after voluntary communication to others, free as the air to common use[25]. This freedom of use of knowledge products is the main characteristic of the new digital environment which challenges traditional copyright law. Indeed, the development and diffusion of digital technology permit the unauthorized creation of unlimited and costless copies and worldwide distribution of protected works[26]. The copyright industries are responding by using anti-circumvention measures such as encryption technologies.

6. Infringement of Artistic Works

While copyright infringement has always been a problem, hardware technology available in the past had a limiting effect. Music stored on compact discs could be duplicated onto a computer, but the sheer size of the file would inhibit the popularity of digitizing songs.

The size of the files would also prohibit users from sharing these files with other computer users since floppy disks could not hold the full-length music files, and the time needed to transmit a file over the Internet was extremely lengthy. A new audio format, however, addresses these concerns.

Many changes have taken place in the way music is recorded and distributed, such as creators' capacity to self-publish and self-distribute; this means that recording studios and labels are no longer, in theory, a necessity. Yet, even with this flexibility, many creators are not making more money and may not even be making a living wage. Also, there is a host of new distributors of legitimate copies that are frequently not involved in owning the copyright in the works that they distribute[27]. Music producers and distributors have also faced many challenges, including technological developments (Wu, 2010) [28]. Both groups in varying ways and degrees have adjusted to those developments[29]. This adjustment does not necessarily mean success; it may mean getting out of the business. The central utilitarian rationale of copyright law is that creators can be sufficiently rewarded that they are incentivized to continue to create (Picker, 2002).[30] Copyright has consequently been an important tool in much economic activity of the creative industries. However, copyright's role is not to support incumbent business models, but rather to support creativity. A key part of supporting creativity should be for artists and creators (in

[25] International News Service v. Associated Press, 248 U.S. 215 (1918), also known as INS v. AP or simply the INS case, is a 1918 decision of the United States Supreme Court that enunciated the misappropriation doctrine of federal intellectual property common law—that a "quasi-property right" may be created against others by one's investment of effort and money in an intangible thing, such as information or a design. The doctrine is highly controversial and criticized by many legal scholars, but it has its supporters.

[26] The INS decision recognized the doctrine of U.S. copyright law that there is no copyright in facts, which the Supreme Court later greatly elaborated in the Feist case in 1991, but nonetheless INS extended the prior law of unfair competition to cover an additional type of interference with business expectations: "misappropriation" of the product of "sweat of the brow." The case was decided during a period when a body of federal common law existed for business practices and torts, which the Supreme Court had power to declare or create, but two decades later the Supreme Court abolished that body of substantive law and held that state law must govern the field henceforth. Accordingly, the INS case no longer has precedential force, although state courts are free to follow its reasoning if they so choose.

[27] Online service providers, such as Google or YouTube, that distribute copyright works are examples. A different sort of distribution entity that does not own copyright includes some streaming services. An example is Spotify which licenses, rather than owns, the copyright in the content it makes available. This contrasts to the predominant business model in the analog world where the record labels (and in other industries such as book publishers) owned copyright and controlled distribution. See John Seabrook, Revenue Streams: Is Spotify the Music Industry's Friend or its Foe? The New Yorker, (Nov. 24, 2014), http://www.newyorker.com/magazine/2014/11/24/revenue-streams [http://perma.cc/9ZMU-DH7A].

[28] See Jim Rogers, The Life and Death of the Music Industry in the Digital Age 21 (2013) (discussing how the music industry has developed and how the digital revolution is changing it); see also Tim Wu, The Master Switch 13-14 (2010) (discussing the challenges of the Internet in our society and particularly its role as a communicator and distributor of information).

[29] See Tim Wu, The Master Switch: The Rise and Fall Of Information Empires 97 (2010); see also Justin Hughes, On the Logic of Suing One's Customers and the Dilemma of Infringement-Based Business Models, 22 Cardozo Arts & Ent. L.J. 725, 737-38 (2005) (giving an overview of the decline of US music industry revenue)

[30] See Randal C. Picker, Copyright as Entry Policy: The Case of Digital Distribution, 47 Antitrust Bulletin 423, 424 (2002), (noting that "the copyright statutes reflect substantial path dependence, as well as the play of powerful interests"); see also Jessica Litman, Digital Copyright 70 (2001) (commenting on the US 1976 Copyright Act, stating, "Most of it was drafted by the representatives of copyright-intensive businesses and institutions, who were chiefly concerned about their interaction with other copyright-intensive businesses and institutions."). Additionally, one need only look at the response of the music industry to declining revenues as requiring better enforcement of copyright to see the importance of copyright to the music industry. See generally Annemarie Bridy, Is Online Copyright Enforcement Scalable? 13 Vand. J. Ent. & Tech. L. 695, 711 (2011) (discussing the industry data on infringement and its self-perpetuating claims that infringement is massive and the appropriateness of the Digital Millennium Copyright Act as a response to those apparent increases. Bridy notes that "there is, however, some truth behind the hype. Notwithstanding the copyright industries' propensity to exaggerate their losses, or the fastness and looseness with which their statistics are (re)circulated by uncritical government officials and media outlets, there can be little question that P2P networks have facilitated large-scale infringement, or that the volume of files traded illegally by means of such networks has been, and remains, large and revenue-depleting.").

copyright terms, the "authors") to make a living, even if what an author is - and the extent of that rationale - is disputed[31].

This new technological advance, which threatens to undermine copyright law, is the new digital music format: Motion Picture Experts Group Audio Layer 3 or MP3[32]. Unlike music on cassettes or CDs, MP3s are completely digital and are not bound to any physical medium. MP3s employ a method of file compression called “perceptual audio coding" methods. By stripping away digital information inaudible to the human ear from the sound recording, much of the sound data can be discarded from the digitized file. This allows very large music files to be digitized in minimal amounts of space. The result is a file that challenges CDs for quality but that is comparatively much smaller than an uncompressed file. The rate of file compression is typically between 10: 1 and 12: 1. As these files are a fraction of the size of a regular CD file, the compact disc is no longer necessary as a storage device for music.

The expansion of the average-sized hard drive along with the decreasing prices of memory storage has made it economically practical to store vast numbers of music files on one's personal computer for later listening. Whereas an uncompressed music file required approximately 50 megabytes of hard disk space, the typical MP3 is less than 5 megabytes in size (Selby, 2000)[33]. While an uncompressed music file could take two hours to download or transfer to another user on the Internet using a 56kbs. Modem, a compressed MP3 can be downloaded in about 5 minutes. The advent of MP3s and file-sharing technologies have completely changed the Internet music environment. The small size of MP3s and the file-sharing technology available make it easy and inexpensive for users to seek and copy digital music over the Internet.

Compression technology coupled with the advance in modem speeds and the fast expansion of the Internet has made the sharing of MP3s a problem unforeseen in the past.

7. Infringement of Related and Neighboring Rights

Related rights or neighboring-rights according to section 56 (1) of 2000 copyright law refers to the rights of performing artists in their performances, the right of the producer of phonogram and video-gram in their phonogram and video-gram and the right of a broadcasting organization (audio-visual communication companies) in their radio and TV programs. Protection of those who assist intellectual creators to communicate their message at large and to designate their work to the public in an attempt means related rights. Works of the mind are created to be discriminated against among as many people as possible. This cannot be done generally by the author itself for it requires intermediaries whose professional capacity gives the work those forms of presentation that are appropriate to make them accessible to a wider public. The play needs to be presented on the stage, some need to be performed by an artist, reproduce in the form of record, or broadcast utilizing radio facilities. All persons who make use of literary, artistic, or scientific work to make them publicly assessable to others require their protection against the illegal use of their contract in the process of communicating the work to the public. The protection of another interest does not consist merely in granting of the authorization to prevent the use of their creation and is not limited in prohibition, the infringement of the rights that the law affords to authors. The work is intended to be made available to the public at large in various ways, for instance, publishers reproduce his manuscript in a final form without adding to the expression of the work as created by the author. The problem with this category of intermediary has become more acquainted with rapid technological development. At the very beginning of the 20th century, the performance of dramatists, actors, or musicians

[31] In this Article, "authors" is synonymous with creators (individuals and groups), rather than corporate owners or distributors, which might otherwise be called cultural businesses or industries. The role of authorship is seen as paramount by some. See Jane C. Ginsburg, Exceptional Authorship: The Role of Copyright Exceptions in Promoting Creativity, in Evolution and Equilibrium, supra note 1, at 15-28 [hereinafter Ginsburg, Exceptional Authorship]; see also Jane C. Ginsburg, The Author's Place in the Future of Copyright, 45 Willamette L. Rev. 381, 383 (2009) [hereinafter Ginsburg, Future of Copyright]; Jane C. Ginsburg, The Concept of Authorship in Comparative Copyright Law, 52 DePaul L. Rev. 1063, 1085 (2003) [hereinafter Ginsburg, Comparative Copyright]. Others contest that centrality of authors. See, e.g., Oren Bracha, The Ideology of Authorship Revisited: Authors, Markets, and Liberal Values in Early American Copyright, 118 Yale L.J. 186, 188 (2008); see also The Construction of Authorship 359 (Martha Woodmansee & Peter Jaszi, eds., 1994).

[32] See "MPEGA udio Layer-3,"online: Fraunhofer Institute for Integrated Circuits< iis.fhg.de/amm/techinf/layer3/index.htm(l>da te accessed:4 November2 001).

[33] See J. Selby, "The Legal and Economic Implication of the Digital Distribution of Music: PartI " (2000) 11: I Ent. L. Rev. 4 at 6.

ended with the play or concert in which they perform. It is no longer so with the advent of the phonogram, radio, motion picture, TV, video-gram, etc. technological development has made possible the fixing of performance on the varieties of materials e.g., records, tapes, cassettes, CDs, films, etc. what was earlier a localized and immediate phase of performance on a hall before a limited audience become an increasing performance exercise before an equally unlimited audience that went beyond national frontiers.

The development of broadcasting and more recently T.V also has similar effects. This technological innovation has made possible to reproduce individual performance by performing artist and to use them without their presence and the user being oblige to reach an agreement with them. These have led to a reduction in the number of live performances. It has created what has come to be known as technological unemployment among performing artists thus giving a new dimension to the protection of the interest of performance. The appeal of the phonograms and easy availability in the market of a variety of increasing production create the growing problem of piracy which has become a worldwide scourge. So, the international convention for the protection of performance, producers of phonograms and broadcasting organization (the Rome Convention 1961), and national laws, therefore, provides limitations and rights allowing e.g., private use, use of such except in connection with reporting of current events and use for the teaching of scientific research of protected performances, phonograms and broadcasting. By article 14 of the Rome Convention, the duration of the protection of related rights is 20years from the end of the year. In the TRIPS Agreement Article 14(6) the rights of phonograms are to be protected for 50years from the date of fixation or the performance and the right of broadcasting organization for 20years from the date of broadcast.

Internet users can also utilize commercial sites like "Yahoo! GeoCities" and "Tripod.com," which offer free space to host a personal website in return for hosting advertisements on the page.[34] This allows the average Internet user to create a website and provide information and files of any type to users around the world, provided they stay within their spatial limit as dictated by the service providing the hard disk space.

The ease with which a person can now offer information over the Internet creates complex challenges for the owners of intellectual property. A user can easily create a web page that displays the contents of a book, which is copyrighted in its entirety, or that displays a trademark, using very little file space. Detecting such acts and forcing the removal of material can be onerous as the computer on which the files reside could be in one country, while the person who posted the material could be residing elsewhere. The anonymity of the Internet also makes it difficult to find the person responsible for such acts. While music files have traditionally been excluded from such piracy because of the sheer size necessary to copy a single song into a digital format, the advent of MP3 technology has drastically reduced the amount of space required to digitize a music selection. Whereas the resources necessary for music piracy previously made it impractical, users can now easily post or transmit pirated sound recordings over the Internet.

8. Conclusion

Copyright infringement in the information and communication technology era has become predominant in modern times. Cyberspace is the biggest threat to Copyright holders due to the characteristics of communication technology. The unusual feature within the information and communication technology era is that it is not easy to determine whether a particular piece of work was copied from a protected work being an infringement of the original. On the other hand, in a concrete standard, such a difference can be easily determined. Infringement may not always be deliberate. It may also be due to ignorance. Thus, information and communication technology is more of a curse than a blessing to intellectual property creators and holders of copyright. Copyright infringement in the information and communication technology era may occur differently; for instance by framing links catching public display of the rights and by uploading on the Internet. Whether intentional or ignorantly, copyright infringement is considered a violation of the rights of the intellectual property creator or copyright holder and liability should rest on the perpetrator.

[34] See, e.g., "Membership Brochure," online: Yahoo! Geo Cities www.geocities.com/join_info.html (date accessed: 3 December 2000), which describes the advantages of maintaining a web site on "Yahoo! Geocities" including I 5 Meg of personal webspace free.

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Examination of Judge's Decision Number 732/Pid.Sus/2017/PN Jkt.Utr: A Case Study of Immigration Crimes Committed by Corporation based on Article 118 *juncto* Article 136 paragraph (1) of the Indonesian Immigration Law

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Abstract
In applying this article, the author finds a discrepancy between the judge's decision that has permanent legal force (*inkracht van gewijsde*) and what is mandated by Law Number 6 of 2011 concerning Immigration. Article 136 paragraph (1) explains that if an immigration crime is committed by a corporation, the parties who can be asked for responsibility are the management and the corporation. The author sees that there are three elements that have an influence on the effectiveness of law enforcement, namely Immigration Investigators, Public Prosecutors, and Judges. In this case, the Public Prosecutor has a major role in influencing the non-compliance with the application of the article. This is because the Public Prosecutor has authority over who and how much prosecution is in this case. However, the author cannot know what the basis for the Public Prosecutor's consideration in conducting the prosecution is because the Public Prosecutor is known to have died. The author concludes that there was an error in the interpretation of the elements of legal norms in Article 118 *juncto* Article 136 paragraph (1) which resulted in the prosecution only directed at the corporation.

Keywords: Examination of the Judge's Decision, North Jakarta Immigration Office

1. Introduction

Corporations have an important role to play in globalization. Corporations have an impact on the development of the world economy which is influenced by national and multinational corporations (Aryani, 2021). The existence of corporations will always coexist with the control of natural resources and world finance. In practice, corporations always monopolize more natural resources than other corporations. This will cause competition

between corporations and potentially create a more dominant corporation that will give birth to a global capitalism (Wijaya, 2018). The existence of unlimited human movement, making corporations not only affect the world economy and finance. But more than that, corporations can be subject to criminal law (Enggarsasi, 2002).

Black's Law Dictionary mentions crimes committed by corporations as Any criminal offense committed by and therefore chargeable to a corporation because of the activities of its officers or employees (e.g., price fixing, toxic waste disposal), which is often referred to as white collar crime.

Although the Criminal Code only stipulates that the subject of the crime is a legal person (Kristian, 2016). Administrative law appears as a single entity and can be treated as a legal entity or corporation (Retnowinarni, 2019). The Criminal Code will refer to corporate administrators or commissioners who must deal with the situation (Krismen, 2014).
Article (2) of the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations regulates provisions for:

1. Become a guideline for law enforcement in handling criminal cases with Corporate and/or Management actors
2. Filling legal vacancies, especially criminal procedural law in handling criminal cases with Corporate and/or Management actors; and
3. Encourage the effectiveness and optimization of handling criminal cases with Corporate and/or Management actors

In various regulations governing special crimes, it also states that corporations can be made one of the subjects of law, namely as subjects of criminal acts committed by corporations (Puspitasari &; Devintawati, 2018). In the Immigration Law, it is determined that corporations that act as guarantors of foreigners residing and operating in Indonesia are one of the subjects of special criminal law on immigration (Astuti, 2020). A guarantor is a person or corporation responsible for the existence and activities of foreigners while in Indonesia (Parengkuan, 2015). They have an obligation to guarantee foreigners residing and working in Indonesia. Corporations are determined as legal entities or non-legal entities that are guarantors for foreigners or foreigners who want to do activities in Indonesia (Mohede, 2011). Article 63 of the Immigration Law regulates foreigners who are required to have a guarantor while in Indonesia (Hamidi, &; Christian, 2021). The obligations that must be fulfilled by the guarantor are individuals or corporations which if the guarantor violates or does not perform its obligations mentioned in Article 63 may be subject to criminal penalties as stipulated in Article 118 and Article 136 paragraph (1).

Article 118 of the Immigration Law specifies that:

> Any Guarantor who intentionally provides false information or does not fulfill the guarantee he provides as referred to in Article 63 paragraph (2) and paragraph (3) shall be punished with a maximum imprisonment of five years and a maximum fine of IDR 500,000,000.

Article 136 paragraph (1) of the Immigration Law specifies that:

> In the event that criminal acts as referred to in Article 114, Article 116, Article 117, Article 118, Article 120, Article 124, Article 128, and Article 129 are committed by the Corporation, the crime shall be imposed on the management and the corporation.

The number of investigations from 2017-2019 there are two articles that determine corporations as the subject of criminal acts, namely in Article 118 *juncto* 136 and Article 124 *juncto*. 136 paragraph (1) and paragraph (2) and both show the number of cases is only five cases over the last three years. This data shows that the number of criminal acts whose subject is the Corporation as perpetrators of criminal acts is one of the articles that is still very minimal in the judicial process for the last three years in all Immigration Offices throughout Indonesia.

With so many laws governing corporations as subjects of criminal acts, it is not enough to reflect justice, certainty, and legal expediency as expressed by Gustav Radburch (Muslih, 2017). This can be seen by the

investigation process with corporations as perpetrators of criminal acts which in the Supreme Court Decision have not been able to implement what is prescribed by the Immigration Law. Some factors such as the investigator's understanding of the legal subject (corporation) that can be held accountable for prosecution in criminal acts. This has the potential to create legal uncertainty.

Based on the background above, the formulation of the problem in this study is as follows: (1) what is the basis for the judge's consideration in deciding a case with the person in charge of the corporation? (2) How the criminal case of PT. SJB and proving the elements of legal norms in Article 118 *juncto* Article 136 paragraph (1) of the Immigration Law?

2. Method

This research uses legal research methods with normative and empirical approaches. This research data consists of primary data sources in tracing and collecting materials from direct interviews related to this study and secondary data in collecting data obtained through literature materials (Benuf &; Azhar, 2020).

3. Discussion

3.1 Basis for Case Judge's Consideration in Deciding Corporate Crime Cases PT. SJB (Legal Study Decision Number 732/Pid.Sus/2017/PN Jkt.Utr)

3.1.1 Position Case

The case that became the object of this study originated from the results of immigration control operations for foreigners carried out by immigration officers of the intelligence and enforcement section at the North Jakarta Immigration Office. The activity was carried out on Friday, March 30, 2017 at a boarding house located at Jalan Tipar Cakung Sukapura, North Jakarta. During the foreign surveillance operation, Immigration officers found seven foreigners with Nigerian nationals suspected of immigration violations. Then they were taken to the North Jakarta Immigration Office for further examination related to the activities and travel documents of the seven Nigerian foreigners.

When checked, immigration officers found that one of them committed an immigration violation in the form of exceeding the time limit in Indonesia (Muhlisa & Roisah, 2020). This is known on the Republic of Indonesia Visa that they use when entering and being in Indonesia. The immigration officer checked the travel document and found the Visa of the Republic of Indonesia with Register Number 2A1211D-1005Q and IMI.2.GR.01.06.02.0658HQ.211 issued by the Embassy of the Republic of Indonesia in Abuja, Nigeria on August 24, 2016. In the visa there is the name of the guarantor, namely PT. The SJB stated on the foreigner's passport. Based on field facts, the foreigner is no longer allowed to be in Indonesian territory and is subject to immigration administrative action in the form of deportation and his name is included in the deterrence list (Ginting, et al., 2014). This provision is regulated in Article 78 paragraph (3) of the Immigration Law which explains that foreigners holding stay permits that have expired and are still in Indonesia more than sixty days from the deadline of the stay permit are subject to immigration administrative actions in the form of deportation and deterrence (Hasan, 2015).

As a follow-up to this action, the North Jakarta Immigration Office sent a letter with Service Letter Number W.10. IMI.7.GR.03.02-2703 to the guarantor contained in the Visa of the Republic of Indonesia, namely PT. SJB. President Director of PT. SJB is requested to immediately carry out its obligation as a guarantor to remove the foreigner from Indonesia. This obligation is regulated in Article 63 paragraph (3) of the Immigration Law:

The guarantor must pay the costs incurred to repatriate or remove the guaranteed foreigner from Indonesia if the foreigner:

a. has expired his residence permit; and/or
b. subject to immigration administrative action in the form of deportation.

Based on this case history, the guarantor must comply with Article 63 paragraph (3) point b in order to deport the foreigner. On March 31, 2017, the North Jakarta Immigration Office sent a letter to order PT. SJB as a guarantor to immediately repatriate one Nigerian foreigner since seven days from the letter received by PT. SJB. Until April 6, 2017 (deadline of seven days from receipt), PT. SJB does not carry out its obligations as a guarantor. Actions taken by PT. SJB as the guarantor has violated Article 63 Paragraph (3) of the Immigration Law and is subject to the criminal provisions of Article 118 *juncto* Article 136 paragraph (1) which regulates immigration crimes by the guarantor (PT. SJB).

Article 118 of the Immigration Law specifies that:

> Any Guarantor who intentionally provides false information or does not fulfill the guarantee he provides as referred to in Article 63 paragraph (2) and paragraph (3) shall be punished with a maximum imprisonment of five years and a maximum fine of IDR 500,000,000.

Article 136 paragraph (1) of the Immigration Law specifies that:

> In the event that criminal acts as referred to in Article 114, Article 116, Article 117, Article 118, Article 120, Article 124, Article 128, and Article 129 are committed by the Corporation, the crime shall be imposed on the management and the corporation.

3.1.2 Judge Consideration Policy

The judge is tasked with examining, prosecuting, and deciding cases of immigration crimes by corporations contained in Decision Letter Number 732/Pid.Sus/2017/PN Jkt.Utr Based on the judge's decision, it was determined that PT. SJB has been found legally guilty of committing an immigration crime as stipulated in Article 118 *juncto* 136 paragraph (1) of the Immigration Law. This provision regulates criminal sanctions for guarantors who do not carry out their obligations (corporations).
After hearing testimony from witnesses, experts, evidence presented in the trial, and the indictment submitted by the Public Prosecutor, it is known as follows:

a. Considering the Public Prosecutor's Demands

Any guarantor who intentionally provides true information or does not fulfill the guarantee he provides as referred to in Article 63 paragraph (2) and paragraph (3).
Criminal acts are committed by corporations by:

1) The North Jakarta Immigration Office conducted a foreigner surveillance operation at a boarding house on Jalan Tipar Cakung Sukapura, North Jakarta. Seven foreigners were arrested with the following initials: NCN, OSO, EU, OPO, AOJ, CI, ECS.
2) At the time of inspection and data collection by immigration officers by asking for travel documents and immigration documents to the seven foreigners. It was later discovered that the travel document of one of the foreigners had overstayed, which was more than sixty days. But the foreigner did not leave Indonesia. Furthermore, he was taken to the North Jakarta Immigration Office for further examination.
3) Immigration officers inspect the Visa of the Republic of Indonesia that has expired since November 11, 2016 with Register Number 2A1211D-1005Q and IMI.2.GR.01.06.02.0658HQ.211 issued by the Indonesian embassy in Abuja, Nigeria on August 24, 2016. In the Visa of the Republic of Indonesia there is a guarantor PT. SJB (defendant) responsible for the whereabouts and activities of foreigners. PT. SJB as a guarantor has the obligation to report every change of address, report any change of civil, immigration status, and change of address and must bear the costs incurred to repatriate or remove the foreigner he guarantees from Indonesia, if the foreigner is subject to immigration administrative action due to an expired stay permit (Mirwanto, 2016). However, based on evidence at the trial, it was proven that PT. SJB (defendant) as guarantor did not fulfill its obligations as guarantor.
4) The North Jakarta Immigration Office has issued a Service Letter Number W.10. IMI.7.GR.03.02-2703 addressed to PT. SJB (defendant) as guarantor on March 31, 2017. In the letter, it is explained about the notification that the guarantor must repatriate the foreigner within seven days from the time the letter has been received by PT. SJB. However, until April 10, 2017, PT. The SJB (defendant) did not release or repatriate the foreigner.

5) That based on Notarial Deed AK Number 07 dated May 15, 2015, Mr. NA has been appointed as President Director, Mr. S as Director, Mrs. WS as President Commissioner, and Mrs. R as Commissioner.
6) PT. SJB (defendant) must know the stay permit used by a guaranteed foreigner starting from when the effective date of his stay permit in Indonesia, where he is, what his activities are, and when his stay permit expires. Then if there are foreigners subject to immigration administrative action (fines or deportation), then PT. SJB as the guarantor has the obligation to bear all these burdens. If the obligation is not carried out by the guarantor (PT. SJB) has violated Article 118 *juncto* Article 136 paragraph (1) of the Immigration Law.

In this verdict letter stated the criminal prosecution filed by the Public Prosecutor:

1) Declare that NA (President Director) as the party representing PT SJB, has been proven guilty according to law for committing immigration crimes as stipulated in Article 118 *juncto* Article 136 paragraph (1) of the Immigration Law.
2) Imposing a fine of IDR 200,000,000. If not paid, it will be replaced by one year of confinement.

b. Considering the Testimony of Witnesses

1) RCA Witness
   RCA is an immigration officer at the North Jakarta Immigration Office who gave information that on March 30, 2017 he and colleagues from the Immigration Intelligence and Enforcement Section conducted immigration control operations at the Boarding House located at Jalan Tipar Cakung Sukapura, North Jakarta. During the activity, it was discovered that they arrested as many as seven foreigners with Nigerian nationals. Then foreigners are required to present a travel document that is known that one of them has a travel document that has expired since November 11, 2016. This means that those who have stayed in Indonesia have passed the deadline of being in Indonesia for more than sixty days. The witness saw that the guarantor in the Visa of the Republic of Indonesia was PT. SJB (defendant). Then the North Jakarta Immigration Office sent a letter to PT. SJB as guarantor on March 31, 2017. However, until April 10, 2017, PT. SJB (defendant) did not perform its obligation as guarantor, which is to repatriate foreigners who have violated immigration stay permits.
2) MU Witness
   MU is a courier at the North Jakarta Immigration Office. He gave a statement that he had delivered the Official Letter on March 31, 2017 to PT. SJB with an immigration officer named RCA. The official letter has been received by PT. SJB through an employee on the same day.
3) Member in Conference (RES)
   RES as an expert in the trial gave the following testimony:
   a) Every foreigner must follow the prevailing laws and regulations in Indonesia, both the Immigration Law and other national regulations applicable in Indonesia.
   b) Every foreigner residing in Indonesia is required to provide the necessary information regarding his identity and/or family, report changes in civil status, citizenship, employment, guarantor, or change of address to the Immigration Office, show and submit travel documents or stay permits if requested by the Immigration Officer in charge of immigration control as stipulated in Article 71 of the Immigration Law.
   c) Every foreigner residing in Indonesia is required to have a stay permit as stipulated in Article 48 paragraph (1).
   d) Every foreigner whose residence permit expires, the guarantor is responsible for the existence and activities of the foreigner.
   e) Article 63 paragraph (2) stipulates that the guarantor is responsible for the whereabouts and activities of the foreigner he guarantees during his stay in Indonesia, and must report any changes in civil, immigration status, and change of address to the Immigration Office.
   f) Article 63 paragraph (3) states that the guarantor must bear the costs incurred to repatriate (deport) foreigners from Indonesia who have expired their stay permit.
   g) Article 118 of the Immigration Law states that any guarantor who intentionally provides incorrect information or does not fulfill the guarantee obligations provided by him as referred to in Article 63

paragraph (2) and paragraph (3) shall be punished with a maximum imprisonment of five years or a maximum fine of IDR 500,000,000.

4) Testimony of the Defendant in the trial (NA as President Director of PT. SJB)
   a) That it is true that the defendant owns a company called PT. SJB.
   b) That PT. SJB is located at Jalan Ks Tubun 10B, Kota Bambu Selatan, Palmerah, West Jakarta.
   c) That PT. SJB operates in the apparel trade.
   d) That true PT. SJB was founded in 2015.
   e) That the defendant is the President Director of PT. SJB.
   f) That one of the activities of PT. SJB is a visa administration and guarantor for Nigerian and Pakistani citizens who want to shop for garments or apparel in Indonesia.
   g) That as a guarantor carry out visa arrangements at the Embassy of the Republic of Indonesia in Abujadi, Nigeria. Then a Clearing House (CH) meeting was held by the Directorate General of Immigration to decide on the status of Nigerian citizens to be granted visa calling.
   h) That it is true that a foreigner named OSO is the responsibility of the guarantor (PT. SJB).
   i) That it is true that the OSO residence permit has expired since November 11, 2016 and its current status as an overstayer.
   j) That the defendant knows the responsibility as a guarantor stipulated in Article 63 paragraph (2) and paragraph (3).
   k) That PT. SJB has received a letter from the North Jakarta Immigration Office to repatriate foreigners (OSO).
   l) That PT. SJB was given until April 6, 2017 to repatriate OSO, but PT. SJB did not perform its obligations.

3.1.3 Evidence of the Chief Judge in the Conference of Matters with the Prosecutor PT. SJB

In this study, the author collected primary data from the Chief Judge of the North Jakarta District Court who tried this case (DIR). In the interview, the author conveyed several questions related to the basis for criminal conviction considerations only given to corporations, namely PT. SJB. Judge DIR testified that the panel of judges did not have the ability to make a perfect sentence, because of the number of cases that had to be handled. This makes the judge unable to focus on the redaction of the article or the interpretation of the law. Judges only examine, prosecute, and decide cases on what has been charged by the Public Prosecutor (Syahrin, 2019). In this case, the Prosecutor only prosecuted the corporation (PT. SJB) with a fine of IDR 200,000,000 and if not byar, it is replaced with imprisonment for one year.

The author also raises a follow-up question, whether the panel of judges can evaluate and change the object of the charge in a prosecution file. The judge replied that there is no normative legal procedure that provides space for the judge to interpret the contents of the article and evaluate the claim if there is an error from the object of the claim. The judge is only guided by the minutes of the trial, the facts of the trial, and also the file of charges submitted by the Public Prosecutor in the trial.

3.2 Anomaly of Criminal Conviction of Immigration Crime with Corporate Law Subjects

3.2.1 Application of Article 118 juncto Article 136 paragraph (1) in the Perspective of Immigration Crime

The author takes a discussion of immigration law enforcement case studies with the subject of law being corporations. In this case, the corporation in question does not carry out its obligations specified in the Immigration Law. The author argues that there is a discrepancy between the application of Article 118 *juncto* Article 136 paragraph (1) in the Case of PT. SJB. This is because the criminal conviction in Decree Number 732/Pid.Sus/2017/PN Jkt.Utr is not in accordance with the criminal provisions stipulated in the Immigration Law. So the author feels the need to conduct a legal examination of the application of law in the judge's decision with the following analysis:

a. Corporations in Indonesian Legal Perspective

Corporation comes from Latin, corporare. This term has been used by scholars since the early medieval times until now. Corporare is a word derived from the word corpus which means body or giving body. Then it develops into corporatio which means the result of forming a body.

According to Satjipto Rahardjo, a corporation is a body that is the result of a legal ciota in which there is a corpus or structure that has a personality. That is what makes law constituent and subdued by law, even though the term corporation does not exist in classical criminal law codifications. Article 8 paragraph (2) of the *Reglement op de Burgerlijke Rechtsvordering*, contains the term corporation as *indien de eischende overwerende partij eene corporation maatschap of handelsvereeninging is, zal hare benaming en de plaats van naam, voornamen moeten warden uitgedrukt*. Later in 1938, this article was changed to *indien de eischende of verwerende partij een rechtsoersoon of vennootschap is zal haar benaming*. Based on Article 8 paragraph (2) *of the Reglement op de Burgerlijke Rechtsvordering* it is determined that what is meant by a corporation is something that can be equated with a legal subject known as rechtspersoon.

The definition of a corporation as a legal entity is also found in Black's Law Dictionary which states that:

> An entity (usually a busibess) having authority under law to acy as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely, a group or succession of persons stablished in accordance with legal rules into a legal or jurist person that has legal personality distinct from the natural persons who make it up, exist indefinitely apart from them, and has the legal powers that isconstituution gives it.

Soerjono Soekanto and Purnadi Purbacaraka, gave opinions regarding legal entities:

> In translating zedelijk lichaam *into legal entity, then* lichaam is *correct translation of badan, but law as zedelijk translation is* wrong. Because it is actually moral. So the term *zedelijk lichaam* is the same as *rechtpersoon*.

b. Corporate Crime

Corporate crime can also be categorized as transnational organized and structured crime (Disemadi &; Jaya, 2019). This is because a corporate crime is committed by a structured and organized group of people both in terms of positions and responsibilities of each member in a corporation (Parameshwara &; Riza, 2023). This action will give rise to a very compact and solid crime organization (Sjahdeini, 2017). This is usually based on interests and also ethnic and tribal ties or family ties, and in a corporate crime (Priyatno, 2017). In this action, there may be the involvement of law enforcement, professional groups, and the community who are the beneficiaries of the proceeds of crime (Prasetyo, et al., 2017).

In a corporate crime there are several elements in it, namely deceit, misrepercentage, concealment of fact, manipulation, breach of trust, subterfuge, or illegal circumvention that can harm many parties (Rifai, 2014).

c. Subjects of Corporate Crime Law in Article 136 paragraph (1) of the Immigration Law

Legal subjects are all who can have the right and obligation to act in law (Yudoprakoso, 2016). Corporations have the ability as legal objects that are used for all the needs of legal subjects and can be the subject of a legal relationship carried out by the legal subjects themselves. So it can be understood that corporations are subjects of criminal law (Puteri, et al., 2020).

The Immigration Law regulates corporate crime in Article 136 paragraph (1) which explains that if the subject of corporate law commits a criminal act as referred to in Article 114, Article 116, Article 117, Article 118, Article 120, Article 124, Article 128, and Article 129, then the crime is imposed on the management and the corporation. Then in its implementation, this provision has been strengthened by Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations which regulates the

understanding and also legal subjects that can be held criminally responsible in corporate criminal cases. This regulation also regulates the handling of corporate crime cases which are the legal authority of each law enforcement agency. The author cites several articles in Supreme Court Regulation Number 13 of 2016 which uphold Article 136 paragraph (1) of the Immigration Law as follows:

Article 1 number (1)

Management is a corporate organ that carries out the management of the corporation in accordance with the articles of association or laws authorized to represent the corporation, including those who do not have the authority to make decisions, but in reality can control or influence corporate policies or participate in deciding policies in the corporation that can be qualified as criminal offenses.

Article 2

The aims and objectives of the establishment of procedures for handling criminal cases by the Corporation are to:

(1) become a guideline for law enforcement in handling criminal cases with Corporate and/or Management actors;
(2) fill legal vacancies, especially criminal procedural law in handling criminal cases with corporate and/or management actors;
(3) encourage the effectiveness and optimization of handling criminal cases with Corporate and/or Management actors.

Article 23

(1) Judges can impose crimes against Corporations or Managers, or Corporations and Managers.
(2) The judge administers the crime as referred to in paragraph (1) based on each law that regulates criminal threats against the Corporation and/or Management.
(3) Criminal conviction against the Corporation and/or Management as referred to in paragraph (1) does not rule out the possibility of criminal conviction against other perpetrators who under the provisions of the law are proven to be involved in the crime.

With the use of redaction "and" in Article 118 *juncto* 136 paragraph (1) which can be interpreted that both subjects can be subject to criminal sanctions, namely corporations represented by the President Director or leaders responsible for the Corporation and also administrators responsible according to the articles of association and laws.

3.2.2 Elements of Law Enforcement Officers in the application of Article 118 juncto 136 Paragraph (1) in the Case of PT. SJB

On April 20, 2017, the North Jakarta Immigration Office sent a Notice of Commencement of Investigation to the North Jakarta District Attorney's Office to inform that an investigation into alleged immigration crimes committed by the corporation (PT. SJB.) The unlawful element is that the corporation acting as a guarantor does not perform its obligations as stipulated in Article 118 *juncto* 136 paragraph (1).

PT. The defendant SJB is represented by the President Director (NA). He is suspected of being guilty of committing immigration crimes, because PT. SJB does not perform its obligations as guarantor. This was proven when immigration officers conducted immigration control and found that there were foreigners with Nigerian citizenship (OSO) who had expired their residence permits since November 11, 2016 and were subject to immigration administrative action (deportation).

Article 63 paragraph (2) explains that each guarantor must bear the costs arising from the deportation of the guaranteed foreigner. The North Jakarta Immigration Office has sent a notification letter to order the guarantor to immediately repatriate the foreigner within seven days. However, the guarantor did not do what was ordered by the North Jakarta Immigration Office, so the guarantor has committed a criminal act as stipulated in the criminal provisions of Article 118. This article stipulates that guarantors who deliberately provide false

information and do not carry out their obligations as guarantors are threatened with imprisonment for a maximum of five years and a maximum fine of IDR 500,000,000. Because the guarantor is a corporation, the criminal provisions are further regulated in Article 136 paragraph (1) stating that if a corporation commits an immigration crime, the management and the corporation can be criminally charged. From the point of view of the criminal stelsel, the use of editorial "and" in Article 136 paragraph (1) can be interpreted to mean that criminal subjects can be imposed on both (administrators and corporations) as stipulated in Article 118.

But in fact, in this case, only the corporation is subject to criminal sanctions, while the management is not subject to punishment. To examine these findings, the author uses the theory of law enforcement effectiveness proposed by Soerjono Soekanto which states there are five factors that affect the effectiveness of law enforcement (Soekanto, 2004). To sharpen this research, the author will examine only one factor that is considered to have a major contribution in influencing the law enforcement process, namely law enforcement officials. In the investigation process until the reading of the judge's decision that has permanent legal force (*inkracht van gewijsde*) has involved three elements of law enforcement which are explained as follows:

a. Immigration Investigator

The author asked for information directly to the immigration investigator who handled this case directly, namely SS. The author conducted an interview and asked several questions, namely what is the basis for proving the elements of Article 118 *juncto* Article 136 paragraph (1). SS said that when the case title was judged, it was important to send a notification letter to the guarantor that the foreigner he guaranteed had expired and was subject to immigration administrative action. In this case, the guarantor has the obligation to repatriate the foreigner (OSO) within seven days after the letter reaches PT. SJB. As guarantor, PT. SJB, does not respond or have good faith to carry out its obligations as stipulated in Article 63 paragraph (2). This is the basis of legal proof that the guarantor (PT. SJB) has not performed its obligations and has fulfilled the elements of Article 118 with the offense of not performing obligations as a guarantor by not removing foreigners from Indonesia within seven days. Because in this case the guarantor is the Corporation, the provisions imposed are Article 118 *juncto* Article 136 paragraph (1).

The limitation of the authority of the Immigration Investigator in the investigation is until the determination of the article to be imposed and its proof (Syahrin, 2018). After the elements of the article and the administration of the investigation have been fulfilled, the case file will be declared P21 or complete (Yuanitha, 2020). Then the case is transferred to the Public Prosecutor by submitting the accused and evidence to the Public Prosecutor (Mulyawan, 2018). Immigration investigators do not have the authority to determine the prosecution of either the subject or the amount of charges to be prosecuted against the accused (Malota, 2015). No legal procedure can be taken if the Immigration Investigator objects to the charges given by the Public Prosecutor to the defendant. Immigration investigators cannot interfere with the prosecution process conducted by the Public Prosecutor.

b. Public Prosecutor

In this study, the Public Prosecutor became one of the parties that influenced the effectiveness of law enforcement. This is because the Public Prosecutor has the authority and perogrative right to determine the charges imposed on the defendant without any intervention from any party, both from the Immigration Investigator and the Panel of Judges. However, the author could not obtain a statement directly from the Public Prosecutor (FA), because he had died before the author conducted the research. Prosecution documents were also not found. However, the author conducted a search and legal study of Decree Number 732/Pid.Sus/2017/PN Jkt.Utr in which there was the object of prosecution demanded against the defendant.

In Decree Number 732/Pid.Sus/2017/PN Jkt.Utr, it is stated that the Public Prosecutor prosecuted PT. SJB (defendant) with a criminal charge of a fine of IDR 200,000,000 addressed to NA as President Director of PT. SJB. The judgment stipulated that if the fine is not paid, it will be replaced by one year's imprisonment.

c. Panel of Judges

In Decree Number 732/Pid.Sus/2017/PN Jkt.Utr, the Panel of Judges imposed a fine of IDR 100,000,000 on PT. SJB (defendant). The panel of judges gave information regarding why in this case criminal convictions were only given to the corporation, even though the Immigration Law has determined that if the corporation commits a criminal act, those who can be held criminally responsible are the management and the corporation.

The panel of judges explained that they examine, prosecute, and decide criminal convictions always guided by and looking at what the Public Prosecutor demands, as well as the facts of the trial. The judge cannot award more crime than what is demanded by the Public Prosecutor to PT. SJB (defendant), because it will result in *ultra petita*. In this case, the Public Prosecutor only named one defendant, namely PT. SJB represented by NA as President Director. The Public Prosecutor did not name any administrators or anyone else in the company's articles of association to be prosecuted in this case. Even though this provision has been regulated in Article 118, which is a maximum imprisonment of five years and a maximum fine of IDR 500,000,000.

In the provisions of the Code of Criminal Procedure, there is no stipulation regarding the legal process that can be pursued if the Public Prosecutor demands differently from that specified in the law. The judge cannot intervene with the Public Prosecutor to change or replace the object of the charge in the Prosecution Letter. The judge only examines and proves the legal elements in the article charged. Based on the results of legal considerations from the Panel of Judges, it is proven that PT. SJB has committed an immigration crime as stipulated in Article 118 *juncto* Article 136 paragraph (1). Criminal sanctions are given only to corporations (PT. SJB). The author argues that this judge's decision is not in accordance with the theory of legal purpose put forward by Gustav Redburch (Moeliono & Sebastian, 2015). A good judge's decision must meet the principles of legal expediency, legal certainty, and legal justice with the following explanation:

(1) Legal Justice: In the judge's decree that has permanent legal force (*inkracht van gewijsde*), the Panel of Judges only imposes criminal sanctions on the corporation, because the prosecution file submitted by the Public Prosecutor does not mention the administrator as a defendant. So that this causes legal injustice, even though Article 118 *juncto* Article 136 paragraph (1) has determined that if the corporation commits a criminal act, the management and the corporation can be subject to criminal sanctions.
(2) Legal Certainty: The author sees legal uncertainty arising from prosecutions that are not in accordance with what is prescribed in the Immigration Law. If we look from the point of view of the subject of criminal acts in Article 118 *juncto* Article 136 paragraph (1), then those who must be responsible are the management and the corporation. But in fact, what was demanded by the Law Prosecutor and then became the basis for the judge to sentence this case only to the Corporation.
(3) Legal Expediency: The Judges Council (DIR) explained that the imposition of criminal punishment is not a means of revenge, but must provide benefits for many people. That is, the sanctions imposed can provide this deterrent effect on the perpetrators of criminal acts, so as not to repeat their actions that will cause losses to many people. In this case, the author of the criminal sanctions given by the Panel of Judges has not been able to reflect the expediency of the law optimally, because the criminal conviction given is not in accordance with the Immigration Law, so it does not cause a deterrent effect for corporations that commit criminal acts.

The author uses the theory of the effectiveness of law enforcement and also the theory of legal objectives because in handling this corporate crime case, it has resulted in ineffectiveness in the application of the law (Ansori, 2017). The author sees three elements of law enforcement officials who play an important role in the law enforcement process of this case. The author uses law enforcement theory presented by Soerjono Soekanto to see and measure the limits and authority of each element of law enforcement officials (Arianto, 2010). The author finds that in this case, the party who has erred in applying the law is the Public Prosecutor. In the Code of Criminal Procedure, the Public Prosecutor is given the authority to prosecute and determine the object of the charge and which subjects can be held accountable. But in this case, the Public Prosecutor only named one defendant (corporation), while the management was not prosecuted. Even though the provisions for immigration criminal sanctions for corporations have been regulated in Article 118 *juncto* Article 136 paragraph (1) of the

Immigration Law which was later strengthened by Court Regulation Number 13 of 2016. In this provision, the party that must be responsible is PT. SJB as a corporation and NA as President Director.
With the object of the charge that is different from the Immigration Law, the Panel of Judges cannot impose criminal penalties on the management. The panel of judges has no authority to intervene in the prosecution of the Public Prosecutor and decide the criminal conviction no more than what is demanded by the Public Prosecutor (*ultra petita*). Therefore, the author considers that this judge's decision does not meet the principles of legal justice, legal certainty, legal expediency as conveyed by Gustav Radburch.

4. Conclusion

Based on the results of data analysis in the previous discussion, it can be concluded that the basis for the judge's consideration of imposing a criminal verdict in a corporate crime case is only addressed to PT. SJB while its management is not given criminal sanctions. The panel of judges in sentencing a criminal case refers to the prosecution file submitted by the Public Prosecutor. In the prosecution file, the Public Prosecutor only charged one defendant, namely PT. SJB represented by NA as President Director. The author did not find a normative procedure that could give authority to the Panel of Judges to intervene in the charges filed by the Public Prosecutor. The Magistrate's Majeliest cannot decide cases beyond what is demanded by the Public Prosecutor.
The application of Article 118 *juncto* Article 136 paragraph (1) is addressed to PT. SJB for not carrying out its obligations as guarantor. PT. SJB did not repatriate the foreigner from Indonesia, because he had passed his stay permit. The author found a discrepancy between the Judges' Decision Letter that has permanent legal force (*inkracht van gewijsde*) and what is mandated by the Immigration Law. Article 136 paragraph (1) specifies that if an immigration crime is committed by a corporation, the parties who can be asked for responsibility are the management and the corporation. The author sees that there are three elements that affect the effectiveness of law enforcement from this judge's decision, namely the Immigration Investigator, the Public Prosecutor, and the Panel of Judges. The author argues that the Public Prosecutor has a crucial role that influences the disagreement in the application of the article. This is because the Public Prosecutor has authority over who and what objects are used as prosecutions in this case. However, the author cannot know what the basis for the Public Prosecutor's consideration for carrying out the prosecution, because the Public Prosecutor has died. The author concludes that there was an error in the interpretation of the elements in Article 118 *juncto* Article 136 paragraph (1) which resulted in the prosecution only directed at the corporation.

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Analyzing Arabia and Japan's Energy Security Activities within Saudi-Japan 2030 vision

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Abstract
Bilateral cooperation between Saudi Arabia and Japan takes various forms. As an illustration, the two countries have demonstrated their long-term commitment to working together in multiple fields, which ultimately sparked the Saudi-Japan Vision 2030. In this context, collaboration in the energy security sector is essential, especially with Saudi Arabia, which wishes to switch from fossil to renewable energy. This study will review further the implementation of Saudi Arabia-Japan bilateral cooperation through Saudi-Japan Vision 2030 in energy security. Next, the research will explore the various projects, activities, and types of collaboration that have been undertaken between the two countries under the vision they share.

Keywords: Saudi-Japan Vision 2030, Energy Security, Bilateral Cooperation

1. Introduction

The Kingdom of Saudi Arabia (KSA) is the largest country in the Middle East Asia region, with only around 1% of productive land. Arid deserts dominate other areas of KSA. Due to the desert conditions, KSA has an uneven population distribution. Most of the KSA population is gathered in urban areas and centers of economic growth, experiencing high urbanization rates. Government programs, such as infrastructure development and job creation in urban areas such as Makkah, Riyadh, and the east, have encouraged significant economic growth. The KSA area in the middle of the Arabian Peninsula has a strategic position with sufficient air, sea, and land access. The KSA area is also squeezed by the two busiest shipping lanes in the world, namely the Red Sea for the Suez Canal and the Persian Sea.

The KSA financial system has changed since the discovery of oil in the Middle East region, which advanced Saudi Arabia as a world oil producer while supporting Western countries. In 2016, KSA became the world's most prominent supporter and the ruler of oil production in the Middle East region. This oil production resulted in significant economic growth and provided huge profits for the country. Therefore, KSA is currently known as a rich country thanks to the discovery of oil (Kartini & Ghafur, 2019).

Recognized as a country with an absolute monarchy system of government led directly by the King and royal family, the character of the KSA government tends towards an oligarchic form. This can be seen from the composition of the cabinet in the government, which is identical to that of the royal family. As a result, all KSA policy authority rested with the monarchy. Therefore, with the emergence of various decisions, the KSA community can only accept what has been taken by the government. This system is closely related to the culture of the KSA community, which prefers to be led by respected people. Because the state's status is passed down from one family, the royal family has special powers, allowing them to control all sectors of the KSA state. In this context, KSA can realize their dreams according to their wishes. However, the impact is to give the impression that the KSA community does not have the freedom to innovate according to their wishes, and they are expected to comply with the policies set by the government.

In the history of KSA, in the 1970s, policy leaders had attempted to reduce dependence on petroleum and make it a significant contributor to Gross Domestic Product (GDP). The strategy implemented by Arab governments did not meet expectations, as oil remained the main commodity, contributing around 73% of state revenues. Even though world oil prices experienced fluctuations, the KSA Government could not eliminate its dependence on oil. Ultimately, King Salman Bin Abdulaziz showed courage by planning an energy diversification program directly supported by Crown Prince Mohammed Bin Salman (MBS). This program aims to reduce KSA's economic dependence on the oil sector and create alternative sources of income to increase the country's financial stability (Roji, 2017).

On April 25, 2016, Vision Saudi 2030 was launched, Saudi Arabia's effort to reduce its dependence on the oil sector, diversify the economy, and expand the public sector, including tourism, education, infrastructure, health, and recreation. KSA, one of the conservative countries, views Vision 2030 as a solution to overcome its economic challenges and reduce its dependence on oil. As the initiator of reform, the Crown Prince of Saudi Arabia initiated a change from the country's image, which was initially identified as conservative, to more moderate. With Vision Saudi 2030, Crown Prince Mohammed Bin Salman (MBS) believes and promises that this will transform Saudi Arabia into a more open and modern country. This program is expected to open the door to economic problems and form a new direction for the government to reduce dependence on oil resources (Nugraha, 2018).

In this case, Saudi Arabia (KSA) has solid cooperative relations, one of which is with Japan. Japan is an essential investor in Saudi Arabia and often develops diplomatic ties through trade, product import and export, and technology cooperation. In contrast, Saudi Arabia has been Japan's most prominent oil supporter since 1955. Japan first imported oil from the Middle East in 1921, mainly from Iran. After World War II, Japan's oil demand increased to support postwar reconstruction and economic growth. Although Japan experienced failure in its efforts in Saudi Arabia and Iraq in the 1930s due to limited development funds and technical capacity, Japan's efforts to secure crude oil were successful in 1957. That year, the Saudi Arabian Oil Company obtained the Khafji field concession in the neutral zone. Despite this, most of Japan's oil is still imported through large Western companies controlling vast resources through concession agreements. A paradigm shift occurred in 1973 when the Organization of the Arab Petroleum Exporting Countries (OAPEC) imposed an oil embargo following the fourth Arab-Israeli War. Japan failed to be categorized as an Arab-friendly country and was notified of reduced exports. The oil crisis accelerated inflation, prompting the Japanese government to introduce a legal framework to prevent hoarding and arbitrary price increases. These events prompted a severe rethink of Japan's energy security and relations with the Middle East. In response to these challenges, in 1974, Japan established the Japan Institute for Middle Eastern Economics (JIME), which later became the predecessor of the JIME Center-IEEJ. This step was taken as a new initiative to understand the geopolitics of the Middle East and strengthen ties between Japan and the region (Yoshioka, 2018).

In energy security, Japan has secured national oil reserves for over 100 days, which did not exist in 1973. Energy-saving measures have also become standard practice in Japanese society. The Japanese government is increasing the use of nuclear energy and natural gas to diversify primary energy supplies. As a result, the share of oil among primary energy sources decreased significantly from 75.5% in 1973 to 41.1% in 2015. Despite the decline, dependence on oil from the Middle East remains high, with more than 80% of Japan's oil supplies

originating in the region in 2015. Since 1975, Saudi Arabia, the UAE, Kuwait, and Qatar have been Japan's most significant oil exporters.

Meanwhile, the UAE, Qatar, and Oman provide a quarter of Japan's natural gas supplies. In 2011, Saudi Arabia doubled its gas exports to Japan following the suspension of nuclear power operations caused by the Great East Japan Earthquake. Saudi Arabia is the third gas provider for Japan after Australia and Malaysia. The Ministry of Economy, Trade and Industry (METI) projects that oil and natural gas will still account for about half of Japan's primary energy in 2030, making relations with Saud Arabia crucial for Japan's energy security. Apart from the energy realm, ties between Japan and Saudi Arabia have developed to involve exporting cars and machinery and infrastructure development by Japanese companies. The Japan International Cooperation Agency (JICA) was also engaged in reconstruction projects in Iraq in 2003. Japan's active political and economic involvement with Saudi Arabia aims to achieve peace and stability in both countries, primarily focusing on economic and human development (Yoshioka, 2018).

Since the beginning, the two countries have achieved benefits. Until now, they have maintained cooperative solid relations and expanded bilateral relations in various aspects, including cultural understanding between the two countries. In this context, Japan and Saudi Arabia realize the great benefits of collaborating to achieve their goals. To strengthen this cooperation, the Crown Prince of Saudi Arabia, Mohammed Bin Salman, and the Prime Minister of Japan, Shinzo Abe, formed the "Saudi Japan Vision 2030 (SJV 2030)" group to symbolize the partnership between these countries in the modern era. Implementation of Saudi Japan Vision 2030 began in the first meeting in Riyadh on October 9, 2016, involving five ministries, including the Saudi Arabian Ministry of Economy and Planning (MEP), Ministry of Trade and Investment (MCI), Ministry of Energy, Industry and Mineral Resources (MEIM), Ministry of Economy, Trade and Industry of Japan (METI), and Ministry of Foreign Affairs (MOFA). The meeting discussed cooperation opportunities allocated into five Sub-Groups (SG1-5) based on areas of cooperation, with the addition of one Sub-Group (SG0) to discuss potential new plans for collaboration in other fields. This reflects the commitment of both countries to maintain and expand mutually beneficial cooperation in various sectors (Ministry of Foreign Affairs of Japan, 2017).

2. Method

The subject of this research is Saudi Vision 2030, and the object of this research is KAS and Japan's cooperation in energy security. In this research, the author chose to use a qualitative method, which is an approach to exploring and understanding the meaning of individuals and groups related to social problems. Meanwhile, according to Bryman (2016), qualitative research is a research strategy that emphasizes words rather than quantification in data collection and analysis. Where the approach taken places more emphasis on inductivity to connect theory and research. This qualitative research must carry out the norms of the natural scientific model and positivism in its preference for interpreting the social world individually. This research embodies the view of social reality as a constant. Apart from that, this research uses descriptive analysis, which can be understood as research that takes data in detail and clearly as it is in the field. This understanding is in line with the opinion of Leedy & Ormrod (2015), who explain that descriptive research is a type of research that describes new or rarely known phenomena and involves collecting the characteristics of these phenomena without changing the current situation.

To link the explanation above, the use of qualitative methods with this type of descriptive research was carried out to provide an overview and explore the essence of the meaning of KAS-Japan cooperation in the field of energy security and the policies carried out by the Saudi Arabian government regarding cooperation with Japan which are considered to have an impact. This is positive for the country's economy, which depends not only on oil. Using this method, the author will describe bilateral cooperation activities to realize Saudi Vision 2030.

2.1 Concept

In this research, the author will use the cooperation theory approach of Robert Axelrod and Robert O. Keohane to explain matters related to the implementation of cooperation between Saudi Arabia and Japan in the Saudi-

Japan Vision 2030 in the Energy sector. Using this cooperation theory, the author aims to explain three-dimensional situations allowing Saudi Arabia and Japan to collaborate on this topic.

Robert O. Keohane and Robert Axelrod explain three-dimensional situations that allow countries to collaborate, namely mutuality of interest, the number of actors, and the shadow of the future. Shared interests and goals significantly influence the forming of cooperative relationships because collaboration can run efficiently and effectively and produce satisfactory output for both parties.

Next is the number of actors or parties involved in a collaborative relationship. In this case, the state must consider the number of parties involved to avoid defectors and free riders in the cooperation relationship. In carrying out a cooperative relationship, an effective strategy is needed. The strategy here is reciprocity. According to Axelrod, reciprocity will be effective if players can identify defectors, focus retaliation on defectors, and have sufficient long-run incentives to punish defectors.

Countries involved in cooperation must know whether there are parties in it that have the possibility of hindering collaboration, providing retaliation and sanctions against the country, which is the obstacle. As in the case of Indonesia's relationship with the Middle East, it remains essential for radical movements, both for ideological support and financial funding. The shared Islamic identity of both nations underscores cooperation between Saudi Arabia and Indonesia. However, there is a warning that terrorism should not be associated with religion, particularly Islam. Indonesia has garnered global attention due to brutal terrorist attacks and the presence of terrorist networks related to Al-Qaeda. The country is also considered one of the largest suppliers of Islamic State fighters in the world. This indicates the presence of a radical Muslim community that believes Islam should be the sole guidance in life, even adopting extreme measures to reform existing conditions (Juned & Saripudin, 2017).

Finally, the shadow of the future is about whether the cooperation carried out can produce good protection in the future or not. This is also often referred to as concern for the future. A country will tend to collaborate if the results of the cooperation provide long-term benefits. Four factors make Shadow of the Future effective in building cooperation: long-time horizons, Regularity of stakes, reliability of information about the other actions, and quick feedback about changes in the different actions (Axelrod & Keohane, 1985).

3. Result and Discussion

Relations between Saudi Arabia and Japan existed before World War II, marked by a pilgrimage to Mecca carried out by Muslim Kotaro Yamaoka with a Mongolian group in 1909. Official contacts between Saudi Arabia and Japan began with a visit to Japan by a Saudi Arabian envoy. For England, Hafiz Wahab to attend the opening of a mosque in 1938 in Yoyogi, Tokyo. On the other hand, Japan returned to Saudi Arabia in 1939, represented by the Japanese envoy to Egypt, Yokoyama, and met with King Ibn Saud. After World War II, the first Japanese economic delegation was sent to Saudi Arabia in 1953, and the official establishment of diplomatic relations was carried out in the following years, precisely in 1955. The Saudi Arabian embassy was officially opened in 1958 in Tokyo, while Japan began opening its embassy offices in 1960 in Jeddah before being moved to Riyadh in 1984 (Ministry of Foreign Affairs of Japan, 2019).

One of the main points in the bilateral relationship was the granting of oil field concessions by Saudi Arabia to the Japanese company, Arabian Oil Co., and the subsequent successful oil extraction. The concession agreement was signed in December 1957, and oil extraction trials proved successful in January 1960. The agreement then ended in February 2000. However, relations between the two countries that have existed since 1955 continue to show positive and smooth results, which are marked by various visits from both Japan and Saudi Arabia as well as various Cooperation agreements such as the Economic and Technical Cooperation Agreement in 1975, the Air Services Agreement in 2009, the Convention on the Avoidance of Double Taxation and the Prevention of Tax Avoidance about Taxes on Income in 2011, and the Investment Agreement in 2017 or the Saudi Japan Vision 2030 program. From a general economic perspective, the author sees that the existence of the Saudi-Japan

Vision 2023 program is profitable and worth considering, considering that Japan is a potential trading partner for Saudi Arabia and vice versa.

Data shows that over the last four years, Japan has become a very potential and profitable market for Saudi Arabia in exporting its products. For at least four consecutive years, Saudi Arabia's export value has been in a trade surplus with Japan; for example, in 2021, Saudi Arabia will gain a trade balance surplus of USD 21,455,054 with Japan.

Apart from that, based on data collected through ITC Trademap, Saudi Arabia's exports to Japan are currently dominated by crude oil exports, which will reach 52 million tonnes per year in 2022 and have increased from the 2021 period, which reached 48 million tonnes. Meanwhile, Japan's exports to Saudi Arabia are dominated by vehicles and accessories, amounting to 3.5 million tons in 2022 and increasing from the period in 2021, which reached 2.9 million tons. Nevertheless, there has been an increase in exports of other commodities such as aluminum, organic chemicals, bronze, plastic, and gems (International Trade Centre, 2022).

The Saudi-Japan Vision 2030 program has been launched at least since 2016 between Saudi Arabia's Crown Prince Prince Muhammad bin Salman and Japanese Prime Minister Shinzo Abe to increase cooperation based on mutual benefit and not limited to the petroleum sector. Saudi Arabia also emphasizes its goal to become the center of Islam and the heart of Arabia through investments to create a more diversified and sustainable economy. It also utilizes Saudi Arabia's strategic geographic location to drive international trade connecting three continents.

There are at least three pillars in the Saudi-Japan Vision 2030 program: Diversity, achieving sustainable growth by establishing a broad industry, increasing economic competitiveness by utilizing technology and innovation, Soft Values through cultural revitalization, and social development by establishing a solid basis for cooperation. In the Saudi-Japan Vision 2030 program, nine themes will be the focus, namely, industrial competitiveness, energy, entertainment and media, health, infrastructure, agriculture and food security, MSMEs, culture, sports and education, investment and finance (Ministry of Foreign Affairs of Japan, 2017).

For example, a project currently underway is Petro Rabigh, a joint venture between Saudi Aramco and Sumitomo Chemical worth more than $10 billion and is an investment by the Japanese company. Currently, the value of the partnership between the two companies has been increased by $9 billion to $19 billion to expand refineries and production. Additionally, there are plans to build a state-of-the-art conversion facility alongside the existing plant, which is expected to attract at least $1 billion in investment from the private sector (The Japan Times, 2017).

3.1. Implementation of Saudi-Japan Vision 2030 through Multiple Projects

Through Saudi-Japan Vision 2030, the two countries are following up on various initiatives they have. With the existence of Saudi-Japan Vision 2030, the targets to be achieved also become more apparent. We must emphasize that Japan and KSA have made three crucial MoUs. The three MoUs are MoUs in the field of energy efficiency. The MoU is related to the MoU on Cooperation in the energy sector. KSA's further plans in the manufacturing sector will seek to localize the renewable energy and industrial equipment sectors (Yamada, 2017).

National Transformation Program (NTP), KSA, has set an electricity production target of 3.45 gigawatts or 4 percent of total power consumption in KSA. To achieve this target, Saudi Aramco - an oil refinery company owned by Saudi Arabia - agreed with Showa Shell to study solar module production in KSA. Showa Shell is a Japanese refinery company that is 15 percent owned by Saudi Aramco (Saudi Arabia, 2020). KSA has set a target of using wind and solar power plants of 9.5 gigawatts in other sectors by 2023. In addition, the Saudi government also aims to increase renewable energy production to 60 gigawatts, including 40 gigawatts from solar energy and 20 percent from wind energy and other sources by 2030. In 2019, twelve projects were pre-developed with a total capacity of up to 3.1 gigawatts (Zohbi & AlAmri, 2020).

All forms of goods and services related to energy production have been initiated by Saudi Aramco since 2015. This is proof of Saudi Arabia's seriousness in handling energy-related matters. Saudi Aramco itself plays a role in providing 70% of goods and services related to energy production. Furthermore, just as Saudi Aramco collaborates with Showa Shell, Saudi Aramco also collaborates with Sumitomo Corporation in producing tubular goods used in oil and gas fields (Saudi Arabia, 2020).

The interests between the two countries have been guaranteed through the existing Memorandum of Understanding. With the commitment demonstrated through the MoU, mutuality of interest has been realized. The number of actors involved is also quite clear from the data obtained by the author and based on the actors mentioned by the author. By knowing who the (domestic) actors are involved in a collaboration, it is hoped that clarity, accountability, and transparency will be created. With targets also determined, factors such as long-time horizons can be seen more clearly. A clear target means there is less dilemma between actors; therefore, cooperation will run more smoothly.

3.1.1. Initiative Manar

Furthermore, KSA and Japan announced establishing the Manar initiative for cooperation in clean energy. The Manar initiative aims to provide supply chain security and flexibility while realizing the goals of both countries in the field of clean energy and sustainable, innovative materials. This initiative will strengthen Saudi Arabia's ongoing efforts to become a hub for clean energy, mineral resources, and energy component supply chains (Asharq Al Awsat, 2023b).

One of the cores of the Manar initiative is the production of various environmentally friendly materials, and leading companies from Saudi Arabia and Japan are expected to participate and increase their cooperation. Leveraging their joint efforts, the two countries aim to develop components in the energy supply chain, including renewable energy components, thereby supporting the realization of energy projects under this initiative. This will then help the various actions explained in the previous paragraphs.

The initiative will include projects driving the transition to clean energy, focusing on hydrogen and ammonia technology, synthetic fuels, circular carbon economy, carbon recycling, direct air carbon (DAC) capture, and technologies related to essential minerals. To ensure the smooth running of this cooperation, experts from companies and governments between the two countries will be used to develop the market for clean energy and further strive to ensure more affordable prices. And once again, the author emphasizes increasing the flexibility of the energy supply chain (Al Arabiya, 2023).

The Manar initiative also connects the King Abdullah Petroleum Studies and Research Center (KAPSARC) — a research institute that specializes in economics, climate issues, and energy under the Government of Saudi Arabia — with the Institute of Energy Economics, Japan (IEEJ) — a research institute Japan is the same as KAPSARC — Of course, the two institutions exchange knowledge in terms of research and other applied sciences which are carried out through the implementation of shared activities such as joint workshops, international conferences, researcher exchanges, to activities related to joint evaluation of research activities and publications between both research institutions (Asharq Al Awsat, 2023a). The research also emphasizes research on hydrogen, ammonia, synthetic fuel (methane), energy storage technology, carbon recycling, and nuclear issues.

Under Manar's initiative, a sub-initiative called the Saudi-Japan Lighthouse Initiative was also created. As the name suggests, the initiative is designed to be a beacon of light for other countries that want to reduce their carbon emissions. Saudi Arabia's ambition can be seen through this initiative, where Saudi Arabia wants to pioneer the development of clean energy in the Arabian Peninsula (Saeed, 2023). Just like the Manar initiative, the Lighthouse Initiative also focuses on areas of cooperation related to hydrogen and ammonia, e-fuels, carbon recycling, circular carbon economy, Direct Air Capture, cooperation in the minerals sector and supply chain resilience, sustainable advanced materials and exchange of research and knowledge results. In the presentation of

the sixth Saudi-Japan Vision 2030 Joint Ministerial Meeting, it was also explained that Saudi Arabia plans to increase gas production capacity and LPG exports, which are needed for the Japanese economy. Saudi Arabia also plans to develop blue and green hydrogen as part of its agenda. Japan assisted in the execution of this project. Likewise, Minister Nishimura added that since the fifth ministerial meeting two years ago, there have been significant improvements in the energy sector. He emphasized that it was essential to eliminate Saudi Arabia's dependence on the petroleum sector. In October, JOGMEC and Aramco signed a Cooperation Agreement in hydrogen and ammonia to accelerate achieving a sustainable society (Arab News Japan, 2022).

Dr. Sultan bin Ahmed Al-Jasser, Minister of Energy from Saudi Arabia, stated that the Lighthouse Initiative will create business opportunities for both countries and accelerate clean energy technology development. What actors have been mentioned in this initiative, and in what sectors is the cooperation intended to be carried out? Some of the collaboration focuses mentioned above include research collaboration on hydrogen, ammonia, synthetic fuel (methane), energy storage technology, carbon recycling, and nuclear issues. By looking at examples of this research collaboration, both countries have specific goals regarding what they want to develop. Therefore, the author argues that the factors that enable two actors to work together are sufficient. These factors are the mutuality of interest, long-time horizons, and the reliability of quick feedback on each other's actions. This is because the constant feedback obtained by exchanging information and research results can measure the success of the cooperation between two countries. The author also emphasizes that if more factors are met, the shadow of the future and dilemmas that occur will also be reduced. As a result, cooperation between two countries can be considered as successful cooperation and has the possibility of being able to work together for a more extended period.

3.1.2. Hybrid Renewable Energy Supply Infrastructure

Since July 2019, the Saudi Electricity Company (SEC) and Japan's METI have been working together to introduce infrastructure in Saudi Arabia that can supply renewable energy stably and in the most suitable form through renewable energy, the Internet of Things. Companies from Japan supported by the New Energy and Industrial Technology Development Organization (NEDO) have conducted various surveys to demonstrate this project since August 2020. In this project, PV solar panels, an energy storage system, and an energy management system (EMS) will be packaged together in a hybrid system. METI aims to introduce this project “package” to a wind power plant site called Huraymila as a “Hybrid Renewable Energy Supply Infrastructure,” which will be connected using network technology, including IoT.

The hybrid "package" that will be sent will use technology from Japan. The existence of this project package will be a historical milestone for Japanese companies wishing to do business in Saudi Arabia in the future. Apart from that, this project will undoubtedly contribute actively to the existing energy policy in Saudi Arabia, where the latest plans and other cutting-edge technologies will be introduced. It will contribute to implementing the Saudi-Japan Vision 2030 and help Saudi Arabia achieve the Saudi Vision 2030 (Ministry of Economy, 2020).

All cooperation carried out in various fields, whether through capacity building programs, seminars, workshops, information exchange, technology transfer, expert exchange, and research results exchange, has shown that the form of bilateral cooperation has certainly been adapted to the needs and capabilities of each actor. Furthermore, this bilateral cooperation is not only limited to government entities. As mentioned, many other non-governmental actors help, including research institutions between the two countries, academics, and the private sector.

3.1.3. Cooperation in National Grid Development

National Grid Saudi Arabia (NG) Saudi Arabia's national network and the Japanese government are collaborating in developing electricity network infrastructure. Some of the focus areas in this collaboration are as follows: 1) Development of standards and specifications; 2) Engineering and Design Optimization; 3) Asset Management by international standard ISO55000; 4) Training and capacity development for staff; 5) Localization of industry in Saudi Arabia; 6) Making a technology road map.

National Grid Saudi Arabia has been operating since January 2012. The electricity network and various existing infrastructure are wholly owned and managed by the Saudi Electricity Company. National Grid Saudi Arabia aims to plan, operate, and maintain the electricity grid transmission system in Saudi Arabia. Currently, this project has an active role in developing the energy sector in Saudi Arabia. It is also interesting to know that through this project, Saudi Arabia, through the various operations it has carried out and the investments it has made, wants to guarantee electricity interconnection in the Middle East. With a very strategic location, Saudi Arabia wants to ensure the affordability of electricity throughout the country and to other regions of the Middle East. This project also supports Saudi Arabia's efforts to reduce pollution levels and carbon emissions from power plants (Saudi Electricity Company, n.d.).

3.1.4. Joint Crude Oil Storage Project

Another ambitious project can be seen in the Joint Crude Oil Storage Project. This is a follow-up project from 2010 by Saudi Aramco and Okinawa CTS Corporation in the Japanese prefecture. Saudi Aramco uses This shared oil tank commercially as a base for their oil to distribute to nearby "markets" or countries. Seeing more benefits from this collaboration, in October 2019, this project was finally renewed. As one of the projects that we can see in concrete terms, this project can help Japan guarantee its energy security, especially amid the current geopolitical tensions. For Saudi Arabia, this project will provide faster, more accessible, and more efficient access to crude oil supplies to their East Asian buyers (Kumagai, 2019; Ministry of Economy, 2020). The supplies in the tank are ready to be marketed to Pacific Rim countries from closer locations. In exchange for providing storage space, Japan gets priority to purchase all the crude oil in the tanks in the event of an unexpected shortage.

Isshu Sugawara, former Minister of Economy, Trade, and Industry of Japan, said that Japan will continue to support Saudi Arabia in maintaining the stability of its crude oil supply. Through this project, Saudi Aramco leases around 1.30 million kiloliters or at least 8.18 million barrels of natural oil capacity in Okinawa. More specifically, Saudi Aramco rented the crude oil tank from JOGMEC (Japan Oil, Gas and Metals National Corporation) or the Japan Oil, Gas and Metals National Company. It is also known that this project has commercial objectives and aims to provide priority supplies for Japan should a crisis occur (Kumagai, 2019).

For Japan, storing oil domestically from strategic suppliers such as Saudi Arabia is critical, considering recent events in the Middle East. This storage is also a form of prevention if there is an attack on Saudi Arabia's oil storage facilities. It is typical for a country with rich energy resources to conduct energy diplomacy similar to this through a project. Saripudin et al., through their publication, also emphasize that energy-producing countries tend to focus on how they could expand their market globally (Saripudin et al., 2023).

Japan depends on imports for almost 90% of its crude oil needs. Crude oil imports from Saudi Arabia averaged 1.09 million barrels, accounting for around 35% of total oil imports from January to August 2019. The author reiterates that the storage located in Okinawa could be a source of reserve oil supplies for Japan if an incident were to happen; it is also possible that Japan would gain some advantage in gaining access to crude oil if Saudi Arabia wanted to withhold distribution of its crude oil to the international community.

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4. Conclusion

Saudi-Japan Vision 2030 begins with the common interests of the two countries, where, in short, Saudi Arabia feels that project development and political and economic cooperation with Japan is essential, as well as on the

Japanese side, which Japan also needs to increase their involvement among the Arab Gulf countries, one of which is Saudi Arabia.

Saudi Arabia is the world's leading crude oil supplier, making it a significant player in the energy sector. This has led to increased interest in discussing cooperation in this field. Energy security is also crucial for countries engaging in bilateral cooperation, especially in the energy sector.

The author has explained how it is implemented and elaborated on how this bilateral cooperation has been implemented in such a way through various activities to ensure energy security. If we discuss energy security, many processes must be considered; therefore, it is natural that the author has described several collaborations, projects, and training programs as a form of effort between two countries to develop their energy sector and achieve energy security. It is essential to know that regardless of existing implementation, various challenges and opportunities can be analyzed further by stakeholders and academics who will discuss similar topics.

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Moderation in Islamic Teachings and Arabian Values

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Abstract
The article examines the representation of Islamic teachings since some images of deviations have emerged in the contemporary world, threatening international security, and endangering world peace and instability. This is due to neglect of civilized principles, complacency in human ideals and values, and those who consider the aspects of the greatness of Islamic teachings - which Allah has honored Arabian values and mankind as well. The Prophet's Arabian values were the footprint of the Islamic nation's success. There is a prominent feature, and a distinct feature, which was the reason for the Islamic nation to assume a prominent position among the nations, and to give it the qualifications of pioneering leadership for humanity, and the elements of witnessing all people.

Keywords: Allah, Qur'an, Sunnah, Moderation, Islamic teachings, Prophet Muhammad, Arabian Values

1. Introduction

Islamic teachings are moderate tenants for mankind, and they are the best in faith and practice. Allah Almighty says, "*Thus We have made you [true Muslims - real believers of Islamic Monotheism, true followers of Prophet Muhammad SAW and his Sunnah (legal ways)], a Wasat (just) (and the best) nation, that you be witnesses over mankind and the Messenger (Muhammad SAW)[1] be a witness over you"* (Qur'an, 2:143). Being moderate is the best in righteousness, justice, integrity, and elevation. The characteristic of moderation manifests the images of the tolerance of Islam and highlights the virtues of its principles, and its care for the highest social and moral ideals along with great human values, as well as the factual truth. Hence the significance of moderation, especially in this time in which the campaign against Islam and its followers intensified, is thrown with illusory and tendentious terms. Multimedia distorts its image and alienates its strong tradition of tolerance. Writers hunt for the mistakes of some of its affiliates, at a time when the facts are inverted, standards are set back, and some of the people of Islam are tested by avoiding its method of brightness. Therefore, they are shown living a life of religious extremism or negligence, and they follow the path of exaggeration or estrangement.

The moderation of Islam is comprehensive and encompasses all matters of religion, this world, and the hereafter. It is an aspect of the marvelousness in it and its validity for every time and place. With moderation, it magnifies the responsibility of the Islamic nation and its global role as a nation of moderation and testimony: Allah, Glory be to Him, says "*That you be witnesses over mankind*" (Qur'an, 2:143). A testimony in which rights are

[1] The phrases, SAW and (PBUH) mean "May blessings and peace be upon him."

preserved, justice is achieved with them, dignity is preserved, and contemporary civilization is built upon it. After the world has been wracked with various types of conflicts, humanity has been exhausted by various types of shocks. Humanity has been thrown into waves of systems and passions, and its entities have been torn apart in an exhausting journey of loss and destruction. Humanity is fallen into an abyss of annihilation, and a deep abyss of wandering and nothingness. This is due to arrogance, extremism, and one-sidedness in opinion, as well as excessive visions and attitudes. However, the world is dominated by a terrifying civilized conflict that rises from its stumble, wakes up from its negligence, and gathers in the wake of its scattering, after it has been scattered for a long time, because of the misbehavior of some of its sons and those affiliated with the method of moderation in cultural and media ranges. Some Muslims became fed from the crumbs of the tables of the materialistic West, in a form of intellectual extremism, corresponding to opposite responses in opinion, opposite in direction, has taken the way of transgression and prejudice through scandalous media exaggeration until they stigmatized Islam with mistakes and the shortcomings. It is decided by fairness that an individual's error in applying a system is not a defect in the system itself, and whoever claims otherwise, has lost credibility, objectivity, and reality. Though, there is a final important note, which is that moderation in Islam is not subject to whims and desires. It is not a repudiation of the constants and ingredients, nor a rebellion against principles and goals, but rather it is controlled by the rules of Sharia and its wonderful provisions such as personal laws and jury systems which is adopted in the West for four hundred years (Al-Olaqi, 2022).

There are some people who carry everyone who is committed to his religion - especially from the people of righteousness and reform - and attach them to fanaticism and extremism. On the other hand, the defeated who escape from ideals; who are excessive in values; and who play with the regulations and principles. they have them as fantastic thinkers with broad horizons. They are introduced as enlightened liberators and open-minded to contemporary horizons, as well as realistic in vision and behavior. In fact, this is a kind of feverish extremism and poisoned thought, as opposed to reprehensible extremism. It is a big burden for students of moderation to achieve moderation between the two parties. Therefore, the moderation bidding from Arabian values represented in Saudi Arabia, in terms of sense and meaning, place and time, and a belief and a method to the world, fall into the shades of this radiant moderation. It is a global invitation to achieve more grace and more peace for humanity to live in security, safety, prosperity, and harmony, as well as to emit the radiance of love, compassion, intimacy, and cohesion among people.

2. Moderation in Islamic Teachings' Method

Islamic teachings' method is the clear divine path, as in the Noble Qur'an, *"To each among you, We have prescribed a law and a clear way"* (Qur'an, 5:48). It is the clear, straight, and moderate path that the Messenger of Allah (PBUH) walked in belief, worship, rulings, and morals, which followed by his Companions (PBUT),[2] and those who followed their path onto the Day of Judgment. The method is based on the Book of Allah, the Sunnah of His Messenger (PBUH), and the early good righteous Arab predecessors of the three favorite centuries. Undoubtedly, this is the approach that Allah has established for all human beings. Allah the Almighty says in *Surat Al-Fatihah*, the Opening Chapter: *"Guide us to the Straight Way (6) The Way of those on whom You have bestowed Your Grace, not (the way) of those who earned Your Anger, nor of those who went astray"* (Qur'an, 1:6-7). This is the middle approach of the straight path that Allah has blessed. Everyone who deviates from the good intention of the straight path and follows a path other than it, is astray for misleading the path.[3] The straight path is the middle path, the Almighty says, *"not (the way) of those who earned Your Anger, nor of those who went astray"* (Qur'an, 1: 7). The approach of those, whom God is angry with, represents negligence which is the approach of the misguided that represents exaggeration, as they are two approaches that revolve around exaggeration and estrangement. The most prominent feature of the Muslim people's approach is that it is indeed between the two approaches. It is the right path between the two wrong paths. The Almighty says, *"So know (O Muhammad SAW) that La ilaha ill-Allah (none has the right to be worshipped but Allah), and ask forgiveness for your sin, and also for (the sin of) believing men and believing women. And Allah knows well your*

[2] The abbreviation (PBUT) means "May blessings and peace be upon them."
[3] See Tafsir Al-Tabari (1/170).

moving about, and your place of rest (in your homes)" (Qur'an, 47: 19). The Almighty says, *"My Lord! Increase me in knowledge"* (Qur'an, 20:114).

Allah guides those who believe in His straight path *"Mankind were one community and Allah sent Prophets with glad tidings and warnings, and with them He sent the Scripture in truth to judge between people in matters wherein they differed. And only those to whom (the Scripture) was given differed concerning it after clear proofs had come unto them through hatred, one to another. Then Allah by His Leave guided those who believed to the truth of that wherein they differed. And Allah guides whom He wills to a Straight Path"* (Qur'an, 2:213). In the end, those who incurred Allah's wrath have corrupted their will, so they learned the truth and turned away from it. Those who are astray are the ones who lost knowledge, so they are wandering in misguidance and are not guided to the truth. In addition, between the materialism of the Jews and the monasticism of the Christians came slavery in Islam by observing the requirements of instinct.

The wonderful harmony amongst the necessities of the soul and the body without exaggeration in spiritual detachment, nor indulging in material reaction. It is neither monasticism nor materialism, but rather temperance and moderation, as the Almighty says, *"But seek, with that (wealth) which Allah has bestowed on you, the home of the Hereafter, and forget not your portion of legal enjoyment in this world, and do good as Allah has been good to you, and seek not mischief in the land. Verily, Allah likes not the Mufsidun (those who commit great crimes and sins, oppressors, tyrants, mischief-makers, corrupts)"* (Qur'an, 28: 77). Therefore, Muslims did not worship the idols as the Jews did, and Islam did not ask the Muslim to be a monk in a monastery or to go to the desert as the Christians did. Instead, Islam distanced its followers from the setbacks, prophecies, tremors, and lapses that disturb the purpose of human existence to achieve a balance between the requirements of the soul and the body. Subsequently, some Muslims wanted to be strict in worship, so the Prophet (PBUH) rejected this fanaticism. Saad bin Abi Waqqas said, "God's Messenger objected to Uthman bin Maz'un living in celibacy. If he had given him permission, we would have had ourselves castrated" (Al-Bukhari, 5073). The Prophet (PBUH) said: "And in a man's sexual intercourse there is *sadaqa*, a charity." On being asked whether a reward would be given for satisfying one's passion, he said, "Tell me; if he were to devote it to something forbidden, would it not be a sin on his part? Similarly, if he were to devote it to something lawful, he would have a reward" (Muslim, 2376). This is the balance between the soul and the body, between the world and the hereafter, so there is no religious extremism or negligence, but balance and moderation.

The rules of Sharia and legal controls aim at the interest of the individuals and society. Islamic Wise Legislator forbade usury in all its forms to the individual and the group or between Muslims and others. The Almighty says, *"Those who eat Riba (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaitan (Satan) leading him to insanity. That is because they say: "Trading is only like Riba (usury)," whereas Allah has permitted trading and forbidden Riba (usury). So whosoever receives an admonition from his Lord and stops eating Riba (usury) shall not be punished for the past; his case is for Allah (to judge); but whoever returns [to Riba (usury)], such are the dwellers of the Fire - they will abide therein. (275) Allah will destroy Riba (usury) and will give increase for Sadaqat (deeds of charity, alms, etc.) And Allah likes not the disbelievers, sinners"* (Qur'an, 2: 75-276). Muslim scholars are not saints and monks. They do not eat people's money unjustly. Transactions in Islam are based on moderate rules and controls. One of these rules is neither religious extremism nor negligence. Islamic transactions are not left to any human being to adjust them as he likes and loves. Rather, they were laid down by God the Most Just of judges, and the general Muslims adhere to them.

The Islamic system comes as a middle ground between the capitalist and socialist systems. It holds the interest of the individual and society at the same time. It guarantees the individual the right to work and own property without infringing on the freedom of others or harming them. Sharia legitimates the principle of distributing wealth by urging charity, spending money in the right, taking out alms tax, and making a bequest of one-third of the money, and after the death of the individual divides his money through inheritance. Thus, Islam dissolves the problem of accumulating wealth as well as prohibiting monopoly, usury, and fraud. It has specified certain methods of making money which are the permissible legal means. However, it is not permissible to make money except through them. The Islamic system protects society from individual abuse by illegal acquisition or

accumulation of capital in its hands, which harms the rest of society members. Accordingly, the ways of acquiring money are narrow because the Islamic system has numbered financial reserves and urged everyone to do so. It also protects the individual from society's encroachment such as nationalizing his property to give him the freedom to work. Islam makes the individual and society cooperate to achieve the public interest. The interest of the community stands on the no-harm rule. The Islamic economic system was a just middle between two unjust systems. This reveals the keenness of Islam to advance the relationship between the individual and society. The capitalist system is based on the absolute freedom of the individual who is the one who has freedom in all matters. He gives free rein to his whims, desires, morals, work, and all actions. No one has any authority over him. In return for these many rights, he has no duties, and he is not bound by anything towards society. In contrast to this chaotic individual freedom, the idea of sanctifying collective ownership and restricting the activity of the individual established with imposition of laws and systems that govern the freedom of the individual. It did not leave him any means of choice, but perhaps force him to do certain actions. The socialist-communist system deals with members of society like dealing with a machine. Individuals are just a tool to serve society and achieve its goals. Society is only the source of opinions and rights, so the matter turned from negligence to exaggeration, and from negligence to radicalism and extremism but Islam came with moderation and reconciliation between the individual and the community to decide that the goal of an individual's life is the goal of the community itself. Both are an indivisible whole.

One of the greatest distinguishing features of the social system in Islam is that it is characterized by moderation, accuracy, and balance. He did not leave any incoming or outgoing except that he brought it to clarification, care, and comprehensiveness. Islam legislated rules governing the existence of a Muslim in different time periods in which his life phases change from the fashionable status to dislocation fulfilling all his various needs across all dimensions and in all scenes including; First, the right to breast-feeding: The Almighty says, *"The mothers shall give suck to their children for two whole years, (that is) for those (parents) who desire to complete the term of suckling, but the father of the child shall bear the cost of the mother's food and clothing on a reasonable basis"* (Qur'an, 2:233). Second, the right of custody: In Sunan Abi Dawood, the hadith of Amr bin Shuaib on the authority of his father, on the authority of his grandfather Abdullah bin Amr that a woman said: "O Messenger of Allah: my womb was a vessel to this son of mine, my breasts a water-skin for him, and my lap a guard for him, yet his father has divorced me and wants to take him away from me." He said: "You have more right to him as long as you do not marry" (Abu Dawood, 2276).

3. Peace in Islamic Teachings

The doctrine of the people of Sunnah and Community or *Ahlus-Sunnah wal-Jama`ah* is their priority in having perfect faith. Muslims believe in the Names and Attributes that are the affirmation of what Allah has affirmed for Himself of the Names and Attributes, and what His Messenger (PBUH) affirmed for Himself without conditioning or likening and without alteration or negation. Allah is described with the attributes of majesty, beauty, and perfection in the Holy Qur'an. There is no attribute of deficiency to Him, Allah is above it. They confirm the words with the meanings they signify, with their belief that they do not comprehend the perfection and ultimate attributes of God, the Blessed and Exalted. They see that Allah knows Himself, and His Messenger (PBUH) is more knowledgeable about his Lord than all other creatures.

Muslims enjoy spiritual peace in faith especially when they have good faith in fate and predestined proportion *or Al-qadha wa Al-qadar* which is the divine fate and predestination which implies judgment and decision. Judgment is the discontinuity of a thing and its completeness. Everything that has been judged to be done or completed, has been decreed. Judgment has ruled a thing that is made and destined. The Almighty says, *"Then He completed and finished from their creation (as) seven heavens in two Days and He made in each heaven its affair... Such is the Decree of Him the All-Mighty, the All-Knower"* (Qur'an, 41:12). That means He created and made them along with He controlled the creation, which is the meaning of work and making in due measure and proportion.[4] Fate and predestined proportion describe the proportion of a thing to its ability and power. The All-Powerful and the Omnipotent One are among the attributes of Allah Almighty. They are from the ability, and

[4] See *Asas Al-Balaghah* (2/86).

they are from making a thing according to a measure.[5] The concept of Destiny or *Al-Qadar* is what God, the Mighty and Sublime, decrees, and judges on matters from eternity as His foreknowledge is infallible. The measure of sustenance or provision is its allotment.[6] Accordingly, predestination precedes decree, because predestination shows and writes down the quantity of a thing, its qualities, the time of its occurrence in method and causes. The decree is its creation, enforcement, and occurrence. Fate and predestination are a set of rulings and events that are based on the foreknowledge and power of God.[7] Belief in fate and predestination is one of the foundations of faith, as it came in the hadith of Gabriel (PBUH) when the Prophet (PBUH) asked him about faith. Gabriel said: "To believe in Allah, His angels, His books, His messengers, the Last Day, and Predestination, both of good and evil" (Muslim, 1).

Predestination is one of the pillars of faith. The doctrine of the Righteous Predecessors is that everything is by the decree of Allah Almighty. The Most High says, *"Verily, We have created all things with Qadar (Divine Preordainments of all things before their creation, as written in the Book of Decrees Al-Lauh Al-Mahfuz)"* (Qur'an, 54: 49). It came as a middle ground between the two previous views: *"Verily, Allah! With Him (Alone) is the knowledge of the Hour, He sends down the rain, and knows that which is in the wombs. No person knows what he will earn tomorrow, and no person knows in what land he will die. Verily, Allah is All-Knower, All-Aware (of things)"* (Qur'an, 31:34), and the Almighty says, *"No calamity befalls on the earth or in yourselves but is inscribed in the Book of Decrees (Al-Lauh Al-Mahfuz), before We bring it into existence. Verily, that is easy for Allah"* (Qur'an, 57: 22). The Prophet (PBUH) said: "God recorded the fates of all creatures 50,000 years before creating the heavens and the earth, and His throne was upon the water" (Muslim, 2653). Allah is the Creator of the actions of the servants based on the truth. The servants were created for Him, and the actions of the creatures are also created, the Almighty says, *"While Allah has created you and what you make!"* (Qur'an, 37:96). The Sunnis do not deny the action of the servant in the first place, and they do not make the servants the creators of their actions besides Allah Almighty. Although He, Glory be to Him, stated that He created the servants and their actions, He attributed the actions to them and said: *"While Allah has created you and what you make!"* (Qur'an, 37:96). Allah guided the Sunnis to the truth. The truth is to apply the texts and their understandings, neither striking each other nor interpreting them as mentally corrupt analyses without legal evidence. In fact, the Sunnis differentiate between God's power and His will and between His love and His please. Allah's will is of two types: First, Legitimate religious wish includes the meaning of love and contentment, including Allah Almighty's saying: *"Allah wishes to accept your repentance, but those who follow their lusts, wish that you (believers) should deviate tremendously away from the Right Path. (27) Allah wishes to lighten (the burden) for you; and man was created weak (cannot be patient to leave sexual intercourse with woman)"* (Qur'an, 2:27-28), and Allah Almighty says, *"Allah intends for you ease, and He does not want to make things difficult for you"* (Qur'an, 2:185). Second, the Predestined cosmic will is the meaning of will, and the saying of Allah Almighty is *"But Allah does what He likes"* (Qur'an, 2: 253), and also Allah says, *"And whomsoever Allah wills to guide, He opens his breast to Islam, and whomsoever He wills to send astray, He makes his breast closed and constricted, as if he is climbing up to the sky. Thus, Allah puts the wrath on those who believe not"* (Qur'an, 6:125). Hence, Allah decrees sins in terms of His foreknowledge, ability, and cosmic will. It does not mean that He loves or is pleased with sins, but rather He hates them, and forbids them.

The faith of this nation is distinguished from the faith of the previous nations that it is a comprehensive faith, for in addition to faith in Allah - which is the principle to which everyone refers - it also includes belief in all the Messengers and the Books without any distinction between any of them detracting from them. Allah says, "*The Messenger (Muhammad SAW) believes in what has been sent down to him from his Lord, and (so do) the believers. Each one believes in Allah, His Angels, His Books, and His Messengers. They say, "We make no distinction between one another of His Messengers" - and they say, "We hear, and we obey. (We seek) Your Forgiveness, our Lord, and to You is the return (of all)"* (Qur'an, 2:285). The Almighty says, "*And those who believe in Allah and His Messengers and make no distinction between any of them (Messengers), We shall give them their rewards, and Allah is Ever Oft-Forgiving, Most Merciful*" (Qur'an, 4:152). Allah praised them,

[5] See *Lisan Al-Arab*, Article (Al-qadha) (15/186) and (Qadeer) (5/74-75).
[6] Ibid.
[7] See *Wasatet Ahlus-Sunnah bain Afiraq* (p. 362).

saying: " *So, as for those who believed in Allah and held fast to Him, He will admit them to His Mercy and Grace (i.e. Paradise), and guide them to Himself by a Straight Path" (*Qur'an, 4:175), and He appreciated said in their belief in Him and His Messengers (May blessings and peace be upon them): "*And those who believe in God and His Messengers, they are the truthful ones*" (Qur'an,57:19). In the authentic hadith, when Gabriel (PBUH) asked the Messenger of God, may God's prayers and peace be upon him, about faith, he said: "To believe in God, His angels, His books, His messengers, and the Last Day, and to believe in predestination, its good and its evil" (Muslim, 8). The faith of the Islamic nation is a comprehensive faith whose origin is faith in Allah, whose basis is love with glorification, fear, and reverence. From devotion in Allah, faith in all the messengers and all the books is branched. Therefore, the Islamic nation believes in all the messengers and books, with its belief in its final messenger, and its dominant Noble Qur'an over all Holy Books. This only happened to the Islamic nation, for it is a collector of all the good that exists in those nations that preceded it, and this comprehensive faith is the basis of humanity.

4. Moderation in Islamic Principles

The Qur'an and Sunnah are the light and brightness of the universe and the purity and purity of souls. The reference to moderation in the Qur'an and the Sunnah explores the meanings of moderation or the characteristics of the middle nation. The Book of Allah guides mankind to the most upright way, and the straightest path. The Almighty says, "*Verily, this Quran guides to that which is most just and right and gives glad tidings to the believers (in the Oneness of Allah and His Messenger, Muhammad SAW, etc.). who work deeds of righteousness, that they shall have a great reward (Paradise)"* (Qur'an, 17:9). Imam Al-Shatibi said: "The Holy Qur'an is the college of Sharia, the pillar of the religion, the source of wisdom, the verse of the message, the light of sight and insight, and that there is no way to Allah but it, and there is no salvation other than it. A knowledge seeker should take it, and make it his escort and acquaintance, over the days and nights, in consideration and action.

The practical life of the Prophet (PBUH) was middle in everything in his worship and his treatment, so he used to fast until his companions thought that he did not break his fast, and he broke the fast until they thought that he did not fast (Al-Bukhari, 1141). He used to get up at night and sleep from it (Al-Bukhari, 3238), and women and perfume were made dear to him from the world, and his comfort was made in prayer (Ahmad, 12315). He (PBUH) sold, bought, borrowed, spent, and died while his armor was mortgaged to a Jew. He used to spend his daily life with ease and the greatest moderation with high energy, generous morals, and good dealings. Among the masterpieces of his guidance (PBUH) in terms of moderation, indicative of righteousness and priority: What Muslim narrated from the hadith of Abu Rafi' that the Messenger of God borrowed a young camel, and when the camels of the *sadaqa*, charity, came to him he ordered me to pay the man his young camel. When I told him that I could find only an excellent camel in its seventh year he said, "Give it to him, for the best person is he who discharges his debt in the best manner" (Muslim, 1600).

The Arab Prophet (PBUH) used to advise his companions to moderate and intent, and warn them of exaggeration, saying: "Beware of going to extremes in religious matters, for those who came before you were destroyed because of going to extremes in religious matters" (Ibn Majah, 4/228). The Prophet (PBUH) said, "Do not exaggerate in praising me as the Christians praised the son of Mary, for I am only a Slave. So, call me the Slave of Allah and His Apostle" (Al-Bukhari, 3445). Since the straight path of Allah is the perfect moderation - as mentioned earlier - Allah Almighty has guided His Prophet to His straight path, the Most High said: *"Say (O Muhammad SAW): "Truly, my Lord has guided me to a Straight Path, a right religion, the religion of Ibrahim (Abraham), Hanifa [i.e. the true Islamic Monotheism - to believe in One God (Allah i.e. to worship none but Allah, Alone)] and he was not of Al-Mushrikun (see V. 2:105)."* (Qur'an, 6:161). Rather, God, Glory be to Him, praised the way His Prophet (PBUH) followed the straight path and commanded him to remain steadfast on it. The Almighty said: "*So hold you (O Muhammad SAW) fast to that which is inspired in you. Verily, you are on a Straight Path*" (Qur'an, 43:43). One of the greatest features of moderation in Islam is its agreement with the guidance of the Prophet (PBUH). He is the example of the believers and the example of the working worlds, the good and the pious, and along with his guidance is the best of the prophets and messengers. He says, exalted be He: "*Indeed in the Messenger of Allah (Muhammad SAW) you have a good example to follow for him who hopes in (the Meeting with) Allah and the Last Day and remembers Allah much"* (Qur'an, 33:21). He (PBUH) achieved

moderation in its meaning and proposition; Therefore, whenever words and actions contradict his method, they depart from their meaning, deviate from their name, and tend to either exaggeration or negligence.

The Islamic Sharia that Allah Almighty chose for His servants, and called the creation to adhere to - as it contains their happiness in this world and their victory and salvation in the Hereafter - is characterized by harmony, consistency, and perfection, there is no difference in it, no contradiction, and no illogicality; This is because the one who legislated it is Allah Almighty, He is the All-Wise, and the All-Knowing. The Almighty says: "*Do they not then consider the Quran carefully? Had it been from other than Allah, they would surely have found therein much contradictions*" (Qur'an, 4:82). He also said about the Sunnah of the Prophet (PBUH): *"Nor does he speak of (his own) desire. It is only an Inspiration that is inspired"* (Qur'an, 53:3-4). Islamic law contains majestic purposes and lofty goals, in which there is no ambiguity or difference. This is the meaning of the saying of the Messenger of Allah (PBUH) delivered a moving speech to us which made our eyes flow with tears and made our hearts melt. We said: "O Messenger of Allah. This is a speech of farewell. What did you enjoin upon us?' He said: 'I am leaving you upon a (path of) brightness whose night is like its day. No one will deviate from it after I am gone but one who is doomed" (Ibn Majah, 43). One of the most significant features of Sharia is temperance and moderation. This indicates that moderation in this Sharia has reached perfection and beauty, which makes it free from faults, defects, and shortcomings, as well as free from errors and contradictions because it derives its strength and perfection from the strength of its source and foundation, which is the divine law of God. This is consistent with its meaning, linguistically and idiomatically. For instance, one of the meanings of moderation is righteousness and justice. In addition, Allah, the Blessed and Exalted, when He praises the nation of Prophet Muhammad (PBUH), He says: *"Thus We have made you [true Muslims - real believers of Islamic Monotheism, true followers of Prophet Muhammad SAW and his Sunnah (legal ways)], a Wasat (just) (and the best) nation, that you be witnesses over mankind and the Messenger (Muhammad SAW) be a witness over you"* (Qur'an, 2:143).

The moderation of Islam is also characterized as being described as ease and relief, so if there is any aspect of religious and worldly life, there is simplicity and ease from embarrassment in the same moderation. The scholar Ibn Ashour said: "The juridical induction of Sharia indicates that moderation is one of the purposes of Islam, and Allah has made this Sharia a religion of instinct. The matters of instinct are due to the nature, as Sharia law is satisfactory to the souls which feel easy to consent it, and if it is not so, the instinct rejects strictness and stubbornness, Allah the All-Wise says: *Allah wishes to lighten (the burden) for you; and man was created weak (cannot be patient to leave sexual intercourse with woman)"* (Qur'an, 4:28).[8]

5. Prophet Muhammad as World Moderator

The Prophet (PBUH) did not leave room for those who asked him about something, so his question would cause or become stressful teachings upon the people. Abu Hurairah (May Allah be pleased with him) narrated that the Prophet (PBUH) said, "Leave me as I leave you, for the people who were before you were ruined because of their questions and their differences over their prophets. So, if I forbid you to do something, then keep away from it. And if I order you to do something, then do it as much as you can" (Al-Bukhari, 7288). Al-Hafiz Ibn Hajar said: "What is meant by this matter is to leave the question about something that did not happen, for fear that it causes the situation to be obligatory or forbidden. Asking too many questions on every daily issue often involves intransigence, so the Prophet's answer could fall into a legitimate matter that weighs heavily on people. The Prophet's fear that it may lead to abandoning people's compliance and the violation will occur."[9] Just as it was prevented from exaggeration and extremism, it was also prevented from neglecting and squandering rights. Allah has a right over people, which is that they worship Him and do not associate anything with Him; parents have a right; a husband has a right over his wife; a wife has a right over her husband; a ruler over his subjects has a right, and the citizens have a right over the ruler. Islam has commanded people to fulfill all rights without negligence or exaggeration.

[8] See *Muqased Alshariah* by Ibn Ashour (3/193).
[9] See *Fath al-Bari* by Al-Hafiz Ibn Hajar (13/260).

Allah the Almighty sent Muhammad (PBUH) with the wisdom that is his Sunnah, which is the law and the method that Allah the Almighty legislated for him. It was from this wisdom that Allah legislated for him actions and words that show the path of those on whom Allah has bestowed His Grace, not (the way) of those who earned His Anger, nor of those who went astray. This increased the appearance of the character of moderation in his approach (PBUH), his call, and his behavior, which was the perfection of character that Allah made him and honored him with, as the Almighty said: "*And verily, you (O Muhammad SAW) are on an exalted standard of character*" (Qur'an, 68:4). The guidance of the Prophet (PBUH) was a middle ground between religious extremism and negligence. His verbal, practical, and acknowledgment year in matters of religion and the world came to devote the approach of balance and moderation (Al-Olaqi, 2024). Prophet Muhammad (PBUH) forbade Muslims from being strict in religion. The Prophet (PBUH) said, "The religion (of Islam) is easy, and whoever makes the religion a rigor, it will overpower him. So, follow a middle course (in worship); if you can't do this, do something near to it and give glad tidings and seek help (of Allah) at morn and at dusk and some part of the night" (Al-Bukhari 39).

The completeness of the divine advantage and the loftiness of in rank, that Allah, the Blessed and Exalted, has made Prophet Muhammad (PBUH) the Seal of all previous Prophets and Messengers, so his prophethood message does not need to be negated or completed by another prophet, Allah Almighty says, *"Muhammad (SAW) is not the father of any man among you, but he is the Messenger of Allah and the last (end) of the Prophets. And Allah is Ever All Aware of everything*" (Qur'an, 21:40). Allah's Messenger (PBUH) said, "The similitude of mine and that of the Apostles before me is that of a person who built a house quite imposing and beautiful, but for one brick in one of its corners. People would go around it, appreciating the building, but saying: Why has the brick not been fixed here? He said: I am that brick, and I am the last of the Apostles" (Al-Bukhari, 3535). Al-Hafiz Ibn Katheer says: "This nation has won the forefront of good deeds through its Prophet Muhammad (PBUH) for he is the most honorable of Allah's creation and the most honorable of the Messengers to Allah, and He sent him with a complete and great law that was not given to him to any prophet or messenger from among the previous messengers. Some of it does not take the place of the work of many others."[10]

6. Arabian Values

Allah has honored the Muhammadan nation, and made it a moderate and charitable nation, as it is the last and best of nations, dearest to Allah the Most Honorable. The Lord of the worlds chose the nation of Muhammad (PBUH) from among the first and the last, and made it a middle nation, so its prophet is the best of the Prophets; its Holy Book is the best of Holy Books, and its law is the best of laws. Allah, the Blessed, and Most High, says, "*You [true believers in Islamic Monotheism, and real followers of Prophet Muhammad SAW and his Sunnah (legal ways, etc.)] are the best of peoples ever raised up for mankind; you enjoin Al-Ma'ruf (i.e. Islamic Monotheism and all that Islam has ordained) and forbid Al-Munkar (polytheism, disbelief and all that Islam has forbidden), and you believe in Allah*" (Qur'an, 3:110). The Messenger of Allah (PBUH) says, "You complete seventy nations, of which you are the best and dearest to Allah" (Ahmad, 18/133, & Tirmidhi, 3001). The Arab Salaf or righteous predecessors are the noble Companions of the Prophet (PBUH) and those who followed them in righteousness, and the great imams of the nation who are among the notables of the first three generations of Muslims, which are the best of centuries, according to the text of the hadith of the God's Messenger as saying, "The best of men are my generation, then those who come next to them, then those who come next to them. Afterward, people will come who will give testimony before swearing an oath and swear an oath before giving testimony" (Al-Bukhari, 3651). Imam Ibn Taymiyyah said: "What people should do is: that they get used to following the predecessors, as they were upon at the time of the Messenger of Allah (PBUH) for they are the best of generations, the best speech is the word of Allah, and the best guidance is the guidance of Muhammad (PBUH). Nobody deviates from the guidance of the virtuous Companions and the best generations to what is below it."[11]

[10] See *Tafseer Al-Qura'n Al-'Adheem* (2/94).
[11] See *Majmoo' Al-Fatwa* (1/375).

The Salaf are the best Arab people in understanding the texts of the Book and the Sunnah, and they are the most knowledgeable of creation with the provisions of Sharia. This is due to their close covenant with revelation, and they are the most knowledgeable of people about the purposes of Sharia (Al-Olaqi, 2024). The Western jury system is a developed Muslim procedure founded in Islamic courts in Spain. In the meantime, they were the most knowledgeable of people in the language of the Arabs. If they unanimously agree on something, then moderation is in their unanimity, and if they disagree, then moderation does not depart from their sayings. Allah, the Blessed, and Exalted, would not hide the truth from them so that others might know it, and they were the purest and most pious of Allah's creation. Therefore, one of the conditions and controls of moderation in Islam is that it conforms to what the righteous predecessors were upon in terms of rules and regulations because the particles are endless. If something happened that contradicts the approach of the righteous Companions, then this is evidence that it did not reach the moderation; either due to a misunderstanding, a flaw in the application, or both. The righteous ancestors used to take from everything in an undisturbed proportion and were keen on temperance and moderation. It was a basis for them to refer to.

The Salaf are the strictest followers of the Sunnah of the Prophet (PBUH). They were away from whims and opinions. They reviled the people of whims and opinions because they deviate from the moderation of the Islamic religion by violating the Sunnah of the Prophet and following their whims, "*But if they answer you not (i.e. do not believe in your doctrine of Islamic Monotheism, nor follow you), then know that they only follow their own lusts. And who is more astray than one who follows his own lusts, without guidance from Allah? Verily! Allah guides not the people who are Zalimun (wrong-doers, disobedient to Allah, and polytheists)"* (Qur'an, 28:50). It is reported on the authority of the two imams, Al-Hasan Al-Basri and Mujahid bin Jabr Al-Makki[12] that they said: "It is called *Hawa* (whims) because it plunges its companion into the Fire."[13] Sheikh Ata'a[14] said that in what God, the Blessed and Exalted, revealed to Moses (PBUH): "Do not sit with the people of whims, so they speak in your heart of what is not."[15] Bishr bin Al-Harith[16] said: "If your path is against a person of heresy, close your eyes before you reach him"[17] and Ibn Sirin[18] said: "Whatever a man is with the saying of Prophet Mohammed, he is on the straight path."[19] Ibn Al-Mubarak[20] said: "Whoever engages in theology is a heretic."[21]

One of the characteristics of the noble Companions of the Prophet (PBUH) and their Arab values that established moderation and put aside the ways of excessiveness and discarding it: the fact that they do not believe in infallibility in other than the divine Prophets (PBUH) as everyone is to take from his sayings and reject but Prophet Muhammad (PBUH). They believe that jurisdiction is only of the Book, the Sunnah, and the unanimity of scholars. Juristic reasoning by analogy is one of the sources of Sharia, and the Sharia dependency does not differentiate between similar ones, nor is it equal between the variables. The noble Companions used to differentiate between error and sin, between advice and reproach, as well as that there is no contradiction between correct transmission and explicit reason along with that the legal ruling is one, and the fatwa, juridical verdict, changes with the change of time and place. They see that warding off evil takes precedence over bringing interests, that the public interest takes precedence over the private interest, and that religion came for the happiness of human beings, and it combines for them the requirements of the soul and the desires of the body, and that it is a medium that is neither excessive nor negligent.

The ritual of enjoining good and forbidding evil is the safety valve of the nation, by which it protects society from drowning in the swamps of vice, and prevents the spread and continuity of sin, and from publicizing immorality, immorality, and openness, which is one of the greatest causes of God's wrath and punishment upon His servants. Messenger of Allah (PBUH) says, "Whosoever of you sees an evil, let him change it with his hand;

[12] See *Siar Alam Al-Nubala* (4/449).
[13] See Ibn Battah, *Al-Sharh wa Al-Ibanah* (p. 141).
[14] He is Mujahed bin Gaber Makhzoom died in 104 H. See: *Siar A'alam Al-Nobala* (5/78).
[15] See Ibn Battah, (p. 155).
[16] See *Siar Al-Alam Al-Nubala* (10/469).
[17] See Ibn Battah, (p. 158).
[18] See *Sir Al-Alam Al-Nubala*(4 /154).
[19] See Al-Ajri (p. 18).
[20] See *Siar Al-Alam Al-Nubala* (8/378).
[21] See Ibn Battah, (p. 168).

and if he is not able to do so, then [let him change it] with his tongue; and if he is not able to do so, then with his heart — and that is the weakest of faith" (Muslim, 87). His saying (PBUH): "Let him change it" is a matter that indicates the obligation, and the fulfillment indicates the comment, as well as it indicates the affirmation. Imam al-Nawawi[22] said in his explanation of this hadith: "Enjoining good and forbidding evil is a collective obligation to be acted by some of the people but if the whole people do not act without any excuse, they are sinful".[23] Abu Al-Abbas Al-Qurtubi said: "Whoever among you sees an evil, let him change it with his own hand." This command is obligatory because enjoining what is good and forbidding what is wrong is among the duties of faith and the pillars of Islam based on the Book, the Sunnah, and the consensus of the Ummah. As for those who are innovators, then do not count their differences, because their immorality appears. Then if we say: "Enjoining what is right and forbidding what is wrong is obligatory," then that is sufficient. For the Almighty's saying: "*And let there be a nation among you who invite to good, enjoin what is right and forbid what is wrong*" (Qur'an, 3:110), and it is obligatory for two conditions: the first, the knowledge that the action is either reprehensible or known. The second is the ability to change. If this is the case, it is necessary to change by hand if that wrong is something that needs to be changed to it, such as: breaking wine containers, and instruments of amusement such as psalms, pegs, and big sticks; and preventing the oppressor from beating and killing, and so on, if the Muslim is not able by himself, he seeks help from someone else. On the other hand, if he fears that make lead to turmoil and weapon use, it is necessary to stop and start advising the wrongdoers to fear Allah and turn to the good things. Some matters can be attained with peace and diplomacy than by sword and violence. In case, he fears death or harm to himself from the wrongdoers, he changes by his heart, and its meaning is: that he hates that action in his heart, and resolves that if he were able to change, he would change it and that is the lowest degree of faith."[24]

To treat this scourge and this hidden danger that destroys the individual and the community, justice and equity are significant social rights. Therefore, the Almighty commanded His servants to be fair, even if the judgment was not on their side. Even the issue is amid the darkness, the Almighty said: "*O you who believe! Stand out firmly for Allah and be just witnesses and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety, and fear Allah. Verily, Allah is Well-Acquainted with what you do*" (Qur'an, 5:8).

Knowledge is a safety valve from temptations and pitfalls. It is one of the greatest causes of reunion, unity, and cohesion. Therefore, Allah Almighty says: "*Is one who is obedient to Allah, prostrating himself or standing (in prayer) during the hours of the night, fearing the Hereafter and hoping for the Mercy of his Lord (like one who disbelieves)? Say: "Are those who know equal to those who know not?" It is only men of understanding who will remember (i.e. get a lesson from Allah's Signs and Verses)*" (Qur'an, 39:9). One of the greatest things that undermine social cohesion accelerates a serious outbreak of strife is the public's struggle about legitimate politics. The ideological grouping of the communities is going to be destructive and lethal to countries. This is introduced in the Noble Qur'an as Allah, Glory be to Him, assigned it to the scholars of high knowledge who can make solutions and agreement among people. He says, Glory be to Him: *"When there comes to them some matter touching (public) safety or fear, they make it known (among the people), if only they had referred it to the Messenger or to those charged with authority among them, the proper investigators would have understood it from them (directly). Had it not been for the Grace and Mercy of Allah upon you, you would have followed Shaitan (Satan), save a few of you"* (Qur'an, 4:83).

Compassion and forbearance are part of Arabian values. Allah's Apostle (ﷺ) said: "Forbearance or gentleness is not to be found in anything but that it adds to its beauty, and it is not withdrawn from anything, but it makes it defective" (Musnad, 25709). For knowledge purposes, kindness and compassion are evidence of the Muslim's faith and the loftiness of his noble morals. It is evidence of sincerity and truthfulness rooted in his internal self. One of the greatest pillars of cohesion and unity is to be represented in active aspects of the personality through the appearance of forbearance, sobriety, and patience. Therefore, evil acts are going to deter, grievances are removed, anger is absorbed, and there is pardon and transgression.

[22] See *Tabaqat al-Shafi'i* by Al-Subki (5/165).
[23] See *Sharh al-Nawawi, Sahih Muslim* (1/296).
[24] See *Aljamia Lahqaam AlQur'an* (234\233).

7. Conclusion

Moderation is one of the most vital purposes of Islamic Sharia, and observance of purposes is one of the most significant controls for moderation in Islam, as it is like two sides of the same coin. Moderation is not subject to whims and desires, it is not a repudiation of Islamic values, nor a rebellion against principles and aspirations. Rather, the moderation of Islam is a way of life. It fairly is a life in life. It is the basis of all bliss and happiness, progress and sovereignty, security and safety, stability, and reassurance. Therefore, it has legal controls, and observed principles, by which it achieves its best goals, reaches its satisfying hopes, establishes the nation on the path of pioneering, and provides it with all the reasons for leadership. Islamic moderation has beautiful characteristics and great features, which makes it one of the signs and a miracle of miracles. To achieve these noble goals, it is necessary to strengthen and nourish them with appropriate methods and resources. Young Muslim people are acquainted with these resources since their childhood. In practice, civil moderation assists, for example, Saudi citizens through various support stages in their life. These means are shared by the individual, the family, and society (Al-Olaqi, 2024).

The individual is the first building block of which society is formed, and if the individual has a good upbringing, the effect will necessarily appear in his family and society. This will not go away and will not be achieved unless he feels his responsibility towards this debt and bears the trust that every decent human must be a person of honesty and integrity. Allah Almighty said: "*Truly, We did offer AlAmanah (the trust or moral responsibility or honesty and all the duties which Allah has ordained) to the heavens and the earth, and the mountains, but they declined to bear it and were afraid of it (i.e. afraid of Allah's Torment). But man bore it. Verily, he was unjust (to himself) and ignorant (of its results*" (Qur'an, 33:72). In addition, family plays the most significant role in educating young people. Family is the first educational institution in a person’s life. The child takes from the family his most important behaviors and moral components. The family bears the greatest burden for its member in the formation of adult personality. There is no doubt that the righteousness or corruption of this foundation reflects its impact on young people. Therefore, the Muslim family is considered the greatest school of faith and the strongest educational fortress. Young men and women are prepared to be upright and pious, as well as to be safe from aberration and deviation.

Islamic jurisprudence councils and research centers have a clear role in consolidating the foundations of moderation and achieving its goals in Saudi society through holding scientific lessons, organizing advocacy lectures and Islamic conferences, issuing official religious decrees, and useful research. These foundations would rationalize the energies of youth and direct the nation’s efforts to what is consistent with the legitimate purposes of temperance and moderation. There are specialized committees working on official religious decrees and assertions to effectively criminalize illegal and subversive acts and address the suspicions and challenges that arise in the minds of young Muslim people who are eager to benefit from religious sentiment in a positive way. Arts and social sciences play a great role in refining souls, enlightening minds, adjusting moods, and deconstructing spirits. For instance, literature leads to sophistication in ethics and dealings if it is used well and its heritage is exploited. Literary societies and cultural centers are among the most important cultural and intellectual institutions that have an influence on many people's thoughts, minds, and morals in particularly youth. Given the multiplicity and diversity of intellectual and cultural needs, is necessary to focus on the concepts of temperance and moderation. It is an approach to paying attention to perfect ways of achieving moderation and showing their effects on public welfare. These clubs and centers have an essential and active role in literary and cultural life as happened in Saudi society. It is frequented by Saudi groups of young and wise intellectuals who are not insignificant in serving their community. Therefore, it is vital to adopt youth activities that are compatible with the requirements of the wide community and in line with the country's policy in combating deviant and extremist behavior. Each center works to spread moderate thought through activities, seminars, and scientific forums, in addition to the research periodicals.

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Prosecutor's Authority in Investigating Corruption Crimes Law Number 1 of 2023 comes Into Force

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Abstract
This study aims to examine and analyze the authority of the prosecutor's office in investigating corruption crimes after the enactment of the New Criminal Code which includes corruption crimes in the New Criminal Code. Although it has been affirmed that the prosecutor's office remains authorized to investigate criminal acts of corruption, the possibility of practical problems will still arise. The research method used is normative juridical with a statutory approach, concepts, and comparisons. The results of the discussion of this study provide solutions to the limitations of the authority to investigate corruption crimes based on the type according to location, perpetrators, loss values, and types of corruption crimes that occurred.

Keywords: Authority, Prosecutor, Investigation, Corruption

1. Introduction

The Criminal Code (KUHP) which has been in force since 1946 until now is a legacy of the Dutch colonial era, namely Wetboek van Strafrecht vor Nederland Indie. Because it is a colonial heritage since 1963 efforts have been made to reform the Criminal Code (Sri Endah Wahyuningsih, 2014). Until 2022, the composition of the drafting team has been formed and changed. In 2023 the New Criminal Code was ratified which was the result of a team consisting of the best criminal law experts in Indonesia with Law Number 1 of 2023 (Hans Tangkau, 2010). Even though it has been ratified and promulgated in the State Gazette, the Criminal Code will only apply for the next three years. Based on the Republic of Indonesia's Ministry of Law and Human Rights on the Final Criminal Code Bill for 2022 As a new Criminal Code, of course, this Criminal Code is different from the old Criminal Code. Apart from including some new crimes, and new principles, systematics also changed. The new Criminal Code only consists of two books, in contrast to the old Criminal Code which consists of three books. Several crimes that were not included in the Criminal Code are now included in the Criminal Code.

Specifically for corruption, several types of criminal acts of corruption that were previously regulated in the old Criminal Code were repealed and included in the Corruption Law, now they are again included in the New Criminal Code. In Law Number 1 of 2023 concerning the Criminal Code, the regulation of criminal acts of corruption is regulated in Articles 60, 3, 604, 605, and 606. If you look at the contents of the formulation of the articles of corruption in the New Criminal Code, there are similarities with the words of Articles 2, 3, and 5 of Law Number 31 of 1999 as amended by Law Number 20 of 2001.

The re-entry of several acts of corruption in the Criminal Code can have an impact on the law enforcement process, especially the investigative process. So far, corruption investigators have been the Corruption Eradication Commission, the Attorney General's Office, and the Police. Corruption investigations deviate from the Criminal Procedure Code system, which in principle assigns the police as an investigative agency, and places the prosecutor's office as a prosecution institution (Wirawan and Iswara, 2020).
The legal basis for the prosecutor's office in investigating acts of corruption is Law Number 16 of 2004 concerning the Prosecutor's Office which is regulated in Article 30 paragraph (1) letter d which states that one of the prosecutor's powers is to "investigate certain criminal acts based on the law". What is meant by certain crimes are corruption and gross human rights violations.

According to Abd Muthalib (2017) Long before the enactment of this Law, the legal basis used to investigate corruption was the transitional rule of Article 284 paragraph (1) of the Criminal Procedure Code which states that within two years after the law this is promulgated, all cases must apply the provisions of this law, with the temporary exception of special provisions for criminal procedures as stated in certain laws, until changes occur and/or are declared no longer valid.

At that time, the police were considered not fully capable of carrying out all investigative actions, especially on difficult matters such as corruption. On the other hand, the Criminal Procedure Code wants to position the function of the police as a "single" investigator. In the law of the KPK, KPK investigators come from the police institution. Another positive thing that the Criminal Procedure Code wants to uphold is horizontal supervision between the criminal justice sub-systems so that suspicion or self-action does not occur by one sub-system without being open to other sub-systems. That is what is called the principle of functional differentiation. In carrying out an investigation, the investigator is obliged to notify the public prosecutor about the commencement of the investigation. In carrying out searches and seizures, investigators must obtain permission from the head of the court.

With the authority of investigators to investigate acts of corruption and prosecutors also given the same authority, this creates various problems with the authority to investigate. This issue creates dynamics and debates that always occur. The result is that there is no limit to the authority to investigate criminal acts of corruption between the police and the prosecutor's office. Subsequent results can weaken law enforcement on corruption crimes where both institutions may blame each other, shake hands with each other or there is struggle for authority. If the case is handled by the police, it is estimated that it will be difficult for the public prosecutor to consider it complete. If this case is handled by the prosecutor, there is suspicion that there is no control from other justice sub-systems because the prosecutor acts as both an investigator and a prosecutor.

With the inclusion of several acts of corruption in the New Criminal Code, a new problem arises where the legal basis for the prosecutor as an investigator is for certain crimes or special crimes. Theoretically, what is meant by special crimes are crimes regulated outside the Criminal Code. With the inclusion of certain acts of corruption in the New Criminal Code, corruption is no longer a specific crime but has become a general crime as well. If following the construction of certain criminal investigations as a crime that can be investigated by the prosecutor's office, it can mean that after the enactment of the New Criminal Code, the prosecutor's office no longer has the authority to investigate acts of corruption.

Several other studies have related issues such as research by Gratia Debora Mumu (2016) with the title "Authorities of Prosecutors as Investigators of Corruption Crimes" explaining the prosecutor's office as one of the institutions that are given authority as an investigator apart from its main task is to carry out prosecutions or

public prosecutions. The authority granted by law to prosecutors is to conduct investigations into specific criminal acts, one of which is corruption. The prosecutor's authority as an investigator is similar to the legal rules governing these provisions, among others, in Article 284 (2) of the Criminal Procedure Code, Article 30 (d) of Law no. 16 of 2004, Article 17 of Government Regulation Number 27 of 1983, Article 8 paragraph (2), (3), (4), and Article 9 letter f of Law no. 30 of 2002 concerning the Corruption Eradication Commission, as well as in Law no. 20 of 2001 concerning the Eradication of Corruption Crimes. And in carrying out this authority there are obstacles and obstacles in the process of investigating corruption so there is overlapping authority between related institutions. Furthermore, there is research entitled "Policy Directions for Eradicating Corruption Crimes in Indonesia: Studies after Amendments to the Corruption Eradication Commission Law" written by Edita Elda (2019) explaining that eradication of criminal acts of corruption is still the main agenda in law enforcement in Indonesia. The birth of Corruption Eradication Commission (KPK) is the spearhead of eradicating corruption in Indonesia, through the mandate of Law Number 30 of 2002. The KPK is given more authority compared to other law enforcement agencies, namely the police and prosecutors in handling corruption cases. After more or less 17 years of existence, changes to the KPK law by the DPR have recently received considerable attention in the community. There were pro and contra groups for the revision of the KPK law which was passed on September 17, 2019. On the other hand, the aspirations of the people were divided into two, namely the pros and cons of the revision of the KPK law. Opinions state that this law change will strengthen the KPK or even weaken the KPK's performance in eradicating corruption. Not a few people also pushed for the President to issue a Perppu. If this law has been recorded in the state gazette and additional state sheets, some parties who disagree with the point of changing the articles in the law can apply for a judicial review as a legal step protected by the constitution.

2. Research Method

By using normative juridical research methods, namely research that uses an approach using secondary data, efforts are made to find ideal concepts in the investigation of corruption by the prosecutor's office about the authority of the police as the sole investigator according to the Criminal Procedure Code after the entry into force of the New Criminal Code. To complete the secondary data, the authors also conducted interviews with several respondents, namely criminal law experts who focused on studying corruption.

3. Results and Discussion

The legal basis for the police to investigate acts of corruption is based on Article 14 paragraph (1) letter g of the Police Law, namely that the police are tasked with investigating and investigating all criminal acts by the criminal procedure law and other laws and regulations. In this case, authority is interpreted as including criminal acts of corruption. Meanwhile, the prosecutor's authority as an investigator also refers to the transitional provisions of law number 8 of 1981. The essence of the temper in the Criminal Procedure Code is the Permanent Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Law Number 16 of 2004, Government Regulation Number 27 of 1983, Presidential Regulation of the Republic of Indonesia Number 38 of 2010 and PERJA Number PER. 009/A/JA/2011, PERJA Number PERJA-039/A/JA/2010, Decision of the Constitutional Court Number 16/P/UUD-X/2012.

With the various provisions mentioned above, it can be identified that there are problems with authority in investigating corruption. Referring to the KUHAP system, investigations are carried out based on Articles 106 to 136 of the Criminal Procedure Code by investigators according to Article 1 points 1 to 5, namely the police and prosecution of criminal acts carried out according to Articles 137 to 144 of the Criminal Procedure Code by the public prosecutor (Article 1 points 6 and 7 of the Criminal Procedure Code).), namely the Prosecutor (Suhari Lasmadi, 2010).

Furthermore, referring to the provisions of Article 26 of Law no. 31 of 1999 to Article 27 of Law no. 31 of 1999, it is stated that for crimes that are difficult to prove, a joint team will be formed under the coordination of the Attorney General. With the formation of the KPK, the coordination function in Article 27 in eradicating corruption was taken over by the Corruption Eradication Commission (KPK) by Article 6 of Law Number 30 of 2002 concerning the Corruption Eradication Commission.

Article 17 of Government Regulation (PP) of the Republic of Indonesia Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code, also formulates the matter: "Investigations according to the special provisions of the criminal procedure book as referred to in certain laws as referred to in Article 284 Paragraph (2)) The Criminal Procedure Code is carried out by investigators, prosecutors, and other authorized investigators based on statutory regulations. where Article 26 also contains provisions: "Investigations, prosecutions, and examinations in trials of criminal acts of corruption, are carried out based on the applicable criminal procedural law unless otherwise specified in this Law" (Kurnia, Lasmadi, Siregar, 2021).

With the confusion in the regulation of criminal acts of corruption based on these various laws, an illustration can be obtained that there are normative juridical problems in the process of investigating criminal acts of corruption.

Based on interviews with Indonesian criminal law experts, different views were obtained regarding the prosecutor's authority to conduct investigations as illustrated in the following table.

Table 1: Opinion of criminal law experts regarding the investigative authority of the Attorney General's Office

No.	Expert	University	Opinion
1.	Mahrus Ali	UI	This problem has been resolved with the New Criminal Code. The New Criminal Code does not revoke procedural law provisions in sectoral laws, but if you want to be consistent with the principle of functional differentiation, an investigation must be given to a special institution. It is necessary to review the trial minutes of the Prosecutor's Office which authorizes the public prosecutor to become an investigator of certain criminal cases. If the prosecutor is also an investigator, the system gets mixed up. By granting investigative authority, the prosecutor's burden becomes heavy. If the prosecutor becomes both an investigator and a public prosecutor, then where is the control? It is inappropriate for one person to carry two different things out of control
2.	Marcus Priyo Gunarto	UGM	Can read in the explanation, that the enforcement of the special offense law remains by the applicable law. The specific offense is just the core of urine and is a linking article, so it's clear
3.	Romli Atmasasmita	Unpad	In the Criminal Procedure Code, the prosecutor, but in the Criminal Procedure Code, is also an investigator
4.	Topo Santoso	UI	In my opinion, the prosecutor's office still has the authority to investigate the typical. Juridically, it is still regulated in the Criminal Procedure Code, the Prosecutor's Law, and the National Criminal Code and emphasizes that the institution authorized to commit specific crimes in the Criminal Code still has the authority to conduct investigations. In terms of the criminal justice system, crime is a difficult crime to investigate, and historically, and in its background capacity, the prosecutor's office has been able to exercise investigative powers on fraud. In addition, not all criminal acts must be investigated only by the police, because there are also other institutions such as the prosecutor's office, KPK, PPNS, and the Indonesian Navy for cases at sea. This has been going on all along. The investigative duties of the police are very

			numerous because they investigate almost all criminal acts.
5.	Chairul Huda	UMJ	In my opinion, criminal acts (criminal acts of corruption) for which the authority to investigate is given to several institutions (KPK, the Attorney General's Office, and the National Police) are a notary system. This situation can cause a conflict of authority to be investigated, for example, in Lizard vs Crocodile volumes I and II. Given that the prime sector for eradicating corruption lies with the KPK, I agree more if the authority to investigate corruption by the Attorney or Police only concerns certain sectors. Therefore, even if it is still deemed necessary for the Attorney General's Office to be given authority to investigate corruption crimes, it must be determined in a limited way regarding what corruption crimes are. Not as it is now, or likely to remain so, after the enactment of the national Criminal Code, The Attorney General's Office is given the authority to investigate corruption crimes without clear criteria. This can lead to the criminalization of various acts that are said to be against the law but are not acts of corruption. For example, the Jiwasraya case or the use of forest areas for plantations by the Palma group, the cooking oil case is not a criminal act of corruption. However, the prosecutor criminalized it as a criminal act of corruption. With the prosecutor's limited authority in investigating corruption, the exercise of this authority will be carried out in a more accountable manner The cooking oil case is not a criminal act of corruption. However, the prosecutor criminalized it as a criminal act of corruption. With the prosecutor's limited authority in investigating corruption, the exercise of this authority will be carried out in a more accountable manner The cooking oil case is not a criminal act of corruption. However, the prosecutor criminalized it as a criminal act of corruption. With the prosecutor's limited authority in investigating corruption, the exercise of this authority will be carried out in a more accountable manner

Source: Interview, 25 March 2023

Based on the results of the research above, it is illustrated that although the New Criminal Code has stipulated that the prosecutor's office is still authorized to investigate acts of corruption, the actual problem has not been resolved. How technical is the investigation of corruption crimes, it must be determined how to regulate the investigation problems in the upcoming KUHAP. It is still unclear how the KUHAP will maintain the current KUHAP system which places the police as the central investigator (Giulio Calcara, others, 2015).

Under current conditions, the problems most prone to occur in the investigation process are inter-agency conflicts and leadership interventions. Investigative institutions are also inseparable from the possibility of interference by political forces. Law enforcement cannot be completely free from political technology (Orlovskyi, Shapoval, Demenko, 2018).

According to Gerhard Anders, Fidelis, and Brigitte Seim (2020), the Attorney General's Office as an institution that is a prosecution institution according to the Criminal Procedure Code, in the HIR or before the Criminal Procedure Code era was also an investigative institution. Looking back, namely the HIR era, it is not an

exaggeration if the prosecutor's office still wants to maintain its investigative and prosecution authority. This also happens overseas where the prosecutor's office, apart from being a public prosecutor, is also an investigator.

In addition to this historical basis, there is a desire for the prosecutor's office to continue investigating corruption crimes based on the fact that the police's ability to investigate corruption crimes is weak compared to the capabilities of the state prosecutor's office. According to the author's observations, this low capacity is caused by the too-broad authority of police investigators who have to handle various criminal cases.

According to ICW, the handling of corruption cases by the Attorney General tended to increase from 2010 to 2015. The trend of handling corruption cases by the Police tended to increase from 2010 to 2015. The trend of handling corruption cases by the KPK tended to be stagnant from 2010 to 2015 (Anticorruption, 2015).

Based on ICW data, there is an increasing trend in the handling of criminal acts of corruption by the prosecutor's office and the police. This shows that there is a tendency between the police and the prosecutor's office to deal with corruption together.

Based on the data above, it can be emphasized that the prosecutor's office still needs to investigate corruption regardless of whether corruption is a general crime or a specific crime. In addition, even if there is a change in corruption from specific crimes to general crimes, not all types of corruption crimes will turn into general crimes. Of the 30 types of corruption, only 2 types of corruption are included in the New Criminal Code, namely corruption that causes state losses and bribery.

Faisal Laode Syarif (2019) explains that the inclusion of 2 types of corruption in the New Criminal Code is questionable because of the 30 types of corruption, 2 types of corruption include corruption which is difficult to prove. Because it is difficult to prove, it should be more appropriate if it is not included as a crime that is part of the Criminal Code, so that there is no debate about the prosecutor's authority to investigate corruption for both types of violations.

Based on these facts, what needs to be done in this case with the enactment of the New Criminal Code, according to the author, is not to abolish one another's authority to investigate acts of corruption by the three institutions between the police, the prosecutor's office and the KPK. What needs to be done are restrictions. If there is already a boundary between the KPK and the police and prosecutors, in the future it will be necessary to limit the police and prosecutors (Ceshel, Hinna, Homberg, 2022).

Seeing the condition of the prosecutor's organization and the police, ideally, there is a division of authority based on four things (Melo and Renno, 2016), namely:

1. The author proposes that for this type of corruption that causes state losses with a value of more than 100 million, it should still be the authority of the prosecutor's office, while 100 million and below should become the authority of the police. For this type of corruption, extortion at the office, corruption in contracts, destruction of goods, and embezzlement of goods, is the authority of the police, while the corruption of bribery, gratuities, and state losses of more than 100 million remains the prosecutor's authority.
2. The location of corruption crimes, judging from their location, corruption that occurs in district/city capitals, sub-districts, and villages falls under the authority of the police, while those that occur in district capitals and provincial capitals fall under the authority of the prosecutor's office.
3. Value of state losses. From the value of state losses, there should be a division that corruption which causes state losses of more than 100 million is the authority of the prosecutor's office, while state losses of under 100 million are the authority of the police.

Perpetrators of corruption. From the point of view of perpetrators of corruption, ideally, the prosecutor's office handles corruption crimes committed by district, city, and provincial level officials, while the police handle district/city level officials.

4. Conclusion

Based on the discussion above, it can be concluded that changes or the enactment of the New Criminal Code do not affect the prosecutor's authority to investigate corruption crimes normatively. However, theoretically, there is still debate. The author's proposal as an illustration of renewal is about the limits and division of authority to investigate corruption by the location, the perpetrator, the value of the loss, and the type of corruption that occurred.

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Problems with the Implementation of Parate Executie in Indonesia for Land as an Object for Debt Collateral

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Abstract
When the debtor defaults on the agreed debt agreement, then legally the creditor has the right to the debt collateral object for payment of achievements that should be carried out by the debtor by executing it, but the implementation must of course be by applicable legal provisions. Execution of the debt guarantee object can be carried out by parate executie, by way of title executorial, or by way of a private sale. As for Parate Executie or direct execution on one's power, it is a practice of simplifying executions without having to involve the judiciary, which is quite simple, low cost, and relatively fast in time. Unfortunately, parate executives in Indonesia often cause problems in their applications. including because of its existence which currently exists or does not exist and is even considered the same as the concept of the executorial title, so its application becomes inconsistent. The existing problems cause the author to intend to conduct research that aims to find out what exactly is the cause of problems occurring in the implementation of parate executie and what are the solutions to overcome these problems. This research uses normative legal research methods using a statutory approach (statute approach) and a case approach (case approach) that are relevant to the object of the problem in this research. The results of the research from the author's research to find out what are the real problems in implementing parate executie in Indonesia are that there are inconsistent arrangements and implementation and there is confusion in the arrangement which originally regulated 3 (three) types of execution that can be taken by creditors against collateral objects of mortgage rights Also included here is the object of fiduciary guarantees if the debtor defaults (default), namely the exercise of executorial title, parate executie on his own power and underhanded execution, but in the end, it is no longer different and all must get fiat from the Chair of the District Court.

Keywords: Parate Executive, Collateral Object, District Court Fiat

1. Introduction

In practice, if the debtor breaks promises or defaults, the creditor will first remind the debtor of negligence or default by sending several subpoenas or warning letters, but if the debtor still does not heed and carry out his achievements after being reminded several times, the creditor will take legal steps by ways provided by law such

as: filing a claim to the competent court or can carry out executions with executorial titles based on civil procedural law or can also be executed on their power (parate executie) or by selling underhanded.

Execution by the executor is no stranger to Indonesia because parate executie has long been regulated and implemented in several provisions, including provisions regarding mortgage guarantees and creditverband guarantees, mortgage guarantees, and fiduciary guarantees. In this provision, creditors on their authority (parate executive) can sell collateral objects through the auction office without having to involve a court. Execution by parate executie is a relatively easy way and does not require a long time for the creditor to get paid for settlement of receivables in the event of a defaulting debtor compared to having to go through the Courts which requires time, costs, and a process that is not easy.

The application of parate executie in Indonesia always causes many problems, apart from the occurrence of inconsistencies in its application there are also rejections such as the occurrence of lawsuits and so on so that parate executie in its application becomes completely unacceptable in the practice of legal relations of debt agreements.

Execution of a parate executive through the auction process without the intervention of the Court often has an impact on the interest of auction buyers, because there are not a few obstacles when vacating the house or withdrawing the collateral object from the hands of the debtor. After all, the execution does not go through the Court, so buyers are more likely to believe in buying auction items that have gone through the process of execution from the court. On the other hand, the concept of parate executie is very helpful for creditors or creditors for business actors, because it does not require a protracted process to make sales and get payments for fulfilling the debtor's achievements, meaning that parate executie is a way of accelerating the settlement of creditors' receivables.

For debtors, it is felt that the concept of parate executie does not provide justice and legal protection. The debtor feels that the parate executie provision has harmed his constitutional rights so that in its development there has been a judicial review of the articles of law and regulations which give great authority to creditors with their powers to make sales without going through fiat from the Court, this happens because in general, the debtor requires that if there are differences of opinion or opinion regarding the contents and implementation of the agreement, especially regarding defaults which are not only always committed by the debtor, but also at the same time do not rule out the possibility of being carried out by the creditor, the court's role is to settle the problem between them first.

Various other findings were produced by other studies which have discussed issues related to this paper such as Fahlevi and Sihombing (2023) with the title "Parate Execution of Freehold Land as Debt Guarantee" This research takes a case study in the form of a phenomenon that occurred on October 20 of the year In 2014 there was a credit agreement between Bank CIMB Niaga as the creditor and M. Nova Irdiansa as the debtor. The decision of the Panel of Judges of the Supreme Court when deciding on the dispute in its decision contained a rejection of the request for a memorandum of cassation filed by the plaintiffs. The plaintiffs, in this case, are M. Nova Irdiansa and Hj. Enny Adriati is subject to Article 6 of the Mortgage Act (Parate Execution) as legal certainty for debt repayment because mortgage rights have easy and certain characteristics. With the conclusion of the analysis of the author's research, the execution carried out by Bank CIMB Niaga as a creditor through an auction is proven to have been authorized by law to carry out executions without the consent of the debtor giving the Mortgage (Parate Execution) based on Article 6 of the Mortgage Law, the implementation of which is based by the promises contained in the Deed of Granting Mortgage Rights Number 233/2014 in Article 2 number 6 so that in the decision the Panel of Judges rejected the application submitted by the Plaintiffs because it was clear that each party had previously agreed. However, in the implementation of the execution through an auction conducted by Bank CIMB Niaga, there is a discrepancy in Article 49 of the Minister of Finance Regulation Number 27/PMK.06/2016 Concerning Instructions for Conducting Auctions. which is expected to be able to support and at the same time act as a security tool for credit activities to meet the need for availability of funds through Banking Institutions to support National Development. Through this Law, the Unification of National Land Law was completed, especially the law on guarantees for land, which is one of the objectives of the Basic

Agrarian Law, so that Mortgage Rights become the only Guarantee Institution for Land. Finally, research from Savira and Setyorini (2022) has an explanation in their research in the form of one of the characteristics of mortgage rights, namely easy and certain implementation of execution, which is regulated in Article 20 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as the Mortgage Law or UUHT) consists of Execution under Article 6 of the Mortgage Law (Parate Execution), Execution based on executorial title and Underhand Execution. However, in its implementation, problems often arise. If the debtor does not fulfill his obligations and for this action, the creditor has given a warning letter 3 times so that the obligations can be fulfilled immediately as stated in the agreed agreement. So that creditors carry out executions based on Article 6 UUHT on auction rules.

2. Research Method

This research uses normative legal research methods which are nothing but a type of research with techniques for collecting data, processing data, and research data obtained from primary legal materials, secondary legal materials, and tertiary legal materials (Soerjonono & Mamudji, 2018). The normative or doctrinal legal research method used in this study is a method that focuses on positive legal inventory steps, legal principles, and doctrine, legal discovery in concreto cases, legal systematics, level of legal synchronization, legal comparisons, and legal history. Abdulkadir Muhammad, 2004: 52). While this research uses a statutory approach (statute approach) and a case approach (case approach) that are relevant to the object of the problem in this research. This research needs to be done to find out the problems of implementing parate executie in Indonesia against collateral objects in agreements that have defaulted.

3. Results and Discussion

Initially, the guarantee institutions for land were mortgages and credietverband, in which mortgage institutions were regulated in Article 1162-1232 Book II Burgerlijk Wetboek (BW) or the Civil Code (KUHPerdata), while credietverband was regulated in the Staatsblaad provisions of 1908 Number 542 which amendments were made to the provisions of the Staatsblaad 1937-190. However, since the enactment and enactment of Law Number 5 of 1960, guarantees for land are no longer burdened by mortgages and mortgages, but with mortgages which later gave birth to Law Number 4 of 1994 concerning Mortgage Rights on Land and Objects Related to it. Land.

The choice to use the land as collateral or as collateral for credit, both for productive loans and for consumptive loans, is because the land is considered the safest and has a relatively high economic value. (Agus Yudha Hernoko: 1998). Land encumbered with mortgages is considered more effective and safer, because it is easier to identify the mortgage object so that it is clear and the execution is certain, besides that credit or debt with mortgage rights must be paid first than other bills. from the auction results. (Retnoulan Sutantio: 1999).

Parate Executive comes from the word paraat which means the right to the collateral object that is given is ready to be in the hands of the creditor to carry out the sale in public based on his power as if it were considered as selling his property or his own (M. Isnaeni 1996).

Parate Executie has been around for a long time and existed when the guarantee institution, namely mortgages, was enforced as stated in Article 1178 paragraph (2) of the Civil Code which strictly reads as follows:
"However, it is permissible for the creditor of the first mortgage to, at the time the mortgage is given, expressly ask for an agreement that, if the principal amount is not repaid properly, or if the interest owed is not paid, he will be empowered to sell the plots that are bonded in public, to take repayment of principal, as well as interest and fees, from the sales revenue. The promise must be carried out according to the method as stipulated in Article 1211 BW "

Yahya Harahap argues that paratae executie is an exception to the principle of execution under the hands and leadership of the Chief Justice (M. Yahya harahap 1988). Even though the Mortgage is an additional guarantee agreement (not the credit agreement as the main agreement) its function is still to provide a sense of security for the creditor, so the contents of the agreed Mortgage Certificate should not be considered non-existent or have its strength weakened. The function of a legal guarantee is to cover the debt because the guarantee is a means of

protection for the creditor who guarantees him legal certainty about the payment of his receivables or the performance of the debtor (Juhaenda Hasan 2000).

The means of legal protection for creditors has been regulated and confirmed in Article 1131 of the Civil Code which states "That all objects belonging to the debtor, whether movable or immovable, which already exist or will exist in the future, are borne by all individual agreements".

Legal protection for creditors, if the debtor breaks his promise/defaults, cannot be ignored, especially since the debtor is stuck making payments will certainly be very detrimental to creditors. The use of parate executie on collateral objects for mortgages is thus the fastest way to pay off debts so that the funds that have been issued can be returned to creditors where the funds can be used or reused in the rotation of the economy.

Based on the Mortgage Law Article 20 paragraph (1) letters a and b, it is stated that the execution of the mortgage object can be taken in 3 (three) ways, namely as follows:
Parate executive(The right of the holder of the first mortgage right to sell the object of the Mortgage right as referred to in Article 6 of the Mortgage Law);
Executorial title(i.e. contained in the Mortgage Certificate as referred to in Article 14 paragraph (2); and Sales under the hand (i.e. execution through the sale of the Mortgage Right object under the hand upon the agreement of the giver and Mortgage Beneficiary according to Article 20 paragraph (2) of the Law Number 4 of 1996).

In the 3 (three) types of execution confirmed by Article 20 of the Mortgage Law, each has its meaning, characteristics, and procedures and are certainly different from one another. In executing the executorial title in the Mortgage Certificate (previously using the Grosse Acte Mortgage), the sale of land or buildings as collateral objects is subject to the provisions of the Civil Procedure Code by what has been determined in Article 224 HIR/258 RBg, where the weakness is that the implementation procedure takes time quite a long time. Meanwhile, for executions carried out under the hands or underhanded executions, it is necessary to fulfill the requirements, namely, among other things, there must be an agreement between the Mortgage Beneficiary (Creditor) and the Mortgage Giver (Debtor). The problem that needs to be resolved first in carrying out underhanded execution is regarding the validity of selling Mortgage objects by the Bank, based on a power of attorney to sell underhanded from the Mortgage Giver. (Sutan Remy Sjahdeini 1999).

Subekti provides a definition that Parate Executie is "executing himself or taking what is his right, in the sense without the mediation of a judge, which is aimed at a collateral item to then sell the item himself". From this definition, it can be concluded that parate executie as a method of execution is the easiest and most simple way for the creditor to get back the money owed to him in the case of a defaulting debtor compared to the method of execution which is taken through process and assistance or the intervention of the District Court.

Since the Decision of the Supreme Court Number 3210 K/Pdt/1984 dated January 30, 1986, the implementation of parate executie during the period when Law Number 5 of 1960 came into effect until Law Number 4 of 1996 concerning Mortgages over Land and Property -Objects related to land cannot be implemented by the Creditor as expected, because the legal balance in the Decision confirms that "if the auction is carried out by the Head of the Bandung State Auction Office on the Order of the Original Defendant I (Bank-Creditor) and not on ordered by the Chairman of the Bandung District Court, then according to the Supreme Court of the Republic of Indonesia the public auction is contrary to Article 224 HIR, so the auction is invalid."

The Supreme Court's decision is also further strengthened by Book II of the Guidelines for the Supreme Court of the Republic of Indonesia which requires fiat execution from the District Court for the execution of collateral objects burdened with Mortgage. However, according to M. Yahyah Harahap, the Supreme Court Decision Number 3210 K/Pdt/1984 dated January 30, 1986, became a debate in legal studies, because it was considered that the decision had ruled out the eigenmachtigeverkoop principle provided for by Article 1178 paragraph 2 of the Civil Code (M. Yahya Harahap 1993). While Boedi Harsono commented that the decision was one of the facilities that could not be used because the Supreme Court's decision required that parate executie first obtain fiat from the head of the district court (Budi Harsono 1995).

Fiduciary guarantees are now no longer permitted to carry out unilateral execution by creditors, they must receive fiat from the Chairperson of the District Court if there is no agreement between the creditor and debtor regarding default and the debtor objects to handing over the fiduciary guarantee object (object: vehicle). motor) to creditors. Even though there are 3 (three) ways of executing fiduciary collateral objects in Article 15 of Law Number 42 of 1999 which are the same as the execution of collateral objects permitted in the Mortgage Law, namely as follows: "First: Inside the Fiduciary Guarantee Certificate as referred to in Article 14 paragraph (1) the words "FOR JUSTICE BASED ON THE ONE ALMIGHTY GOD" are included. Second: The Fiduciary Guarantee Certificate as referred to in paragraph (1) has the same executive power as a court decision that has permanent legal force. Third: If the debtor defaults, the Fiduciary Recipient has the right to sell the object which is the object of the Fiduciary Collateral on his authority."

However, since the reading of the decision of the Constitutional Court (MK)Number 18/PUU-XVII/2019, acts of coercion or carrying out executions on their power (parate executie) are prohibited and are considered unconstitutional or unlawful as long as there is no agreement regarding breach of contract (default) and the debtor objects to surrendering the vehicle which is the object of fiduciary guarantees, which can only be done if otherwise there is an agreement regarding default and the debtor voluntarily surrendering the fiduciary guarantee object to the creditor or what is usually the case, in this case, is the leasing party.

Likewise, since the enactment of Law Number 4 of 1996, creditors have rarely submitted requests for auction to the State Auction Office for land and buildings that are the object of collateral for Mortgage Rights, because they are sure that the application will be rejected by the State Auction Office. After all, there is already a Republican Supreme Court Decision. Indonesia No.3210 K/Pdt.G/1984 and Book II of the Guidelines for the Supreme Court of the Republic of Indonesia.

Since the Supreme Court's decision, there has been a lack of interest from buyers because there are concerns that problems may arise when the vacancy is carried out, which may occur when the court refuses to issue an order to vacate. After all, there is no fiat from the Head of the District Court (Restowulan Sutantio: 1999).

Parate executie arrangements in the Mortgage Act there is an irregularity when it is connected between Article 6 of the Mortgage Law with the general explanation of number 9 which confirms that the implementation of the executie parate is based on the provisions of Article 224 HIR the arrangement is aimed at mortgage grosse acte and debt recognition grosse acta, while the provisions regarding article 224 HIR emphasize that the gross act mortgage and gross acta acknowledgment of debt have the power as a court decision that has permanent legal force, meaning that the execution of the grosse active mortgage and gross acta acknowledgment of debt is subject to implementation as a court decision which must be implemented on order from the chairman of the District Court. If so, what J said is true.

If the paraate executie is obligated to go through fiat from the Chairman of the District Court, then the location of the paraat (ready at hand) to sell on his power which is given as a full right by law is lost. Even though parate executie is a very simple implementation of execution without the intervention of the District Court, meaning that if the execution of parate executie requires obtaining fiat from the Chairman of the District Court, then such a sale is no different from execution based on the executorial title which is regulated as one of the methods of execution in the Mortgage Law.

Let's look at the general explanation of number 9 of the Mortgage Law, in full as follows:
"One of the characteristics of a strong mortgage is easy and certain execution if the debtor defaults. Although in general the provisions regarding execution have been regulated in the applicable civil procedural law, it is deemed necessary to include specific provisions regarding the execution of mortgage rights in this law, namely those governing the parate executie institution as referred to in Article 224 of the Revised Indonesian Regulation (Het Herziene Indonesisch Regulation) and Article 258 of the Legal Procedure Regulation for Regions Outside Java and Madura (Reglement tot regeling van het Rechtswezen in de Gewesten Buiten Java en Madura)."

In connection with this provision, it is further regulated in the Elucidation of Article 14 paragraphs (2) and (3) of the Mortgage Law which emphasizes:
"Irah-irah listed on the Mortgage certificate and in the provisions of this paragraph is intended to confirm the existence of executorial power on the Mortgage Certificate, so that if the debtor defaults, it is ready to be executed as is the case with a court decision that has obtained permanent legal force, through procedures and by using parate executive institutions by civil procedural law regulations.

So it is very clear that parate executie must be distinguished from the method of execution based on executorial title and execution under the hands because parate executie by law is considered as a characteristic of strong mortgage rights, easy and certain in execution. Therefore there is confusion in some of the applicable provisions which are problematic in the application of parate executie and must be corrected to achieve legal certainty.

Provisions concerning parate executi which have confusion and their implementation in court are at least sufficient to disrupt legal certainty for the giver and recipient of Mortgage Rights, which has an impact on the lack of trust of economic actors in legal instruments, while parate executi on mortgages has the advantages and advantages provided by Article 1178 paragraph (2) The Civil Code against creditors holding first mortgages, even parate executives at mortgage institutions have a very important role and are the basis for building mortgages.

The contradictions in parate executie arrangements in the Mortgage Law are very disturbing and reduce trust in the guarantee institution, regulations that are considered as a legal fortress regarding guarantees for land and which are used in commercial transactions turn out to be in several provisions ineffective in fending off the risk of loss. Legal instruments that are expected and relied on can help sustain an era of economic growth, in reality, this role cannot be applied effectively and optimally.

The presence of the Mortgage Law should not always be interpreted as achieving perfection in the regulation regarding land security institutions, however, the applicable laws and regulations are not final products, but it is necessary to get input or criticism because laws are the first step in the formation of law. better by developments and the demands of social needs of society. Sudikno Mertokusumo said, “The law cannot be complete. The law is only one stage in the process of law formation and is forced to find its completeness in legal and judicial practice (Sudikno Mertokusumo, A. Pitlo 1993)”.

Whereas because the Mortgage Law is a renewal of a guarantee institution for land which is a substitute for a mortgage and credit guarantee institution, the essence of legal reform is appropriate as stated by Peter Mahmud Marzuki who said "renewal of legal values is not just a renewal of legal rules or a renewal of substance the law. Based on these new values, a newly legal substance is built. After the construction of the substance, enforcement procedures are made in the form of formal law. These procedural rules may not set aside or deviate from substantive provisions. Meanwhile, substantive provisions must reflect legal values,

So thus the birth of the Mortgage Law which contains ways of carrying out the execution, especially parate executie, requires a more in-depth discussion so that there are no conflicting provisions or confusion of parate executie in legal practice.

If the implementation of the auction sale of the mortgage object guarantee using parate executie must go through and intervene the District Court (fiat from the Chief of the District Court), it means that the legislators of the Mortgage Law no longer distinguish between the three types of execution methods permitted by the Law. As a result, all of these institutions must and must obtain fiat from the Head of the District Court who obeys the rules of the Civil Procedure Code. Thus, the regulation has shown that the forming nature of the Mortgage Law is inconsistent, so it is appropriate to say that the norms governing the implementation of parate executie for the object of Mortgage guarantees are vague (vage norman).

M. Isnaeni thinks "if there is no consistency flowing within the statutory regulations, it means that the image itself is never certain, then it is very difficult to expect legal certainty to emerge from the womb of such rules.

Even though legal certainty is one of the main pillars of legislation besides the aspect of justice, has a close relationship with the issue of efficiency which is always used as a reference by economic actors who often use legal services in various transactions (M. Isnaeni: 1996) "

4. Conclusion

Based on the explanation it can be explained that if there is confusion in the regulation and implementation, then as the legal philosophers say: "we have to look for the essence of the law, look for what is hidden in the law, investigate legal principles as a value judgment, explain values, the basis legal basis to the last philosophical foundations, trying to reach the roots of law, so that the study of legal principles or legal principles is an important and basic element of legal regulations, even legal principles are the heart of legal regulations (Soetiksno (2002)).

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Enhancing Respect for Human Rights in the Americas

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Abstract
As an exploratory research, our paper aims to describe the role played by the Inter-American Court of human rights in standardising the interpretation of conventional human rights in the Americas. This is basic research. We use qualitative methods to understand the different ways applied by the Inter American Court to enforce not only its judgements, but the content of regional human rights instruments as well as its interpretation, over that of national tribunals. Results have implications for victims of human rights violations in the continent, since every national congress has a duty to apply and enact new legislation in order to comply with the Court's standards. Knowing the content of the Inter American Court's judgements is a first necessary step to apply its standards to every domestic decision.

Keywords: Human Rights, International Protection, Control of Conventionality, Constitutional Identities

1. Introduction

Three main ideas guide the reasoning behind this article. First, we will refer to the historical evolution of the protection of human rights in the three Americas. This is a vital element to understand the way in which in the Americas, human rights were first enacted at the regional level and -very slowly- they were incorporated by member States. This means that at present, each State needs to accommodate its judiciary to the conventional interpretation made by regional bodies. Second, we will comment on the complaint procedure filed by a victim of human rights violations in the regional system. The regional procedure for the protection of human rights, although it is highly symbolic, should not forget that it replaces State violations. Due to the principle of subsidiarity and complementarity, States are always the first authority obliged to protect the rights of victims of human rights violations. Third and last, we will briefly explain the development of the doctrine of conventionality control as elaborated by the Inter American Court of Human Rights. The doctrine of conventionality control is to some extent the heart of the system, since it privileges the interpretation made by the Inter American Court of Human Rights (IACtHR hereafter) over that of national courts.

2. Method

This is explanatory research using secondary data available in books, journals, court decisions, regulations as well as digital data collected through literature study. The approach used is a qualitative approach because this research can explain the relationship and influence of independent variables on attachment variables, both together and individually in the hypothesis.

3. Results

3.1. Human Rights in the Americas: from top to bottom

The Organization of American States (OAS hereafter) was born in 1948. It is a regional intergovernmental organisation which includes 35 Member States: the independent nations of North, Central and South America. The OAS has also granted Permanent Observer status to 57 States and to the European Union. The Organization's Charter is a multilateral treaty adopted in Bogotá, Colombia in 1948. It makes few express references to human rights. Article 3(l) of the OAS Charter establishes that the *"American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed, or sex."* Article 17 OAS Charter provides that "*each State has the right to develop its cultural, political, and economic life freely and naturally*."

Eleven years later -1959-, the Inter-American Commission on Human Rights (IAComm hereafter) started its work. This Commission is one of the organs through which the OAS accomplishes its objectives. (OAS Charter, Article 53). According to Article 106, the principal function of the IAComm is to promote the observance and protection of human rights, and to serve as a consultative organ of the OAS in this regard.

In 1969, the American Convention on Human Rights (ACHR hereafter) was adopted. It is a binding treaty that enshrines the fundamental rights of the inhabitants of the 3 Americas. The ACHR entered into force in 1978 and has the Inter-American Court of Human Rights (IACourt hereafter) as its enforcement body. At present, the American convention is a "living document" -as the IACourt itself has considered in its case law-, with strong statistics about the activity of both the IAComm and the IACourt.

The Inter-American system comprises a complex structure of adherence:

a. First, we find a minimum level of adherence, in the form of compliance with the American Declaration. This is required of all OAS Member States and it is monitored by the IAComm.
b. Second, there is another level that applies to States that have ratified the ACHR, but have not accepted the contentious jurisdiction of the IACourt. Those States must comply with their conventional obligations but they are not subject to rulings of the IACourt in contentious cases.
c. Third, we have the highest level of adherence, which is required of those States that have ratified the ACHR and have also accepted the contentious jurisdiction of the IACourt. They must comply with their conventional obligations and are subject to binding Court judgments.

The Inter-American System is composed of two principal entities: the Inter-American Commission of Human Rights and Inter-American Court of Human Rights. Both bodies can decide individual complaints concerning alleged human rights violations and may issue emergency protective measures when an individual or a group is at immediate risk of irreparable harm.

3.2 Regional proceedings: first the States, and if they don't, the Commission and the Court.

The Interamerican System of protection of human rights resembles the old procedure of the European system within the framework of the Council of Europe. First, the complaint is filed before the Commission and if an agreement with the State is not reached, the case goes to the Court for a binding decision.

Any individual, group of individuals, and non-governmental organisations recognized in any OAS Member State may submit complaints -called petitions-, concerning alleged violations of the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and other regional human rights treaties. Petitions are filed before the IAComm, who generally receives about two thousand petitions a year. The primary function of the IAComm is to promote the observance and defence of human rights, and to serve as an advisory body to the OAS in such matters. The IAComm has competencies with political ramifications, among which special emphasis should be given to the occurrence of visits in loco and the preparation of reports about the human rights situations in member States. It also undertakes functions with a quasi-judicial dimension. It is *via* this latter form of competence that it is able to receive complaints from individuals or organisations relating to human rights violations, examine these petitions, and elaborate a report on the cases with the assumption that they firstly have complied with admissibility requirements. The first step of the proceedings is the admissibility analysis of the petition which is performed by the IAComm. This control consists of finding out if the internal remedies in the denounced State have been exhausted, if the 6-month period has expired since the violation ended, and if the allegedly violated rights are part of the OAS Charter or the ACHR. Once the petition is admitted, the IAComm acts as a mediator between the victim and the State, and tries to reach a friendly settlement of the matter.The State may reply and propose evidence as well as the victim. When this stage is over, according to Article 49 ACHR, if a friendly settlement is reached, the IAComm prepares a report, describing the facts and the terms of the agreement.

For those cases that do not result in a friendly settlement, the contentious procedure follows. In order to bring a case to the Court, the State concerned must have declared its acceptance of the IACourt's contentious jurisdiction. This declaration can be made *ipso facto*, upon ratification of the Convention, at a later time, or on an *ad hoc* basis regarding one specific case. At this stage, the IAComm acts as a party against the State. The IAComm *"shall immediately give notice of that decision to the State, the petitioner and the victim."*

The IAComm's application shall contain, among other information, (i) the claims on the merits, (ii) reparations and costs sought, (iii) the parties in the case, (iv) the facts alleged, (v) information regarding the procedure before the Commission, (vi) the report on the applicable law and (vii) related conclusions. Furthermore, the IAComm must cooperate with the IACourt requests for additional evidence, documents and information, including the summoning of witnesses, experts and so forth. The IAComm may also request that the IACourt hold hearings or issue provisional measures. The IAComm is authorised to participate in subsequent phases of the procedure, such as reparations, interpretation of judgments and the follow-up to Court decisions.

The Inter-American Court is the only judicial organ of the IA Human Rights System. It is *"an autonomous judicial institution",* entrusted with *"the application and interpretation of the American Convention."*. The IACourt's mandate is more limited than that of the IAComm because the Court may only decide cases brought against the OAS member States that have specifically accepted the Court's contentious jurisdiction. Those cases must first be analysed by the IAComm. Only States parties and the IAComm may refer contentious cases to the Court (Article 61.1 of the ACHR). It exercises two types of jurisdiction: contentious and advisory. Contentious jurisdiction is defined as the power to adjudicate cases concerning alleged ACHR violations by States parties. In the exercise of its advisory jurisdiction, the IACourt has the power to interpret the ACHR and *"other treaties concerning the protection of human rights in the American states."* Advisory opinions may be requested by States parties to the ACHR, other OAS member States, and also OAS organs, -including the IAComm-, within their spheres of competence.

The law applied by the IACourt consists of the ACHR, its protocols and thematic conventions, all of which make up the so-called inter-American *corpus iuris*. From 1985 onwards thematic conventions deal with various issues such as the prohibition of torture, second-generation rights, the abolition of the death penalty, violence against women, enforced disappearances and the rights of persons with disabilities.

As a final step of the judicial process, the IACourt adjudicates the case, based on the evidence presented by each party. It issues a judgement that is final and binding for the concerned State. Over the Court's first several decades in operation, the Court adjudicated a significant range of rights protected by the ACHR and its *corpus*

iuris, from extrajudicial execution and forced disappearance cases, to labour, land, and freedom of expression rights.

3.3 The Control of Conventionality doctrine

The Inter-American Court of Human Rights has forged a path, aimed at imposing the doctrine of conventionality control in the inter-American system. Faced with this, States have reacted in multiple ways. The answer runs between the requirement of uniformity, on one side, and legal pluralism, within the framework of a human rights system, on the other side. Uniformity corresponds to an unique inter-American jurisprudence and interpretation: it is the repressive nature of the doctrine. Legal pluralism tries to accommodate the need for the homogeneous exercise of rights, with the duty to respect constitutional identities.

Conventionality control is a doctrine that refers to the obligation of every State party to apply within its domestic jurisdiction, the ACHR and its interpretation as developed by the IA Court. At present, the control of conventionality is considered as one of the most relevant issues in the case law of the IACourt, and enjoys wide reception. The doctrine has already been mentioned in 6 advisory opinions and in numerous judgments. As an example only between 2018 and 2021, the court has mentioned the conventionality control in 23 contentious cases.

As regards legal sources, the doctrine has been built on the basis of Article 1.1 ACHR that imposes on States the obligation to respect human rights; Article 2 by which States assume an obligation of actively guarantee human rights -the duty to enact domestic legislation-; Article 29 about the interpretation criteria of the ACHR and sets out a duty to interpret rights and guarantees as broadly as possible, limiting restrictive interpretations; and Article 69 which obliges States to comply with judgments of the IACtHR in cases to which they are party.

Entering into the description of the doctrine through the analysis of the case law, the first relevant case was Almonacid Arellano (2006), when the phrase "control of conventionality" was first used. The Almonacid Arellano case was about a decree that granted amnesty for serious human rights violations that took place in Chile in the 1970s. This made it impossible to investigate the extrajudicial execution of Almonacid Arellano. In its decision, the IACourt noted that every domestic judge shall compare his internal law to the ACHR and, from this comparison, it comes out a duty not to apply domestic law in any case in which it is in opposition to conventional law.

Two years later , in the Heliodoro Portugal case, the Court linked the duty to perform a conventionality control with Article 2 of the ACHR that refers to the State duty to adapt its domestic law through positive measures. Later on, In Radilla Pacheco case, the Court said that judges are obliged not only “not to apply” internal rules which are in opposition to the ACHR, but also to apply their domestic law in accordance with the conventional interpretation and the principles established by the same Court. In this case, it was the first time that the Court used the conventionality control as a guarantee of non-repetition in order to avoid future violations of human rights, which motivated the reform of the Constitution of Mexico.

In Cabrera García and Montiel Flores v. Mexico (2010), the IACourt added a new aspect to the doctrine, by expanding the range of authorities required to carry out the conventionality control so that the convention has a useful effect. The Court said that the obligation to monitor the conventionality of domestic law extends to every State agency involved in the administration of justice.

From the case law evolution described above, certain elements that we consider central to a theory of conventionality control in the Inter-American system, follows:

a. every democratic State, which is part of the Inter-American system, has a duty to respect the values and principles of international human rights law;
b. the control of conventionality is a hermeneutic exercise. Its main purpose is to give real effect to conventionally enshrined rights, while seeking to harmonise domestic legislation in order to make real the universality of human rights;

c. the obligation assumed by a State party to an international human rights treaty and which has domestically incorporated such obligations, obliges all its officials and agents to apply the IACourt's interpretation, within their competence;
d. any domestic law contrary to the convention does not generate effects, as it is incompatible with the international obligations assumed by the State; this avoids the generation of international responsibility;
e. when interpreting conventional rights, national judges and other officials who apply the law within their competences, must be familiar with and apply the case law of the IACourt. This preventive control seeks to avoid the procedure before the Inter-American system, and constitutes the application of the principle of complementarity. However, it is up to each State to decide which method of conventionality control shall better fit within its domestic legislation;
f. as a guiding principle of interpretation, priority should be given to the rule and interpretation that provides the broadest protection to the human person. This means that the convention must take precedence whenever the conventional protection is diminished by domestic law (useful effect of treaties), and domestic law should prevail whenever it expands the minimum floor of conventional rights (counter-limits doctrine). The exceptional situation that seeks to preserve the constitutional identity of each State (national margin of appreciation doctrine) remains unaffected.

4. Conclusion

The Inter-American Court has been exercising conventionality control since its first ruling. This is one of the ways it uses to deepen the influence and effectiveness of the inter-American system of protection of human rights. The progressive case law affirmation of the control of conventionality in favour of human rights, systematised an activity that affects sovereignty. We find this control implicit in any theory of universal aspiration, such as the international law of human rights. As Judge Silva Meza states:

"It is in the Constitutions where the roadmap for this internationalisation is dictated and it is the domestic jurisdictional bodies that are responsible for designing the contours of this normative change through our judgments" (Silva Meza, 2014).

The success of the doctrine of conventionality control, says Hesse, depends on the sensible, prudent and legitimate implementation that the Inter-American Court makes of it, taking into account local particularities (Hesse, 2011). Which, we add, must be done in light of the useful effect of the treaties, and according to the exercise that each State performs of its national margin of appreciation, and the way in which the doctrine of counter-limits is applied.

Finally, after describing the evolution of the control of conventionality doctrine in the Americas, we may conclude that modern democratic constitutions shall facilitate the articulation between the international, regional and domestic systems. They should be integrated into a new one that ensures respect for democratic governance, the rule of law and the protection of fundamental rights.

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Legal Analysis of the Deportation Process for Final Rejected Persons: Dialectics of International Refugee Law and Indonesian Immigration Law

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Abstract
Final Rejected Person (FRP) is a foreigner whose refugee status application is rejected. FRPs are asylum seekers whose refugee status applications are case closed by UNHCR and cannot appeal. Basically, when there is a final rejection of an asylum claim, the subject to FRP has the obligation to leave the territory of the country. But in reality, many problems arise in the implementation of FRP deportations. In the context of carrying out deportations to FRP, many countries also experience difficulties in handling them. The purpose of this study is to determine immigration law enforcement in deportation to FRP by the Jakarta Immigration Detention Center, as well as obstacles in the implementation of immigration law enforcement. The method to be used is normative-empirical. The results of this study explain that law enforcement in the form of deportation of FRP by the Jakarta Immigration Detention Center has not been in accordance with the theory of sovereignty because it is limited by human rights and technical obstacles in forced deportation of foreigners from Indonesian territory. The obstacle to deportation of FRP by the Jakarta Immigration Detention Center is because FRP has no desire to return to the country of origin, making it difficult to carry out deportation. In this study, the author suggests that communication between agencies in handling FRP be improved so that coordination and deportation of FRP can be better in the future. Then it is necessary to develop persuasive methods in handling FRPs, both methods developed with other organizations, as well as other possible methods for the return of FRP to its country of origin. The return of FRP to the country of origin is carried out by involving other parties so that they can return to the country of origin.

Keywords: Final Rejected Person, Deportation, Immigration Detention Center

1. Introduction

The Indonesian government has delegated to the Ministry of Law and Human Rights in this case the Directorate General of Immigration to regulate and supervise the traffic of foreigners in order to guarantee the sovereignty of

the State. In carrying out the process, immigration officers with their authority through applicable national regulations, sometimes experience problems because international regulations already regulate it, such as arrangements regarding asylum seekers and refugees (Syahrin, 2017). Article 14 paragraph (1) of the Universal Declaration of Human Rights of 1948 states that asylum from other countries due to fear of torture is an inherent right of every human being. They must not experience forced expulsion and return while at the border and about to enter a country, which is an inherent right of every asylum seeker. This is known as the principle of non refoulement (Syahrin, 2020).

Asylum seekers are a special category of foreigners intended for protection by applying the principle of non-refoulement stipulated in international law. While awaiting the determination of the application for protection, they must be examined whether the principle of non-refoulement actually applies and, whether or not they can be returned to their state of nationality or origin. During this determination, asylum seekers cannot be expelled, even if they do not legally meet the standard documents or procedures required to enter and/or reside in the country in which they apply for protection (Slingenberg, 2016).

FRPs are foreigners whose refugee status applications are rejected. FRPs are asylum seekers whose refugee status applications are closed by UNHCR, and cannot appeal (Khalid &; Ardianto, 2021). Basically when there is a final rejection of asylum claims, causing the subject subject subject to FRP to have the obligation to leave the territory of the country. Ideally, rejected asylum seekers leave their country of their own free will without the need for any intervention. Thus, the main consideration of the return policy is to ensure voluntary compliance. However, in reality there are cases of non-compliance with the obligation to leave. States feel the need to use administrative and immigration legal measures to carry out law enforcement (Syahrin, et al., 2022).

Those who enter and request asylum and protection are then given the opportunity to undergo a refugee status determination process commonly referred to as RSD carried out by UNHCR. If in the process an asylum seeker does not qualify for refugee status, then that person is declared an FRP. Article 13 of the United Nations Covenant on Civil and Political Rights states that deportation of foreigners who enter lawfully into the territory of a country can only be justified if there is a valid legal decision or for reasons of state security. The foreigner shall also be given the opportunity to file a legal challenge to his deportation and shall have the right to request judicial review of the competent authority or designee of his case either by himself or on his behalf. So the decision from UNHCR to grant the foreigner status as FRP is the right reason for the Indonesian side to carry out the deportation.

But in reality, many problems arise in the implementation of FRP deportations. In the context of carrying out deportations to FRP, many countries also experience difficulties in handling them, for example in Europe. The European region has a special term for FRPs that experience obstacles to repatriation, namely Non-Removed Rejected Asylum Seekers so that it becomes the top political agenda in many countries (Atac, 2019). In addition, the problem of FRP deportation is the uncooperative attitude of the country of origin that hinders repatriation. An uncooperative home country will deny that the FRP actually has citizenship. Alternatively, they delay the issuance of travel documents required for return, or may object to the proposed modality of repatriation. Some reverting countries reacted by negotiating readmission agreements (Noll, 1999).

In addition to legal considerations, one of the things that affects is relations between countries, both bilateral and multilateral. Where considerations affecting the implementation of FRP repatriation are in good faith to cooperate from the country of origin, either in the issuance of travel documents or in the reception of individuals in its territory. Other considerations in the development of cooperation of third countries in the framework of returns, for example, with cooperation between transit countries (Noll, 1999).

One of the obstacles to the implementation of deportation for FRPs is an intrinsic constraint in international rules on FRPs. FRP transfers are not fully spelled out in the Refugee Act and the power to detain asylum seekers is very narrow. Section 21(4), which enforces Article 31(1) of the 1951 Convention, protects asylum seekers from being treated as illegal aliens and from criminal proceedings due to unlawful entry into the country of transit or destination. Asylum seekers are only liable for detention and deportation after the revocation of the asylum

permit, which can be done if the holder violates the conditions of the permit or receives a final rejection of their claim [Article 22(6)]. Individuals whose claims are ultimately denied by FRP, are then subject to the provisions of the Immigration Act. An asylum seeker can only be detained if the asylum seeker's permit has been withdrawn in accordance with Article 22(6), and the FRP may be arrested and detained pending his or her status of return by the procedures and place prescribed by the government or for which the ordinance and place must be in accordance with humanitarian standards (Section 23) (Dinbabo &; Nyasula, 2015).

In Indonesia itself, the position of FRP is very clearly regulated in the Regulation of the Director General of Immigration Number IMI-0352. GR.02.07 Year 2016. Article 14 Paragraph (2) states that foreigners whose application for refugee status is rejected by FRP by UNHCR subject to immigration administration actions (Syahrin &; Ginting, 2019). However, just like other countries, Indonesia still faces many obstacles in the implementation of repatriation, both voluntarily and through law enforcement.

Basically in theoretical review, refugee law and immigration law are separate regimes. These rules overlap and intersect at certain points. One such intersection is where asylum seekers receive a final rejection of their asylum claim and are referred to as FRPs, which are the transition process from the refugee system to immigration authorities. UNHCR and IOM define FRP as persons who, after considering their asylum claim with fair procedures, are found to be ineligible for refugee status, and are not shown to be in need of international protection (and thus) are not authorized to reside in the country concerned (UNHCR-IOM, 1997 in Dinbabo &; Nyasula, 2015). One of the FRPs that is the object of research in this paper is the case of GK. He is an Iranian foreigner, who entered Indonesia in 2012 and obtained asylum seeker status that year. GK obtained FRP status in 2017, but at the time of his deportation, GK refused to be repatriated to his home country. Until now, GK is still in the Jakarta Immigration Detention Center with the status of FRP. On the other hand, MH is a foreigner with Pakistani nationality. He has been in the Jakarta Immigration Detention Center since 2013 as an FRP and was successfully repatriated to his country in 2019. These two cases are a form of deportation law enforcement faced by the Jakarta Immigration Detention Center. By comparing the two cases, the author can see how the implementation of law enforcement against FRP through the implementation of deportation and its relation to immigration law in Indonesia. This study will discuss: (1) how is immigration law enforcement in deportation to FRP by Jakarta Immigration Detention Center?, (2) What are the obstacles to the implementation of immigration law enforcement in deportation to FRP by Jakarta Immigration Detention Center?

2. Method

The method to be used is by normative-empirical legal research. In normative legal research will use secondary data, by examining theoretical matters related to legal principles, legal conceptions, views and legal doctrines, regulations and legal systems using secondary data (Muhdlor, 2012). As well as principles, rules, norms, and legal rules in laws and regulations and other documents related to the research being carried out. In this research from a normative point of view, it can be obtained from the 1951 Convention on the Status of Refugees, the 1967 Protocol on the Status of Refugees, Presidential Decree No. 125 of 2016 concerning the Handling of Refugees, and FRP documents on behalf of GK and MH. While the empirical legal approach by looking directly at the field related to the use or implementation of regulations related to the research topic such as by conducting interviews with relevant stakeholders.

3. Discussion

3.1 Immigration Law Enforcement Process with Deportation to FRP

GK according to the documents obtained from the Jakarta Immigration Detention Center is an Iranian citizen who received a UNHCR Asylum Seeker Certificate on October 15, 2012. From the interview with GK it was found that he entered Indonesia alone in 2012 through Soekarno Hatta International Airport without being accompanied by anyone else. From an interview with GK, one month after arriving in Indonesia, he received a

UNHCR card and three months later he was included in IOM protection. From the interview with GK, he obtained FRP status about six or seven years after being interviewed on August 23, 2022.

Based on Article 29 paragraph (1) of Presidential Regulation Number 125 of 2016 explains that asylum seekers who are listed as FRP by UNHCR are placed in Immigration Detention Centers for voluntary return or deportation processes. Article 14 paragraph (2) of the Regulation of the Director General of Immigration Number IMI-0352.GR.02.07 of 2016 specifies that the action taken against FRP is an Immigration Administrative Action. In accordance with the Immigration Law in Article 1 number 31 explains that Immigration Administrative Action is an administrative sanction carried out outside the court. Basically, norms related to Immigration Administrative Actions in accordance with Article 75 paragraph (1) of the Immigration Law are carried out on foreigners who carry out dangerous activities that are suspected of endangering public security and order, or do not respect or obey laws and regulations. So basically FRP if Immigration Administrative Action is applied to him, the foreigner, in this case FRP in general can be considered to have committed an immigration violation that deserves to be given Immigration Administrative Action. Article 29 paragraph (1) of Presidential Regulation Number 125 of 2016 explains that the action given is placement in the Immigration and Deportation Detention Center.

In general, the placement of foreigners in Immigration Detention Centers based on Article 83 paragraph (1) is due to several violations such as the absence of a valid stay permit, being in Indonesian territory without having documents, waiting for deportation or expulsion from Indonesian territory or being subject to Immigration Administrative Actions. Basically, GK has fulfilled the overall requirements of placement of foreigners in Immigration Detention Centers because they do not have valid travel documents and asylum seeker letters have expired since he obtained status FRP. In addition, when referring to the definition of deportation, there is an element of coercion, coercive efforts themselves are theoretically part of law enforcement. Law enforcement consists of the process of formulation, application and execution. Execution is the part of the court that is exempt from deportation proceedings, while the formulation is related to the drafting of its regulations. Law enforcement in the case of an application is part of judicial or law enforcement policy (Pramono, 2021) In this case the immigration officer. Coercion itself consists of the first two things, namely in the physical sense such as arrest and detention, but also means restrictions on rights and freedoms (Syamsu, 2016). The enforceability of law enforcement and coercive efforts based on the theory of sovereignty is part of the authority in the implementation of national laws of a country, including Indonesia (Adolf, 2015). Theoretically, much sovereignty is limited by a group of international laws (Institute, 1999), including refugee laws. But for GK's case, since he got the status as FRP, hence the transition of the regulatory regime from the refugee legal system to the immigration legal system (Dinbabo &; Nyasula, 2015). So that the conflict arising from refugee law and sovereignty can be denied and the implementation of law enforcement against Gholamreza can be carried out (Lulf, 2019).

Based on the Duty Order of the Head of the Jakarta Immigration Detention Center Number: W.10.IMI.IMI.8-GR.02.01-1857 dated September 14, 2017, GK has been transferred to the Jakarta Immigration Detention Center along with twelve foreigners who were rejected refugee applications by UNHCR. They were taken to the Immigration Detention Center from Community House Kertamukti II, Maysa Cirendeu (East Ciputat) and Pesona Gunung Indah South Tanggerang. However, from an interview with the Head of the Registration, Administration & Reporting Section of the Jakarta Immigration Detention Center, it was explained that GK refused to participate in the deportation. Eleven other FRPs were willing to be voluntarily repatriated. From GK's explanation, it is known that he is in trouble with the government in Iran. Therefore, when the repatriation was carried out, GK refused for this reason.

One of the problems faced by GK so he did not want to return, because documents obtained from GK showed that on Sunday, July 5, 2015 he had converted and had been baptized at Bethel Church Indonesia. In Iran, converts are punishable by death (Feller et al., 2003). Therefore, the consideration of GK's deportation to his home country is a potential threat to his life. The Human Rights Committee argued that Article 7 of the International Covenant on Civil and Political Rights prohibits countries where asylum seekers or FRP While in place shall not expose individuals in cooperation with the country of origin to the danger of torture or cruel,

inhuman or degrading treatment or punishment upon return to another country by means of deportation. The Human Rights Committee also ruled that deportation is prohibited if the individual concerned may be at risk of violating the right to life in the country where he or she will be returned, including these grounds considered in the case FRP (Feller et al., 2003). Basically, international human rights law has bound governments to intensively control migration (Ellermann, 2009). So that after the GK change process becomes FRP does not cause forced deportation efforts can be made if he refuses, because human rights considerations cause the implementation of deportation can be hindered, including to GK who is threatened with his life if he is to be flown back.

HT, UNHCR staff explained that one example of a country that often persecutes is Iran. Iran's penal code prohibits converts, especially since they were already Muslims. If any of its citizens convert then the penalty is death. This is a violation of human rights because everyone has the freedom to profess, convert or not religion, while in Iran the rules are very harsh for example there are FRPs who are Iranian nationals. Then a consultation was carried out to check whether the person was of Iranian nationality certainly caused the person to be threatened.

Basically, GK, according to the evidence shown and information from the UNHCR, is eligible for refugee status because he cannot return to his country after converting. But in reality, GK still gets the status of FRP. From HT's explanation, it is explained that they may not be convincing when they provide information at UNHCR. Many people gave proof that they had been baptized. For example, in GPDI there is a case in Pekanbaru of a church that gives baptism letters easily to refugees but the refugees do not actually convert just because they are given letters to the attention of UNHCR. Suppose again already have a baptism letter document. This is not automatic, so UNHCR standards do not look at documents, unlike legal proceedings in general, which must have two valid pieces of evidence, must convince officers there is an interview process, there is communication in the form of questions. The documents provided are not the main reference because of many countries. For example, Afghanistan, the population administration is not very good, many also come using these fake documents as references. From the case of GK, which has been declared FRP, it means that at least he has gone through a fairly long process and the results have not succeeded in convincing UNHCR. Therefore an appeal can be made, but the officer does not advise to take such action. Instead of waiting in Jakarta, he better find another way, because of course UNHCR only has one mechanism, whether silent or looking for sponsors maybe he has a family in another country. For international protection as a refugee can no longer be granted.

From the results of the interview, it appears that religious conversion is generally the mode for an asylum seeker to obtain refugee documents. Basically, GK obtained baptism documents as a reason for conversion, as explained by UNHCR sometimes only as a justification reason. From the documents obtained it also appears that the conversion was carried out in 2015, three years after he first entered Indonesia and was carried out in Indonesia. Of course, the condition is threatened because the conversion was not obtained from the beginning while in Iran, but after leaving Iran. From GK's explanation, it was found that UNHCR had given the opportunity for an interview once, then the officer stated that the applicant's application was rejected. On the second occasion, an interview will be given, but the results are immediately declared rejected by the application.

HT as UNHCR staff explained how the FRP process is carried out for rejected asylum seekers that refusal to FRP does vary. The specified criterion is the definition of refugee in Article 1 of the Convention. So a person can be accepted and recognized as a refugee if he meets these criteria. It could be that someone who is an asylum seeker has no good reason or persecution. In the UNHCR system has country information, of course, UNHCR will look at country information compared to information collected from reliable sources. From there the officer will compare, because of course the reason for the application being rejected must be because it does not meet the criteria for refugees. There can also be credibility problems stemming from the identity of the applicant, for example the applicant states that he has Rohingya status. But when the officer checked, it turned out that the applicant was from Bangladesh. This is because the Rohingya and Bangladeshis who are on the Myanmar border are physically and look the same and the language is similar. Then it could also be the reason

that the applicant ran away from his country because of chaos after the officer checked it turned out to be safe. People with such a profile are either safe or there is no indication that such a person is threatened in their home country. The third reason for the definition of refugee will be to look at whether a person has a safe place in the country to move, or called an internal slide alternative. For example, there are Kupang people from NTT for the reason of persecution, for example, the person is rushed abroad and UNHCR will check whether the origin of the person is really from Kupang. If true, there will be considerations if the person moves to Bali whether it is safe. It will be assessed whether it can be protected there. If the person moves to Bali or lives in Jakarta, does it have the same threat, because the threat is sometimes only local, not a country-wide threat? Another reason is that there are people who cannot be processed, for example, people who commit gross human rights violations. But people with such criteria have different clauses or people who are excluded from the process may be war criminals. Those are some of the reasons for the rejection of refugee applications and certainly cannot be analyzed individually because it is privacy, but in general it is a picture of why someone is rejected. It will be seen again if there are any new reasons and see if they are acceptable.

In line with the interview, as described in the Procedure Book for Determining refugee status from UNHCR Explain that the applicant's well-founded fear of persecution must be related to his or her nationality state. As long as he has no fear with respect to his nationality state, and he is allowed to take advantage of the protection of that country. He does not need international protection and is therefore not a refugee (UNHCR, 2011). If a person is willing to take advantage of the protection of his or her home country, that willingness usually does not match the claim that he or she is outside that country because of a well-founded fear of persecution. Whenever nation-state protection is available, and there is no reason based on a well-founded fear of refusing it, the person concerned does not need international protection and is not a refugee (UNHCR, 2011). As in the case of citizenship regain, this third termination clause stems from the principle that a person enjoying national protection does not need international protection (UNHCR, 2011). From this explanation, it can be seen that someone in the determination of refugee status usually then receives rejection if after the party UNHCR compare files owned with Country Information. This is done to see the originating fear especially related to the fear of nationality as experienced by the Rohingya ethnic group in Myanmar. In addition, these fears must come from repressive state actions that are not local and may move from their original place within the territory of the same country. As long as a person's citizenship is still recognized, basically that person still receives protection from his state.

AHY as Spokesperson at the Embassy of the Republic of Iran when asked about if there is someone who claims to be your citizen but he does not have documents. Is there a mechanism prepared by the embassy in checking citizenship status through various stages, and these stages have been regulated in the country's law. Regarding refusal to repatriate FRP while there is no violation, the person concerned can return home if they want to return to their country.

The Iranian embassy also did not see any violations committed, because the conversion was carried out outside the Iranian state, so it was not recorded institutionally in Iran. The Iranian embassy also explained that it is legitimate if the person wants to return to his country. If document constraints are a problem, the Iranian Embassy has prepared the necessary process for making citizenship documents.

However, there are other possible technical obstacles that could have been accepted if GK did not voluntarily want to return to his country. During the deportation flight, he may refuse to sit on the plane. Consequently pilots who have the authority to decide who will be transported on board, may decide to refuse GK who physically resists, because pilots cannot guarantee the safety of the flight if they resist (Rosenberger et al., 2018). DP as Head of the Registration, Administration and Reporting Section at the Jakarta Immigration Detention Center when asked about if FRP Refusing to be sent home, what actions are taken by the Immigration Detention Center, he explained that no action can be taken, let alone coercive actions.

Unlike MH who is a Pakistani citizen. Based on the Letter of the Head of the Jakarta Immigration Detention Center Number: W.10.IMI.IMI.8-GR.02.03-1784 dated November 11, 2019, it is known that he has entered the Immigration Detention Center since May 31, 2013. Then voluntarily discharged since Tuesday, November 12,

2019. MH obtained an emergency passport from the Pakistani government for one trip with a SS067407 number. AVR is voluntary repatriation with assistance, where the transfer is cooperative, convenient, and equipped with logistical and financial support from IOM. In some cases, IOM providing financial assistance to returning migrants to start new businesses in their home countries (Webber, 2013). AVR alone to be applied, a FRP, asylum seekers or refugees, must show good behavior, as an entrepreneur who is able to manage themselves and develop themselves. In some countries a letter of good conduct (Carta de Buena Conducta) is a prerequisite for gaining access to this AVR (Khosravi, 2018). From this can be seen the comparison between GK and MH. In terms of sovereignty, law enforcement is not enough by force alone, but with appropriate methods to remove a person who has been subject to Immigration Administrative Action must use persuasive methods. Not only in Indonesia itself, in some places that use the method AVR, as mentioned above, even provides certain rewards and financial support in order to remove unwanted people the state present in its territory. Theoretically, the movement of migration flows from the country of origin, to the destination country, one of the reasons is economic problems (Santoso, 2014), so that the program AVR is a solution that can help repatriation from FRP.

DK, the Head of the Registration, Administration and Reporting Section at the Jakarta Immigration Detention Center explained, when asked about his experience communicating with FRP and hearing their explanation regarding the reasons usually stated by FRP for refusing to return to their country of origin, that maybe his country is in conflict, if he returns again the person will be threatened. The factor that seeks asylum is when the country is at war or its safety is threatened or there is conflict. But most FRPs seeking asylum exist for irrelevant reasons. For example, looking for a better livelihood. It is not an urgent matter to be designated as a refugee. This shows that many of the FRPs are only related to economic constraints. Therefore, to return to their countries, it certainly needs to encourage economic improvement, because IOM has encouraged several countries to implement the program. For example, one foreigner who had been designated as an FRP on behalf of D. Initially as an IOM program was to be repatriated to his country but the FRP refused to return to Sri Lanka. He just wants to go back to Canada because there is a guarantor (uncle) in Canada. After being given a passport, his uncle would try to lobby the Canadian government to accept him into his country.

What is described above shows that other solutions other than coercive law enforcement can actually make expenditure settlement effective FRP from the territory of Indonesia. Sovereignty theories related to law enforcement by force in the form of deportation are not always effective in repatriation FRP, especially the purpose of migrating from a FRP Not related to the existence of repressive threats from the state, but from economic constraints faced in the country of origin. Of course, with a persuasive approach, it will actually streamline immigration law enforcement in the context of expelling foreigners from Indonesian territory. As is known that the purpose of immigration policy is selective immigration policy, that is, only people who provide benefits to the State of Indonesia are allowed to enter Indonesian territory (Santoso, 2014). Meanwhile, GK was interviewed about how he supported himself during the FRP, she explained that she lived in an immigration detention center and received food from the immigration detention center. This shows that the presence of GK itself is detrimental to Indonesia because it has to provide accommodation and food for itself. Meanwhile, law enforcement in the form of deportation cannot be done. Over time, GK has been admitted to the Immigration Detention Center since September 15, 2017, which has been running for five years until 2022. If you look at Article 85 paragraph (2) of the Immigration Law which regulates the detention period, there are five years left for GK to be in the Jakarta Immigration Detention Center. After that he can be outside the Immigration Detention Center. Of course, all law enforcement in coercive efforts as previously described can no longer be carried out to GK. Therefore, the potential for disruption of sovereignty in terms of limited law enforcement can extend to GK cases because if he reaches ten years, he can be expelled from the Immigration Detention Center.

3.2 Barriers to Immigration Law Enforcement with Deportation to FRP

3.2.1 Legal Policy as a Factor in Deportation to FRP

FRP in legal regulation, entered into the regime of Presidential Regulation Number 125 of 2016. The regulation for FRP is only regulated in Article 29 paragraph (1) related to the process of voluntary return or deportation in accordance with laws and regulations. Article 42 paragraph (3), regulates the sharing of data related to FRP shared by three elements, namely the Ministry of Foreign Affairs, the Ministry of Law and Human Rights and the United Nations. Any data from each party is shared between parties through UNHCR to several other parties. Article 43 paragraph (2) of Presidential Regulation Number 125 of 2016 also explains that the ministry that organizes foreign relations and foreign policy communicates with representatives of the country of origin to provide travel documents and facilitate repatriation for FRPs. If the provision cannot be implemented, then the Ministry of Law and Human Rights will carry out the repatriation process in collaboration with UNHCR and IOM.

Legal constraints related to the handling of FRP in general, that the regulatory regime that regulates FRP itself is only at the level of Presidential Regulation, while deportation and placement in Immigration Detention Centers themselves are regulated in the Immigration Law. Of course, these two regulations are not connected in one continuity, so there is a vague position of FRP is a person subject to Immigration Administrative Action for violations so that they must be subject to detention and deportation. This legal certainty is certainly needed for clear legal implementation for FRPs. Basically, detention and deportation are actions with clear prerequisites as stipulated in the Immigration Law. So that detention and deportation based on Presidential Regulation Number 125 of 2016 have an indirect correlation and do not explain which prerequisites in the Immigration Law are the appropriate reasons for detention and deportation. Article 29 paragraph (1) of Presidential Regulation Number 125 of 2016, there is a clause in accordance with laws and regulations, which of course will refer to the Immigration Law. However, it is not clear in what cases the FRP then meets the conditions of detention and deportation, because as discussed earlier, the FRP is a process of changing from a refugee regulatory regime, to an immigration regulatory regime. This will certainly cause FRP to explain the prerequisites for the implementation of detention as stipulated in Article 83 paragraph (1), whether in Indonesia without having a stay permit, being in Indonesian Territory without having a valid travel document. Foreigners are subject to Immigration Administrative Action for cancellation of residence permit or violation of order and security, pending deportation. While in FRP administration, when viewed in GK and MH files, the main reason for detention is their FRP status. While AVR itself, is a system that is only mentioned in Presidential Regulation Number 125 of 2016.

Article 14 paragraph (2) of the Regulation of the Director General of Immigration of 2016, states that FRP is given Immigration Administrative Action. The legal basis of this regulation refers to the Immigration Law and Government Regulation Number 31 of 2013 concerning the Implementation Regulations of Law Number 6 of 2011 concerning Immigration. The 2016 Regulation of the Director General of Immigration should serve for further arrangements of a technical nature and do not have the authority to establish new policies (Indrati, 1998). In addition, the function of the Director General Regulation of 2016 is the implementation of technical policies from the Ministerial Regulation such as the formulation and implementation of policies, ministries in their fields, the preparation of norms, standards, procedures and criteria in their fields, as well as the provision of technical guidance and evaluation and implementation of administration inthe field under which it is under its authority, as well as carrying out further regulation of the provisions in the Ministerial Regulation (Indrati, 1998). While as mentioned earlier, related FRP, there is no regulatory regime from the Immigration Law to the Government Regulation on the Implementation of the Immigration Law, nor the relevant Ministerial regulation FRP aforementioned. So that the setting FRP The 2016 Regulation of the Director General of Immigration still does not have a formal basis to be regulated in the regulation.

Regarding the exchange of information, it is known that during his assignment at the Immigration Detention Center, there were no obstacles because the authority of the Immigration Detention Center was not extensive. The Immigration Detention Center is only a communication with UNHCR and IOM, related to data that there is no MOU between UNHCR or IOM and immigration. So UNHCR coordinates with the Ministry of Foreign Affairs. But the data deployment has been stopped. So the Immigration Detention Center is actively updating its data. For example, data collection to CH because now there is no data sharing with IOM. So the Immigration Detention Center made a system related to this refugee data. Now the Immigration Detention Center conducts

data collection to register refugees from CH a week for three times. There was an incident when a summons was made, it turned out to be information from IOM that the person had been resettled. Actually related to resettlement , although the authority of the Immigration Detention Center, there should be information sharing. If from the rules related to resettlement, the Immigration Detention Center should be involved, it does not mean that technically, but the Immigration Detention Center accompanied. So the obstacle is communication with related agencies.

From the results of the interview when compared with Article 42 paragraph (3) it is clear from who shared the data, and through whom the data was given to the recipient of the data. However, from the regulation, there is no mention of the obligation to provide data and share data between institutions, so it is possible to unilaterally terminate the sharing of data and information related to this FRP issue. In addition, there is an MOU between the Government of Indonesia and UNHCR. However, all MOU regulatory bodies only mention the nomenclature of the Government of Indonesia in general, while the signatory to the MOU is the Ministry of Foreign Affairs, so it is not stated where UNHCR must share the data. It is certain that UNHCR will share the data with the Ministry of Foreign Affairs. In reality, the person dealing with the FRP is the Directorate General, starting from the entry stage to the stage of exit of the FRP from Indonesian territory. So that the most interested party and need data related to FRP is the Directorate General of Immigration. Both in terms of management of return, placement, transfer and administration of other FRPs with the most interest is the Directorate General. But unfortunately the Directorate General of Immigration is not given enough space to quickly access and receive directly data and information about this FRP. This is because the existing arrangements have not given more space to the Directorate General in handling this FRP problem. FRP subjects are foreigners who are certainly subjects who should be under the supervision and administration of the Directorate General. But unfortunately, the intermediary process with the Ministry of Foreign Affairs will hinder information related to this FRP. UNHCR is a party that is in direct contact with FRP, just like the Directorate General which is a government apparatus that is in direct contact with FRP. The presence of the Ministry of Foreign Affairs between UNHCR and the Directorate General has made communication between the two have gaps, so that the handling of cases related to FRP is also not optimal. Both apparatuses regulate the same subject, namely FRP. But in fact, it does not have clear communication and coordination rules and is instead carried out by the Ministry of Foreign Affairs which does not directly handle FRP.

Article 42 paragraph (3) of Presidential Regulation Number 125 of 2016 regulates parties who receive information about FRP, but it is not explained for what and what information related to FRP will be used. This makes the arrangement useless and has no direction for the information to be used by the relevant agencies. In addition to data exchange, Presidential Regulation Number 125 of 2016 concerning Refugees should also regulate coordination between FRP handling agencies which is only intended for institutions that directly handle FRP cases. In general, stakeholders in Presidential Regulation Number 125 of 2016 do have a coordinating function related to refugees and asylum seekers, both in terms of discovery, securing treatment and other handling. However, it must be distinguished because this FRP is no longer included in the refugee law arrangement, but has entered into the immigration law regulation as explained earlier. So it is no longer relevant if information related to FRP is shared with other parties who do not deal with FRP cases.

Presidential Regulation Number 125 of 2016 has regulated voluntary return. However, there is no institutional coordination process and policy direction development to encourage voluntary repatriation programs. So that voluntary repatriation will only be carried out if the FRP wishes, not initiated in the form of a program that can encourage this FRP to want to return. As for FRPs, voluntary repatriation is part of effective law enforcement (deportation) to remove these FRPs from Indonesian territory. This voluntary return should also be part of the policy regulated in Presidential Regulation Number 125 of 2016.

3.2.2 Law Enforcement as a Factor in Deportation to FRP

From the results of previous interviews with the Security Council when asked about the difficulties in handling FRP, it is known that in handling FRP, although the person carrying out the deportation is the Directorate General of Immigration, coordination with other parties, including UNHCR and IOM. UNHCR because it is the

first party to deal with these refugees, of course, the data and documents owned are certainly more complete. While carrying out deportation, data related to nationality and travel documents are needed so that it can be done more easily in repatriation. Regarding cases such as GK refusing to go home, whether there is a country that has refused FRP repatriation, it may not happen that the person refuses, while the Immigration Detention Center cannot force it. The action taken is only in the form of persuading to return to his country which is a non-formal or persuasive action.

The interview shows that technically, persuasive methods need to be developed in handling FRPs, such as GK refusing to be deported, because human rights rules, as well as aviation rules, can hinder the law enforcement process in the form of deportation. The path that must be taken is indeed a persuasive method, if it involves another organization, namely IOM, then the solution is AVR. But whatever solution is used, it still needs to develop policies that support law enforcement to be able to exercise their authority and can increase their capacity to implement these persuasive methods.

3.2.3 Facilities and Infrastructure as Factors Inhibiting Deportation to FRP

Facilities and infrastructure are an important part of law enforcement to run smoothly needed in deportations FRP Of course, it is access to means of travel between countries, such as travel documents and access to means of transportation repatriation from FRP (Soekanto, 2016). Administrative measures are required for the transfer of asylum, in particular the procurement of identity documents, both in terms of legal proceedings and travel arrangements (Ellermann, 2009). The main obstacle to the means of deportation was that GK revealed that he entered Indonesia through Soekarno Hatta Airport. This shows that he has the documents to enter Indonesia. There is a mode of foreigners who will seek asylum in Indonesia who use air routes to enter Indonesian territory using passports from their country. Then after that when they arrived in Indonesia they threw away their documents and came to UNHCR To obtain asylum seeker documents (Soekanto, 2016). From the results of previous interviews with HT, as Staff UNHCR When asked about the determination process FRP, The existence of documents is actually a clue that they still receive protection from their country. So basically it can still be worked on for some FRP who lost their documents such as MH who obtained an emergency passport from his country, including with GK.

As explained earlier, the effectiveness of deportation law enforcement is one of persuasive approaches. Facilities and facilities needed in law enforcement in the form of physical and psychological, including increasing law enforcement budgets for education, training assessments, and other activities (Ellermann, 2009). Budgeting is needed in order to increase capacity for the ability of Immigration Detention Center officers to take a persuasive approach. In addition, budget preparation is needed, both budget sources from outside institutions, such as: IOM and the Indonesian side itself to be able to take a persuasive approach in repatriation FRP.

4. Conclusion

From the results of the discussion above, it can be concluded that several things as the first about the enforcement of the deportation law against FRP by the Jakarta Immigration Detention Center has not been in accordance with the theory of sovereignty because it is limited by human rights and technical obstacles in efforts to forcibly remove foreigners from Indonesian territory. In addition, the obstacles in law enforcement of deportation of FRP by the Jakarta Immigration Detention Center are caused because FRP has no desire to return to the country of origin, making it difficult to carry out deportation.

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