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The Existence of Cultural Relativism and Its Approach on Different Function of Human Capabilities: A Case from Indonesia

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ABSTRACT:

The universal notion of Human Rights evokes our curiosity on how the same value can be adopted by different time, space, place, and culture. In another side, Capability Approach helps us conceiving how the same human capabilities can be interpreted differently by different functioning. This research aims to serve a different perspective on using Capability Approach to fathom the fulfillment of Human Rights particularly by presenting the relativism of culture around the world by utilizing socio-legal approach. Furthermore, it will discuss evidence from Indonesia, particularly in land acquisition and politic participation, as example how its civilization leads to the deviation of Human Right`s universality. The result of this study shows key finding that the government or society which can be apprehended violates human rights, will be seen reasonably respect human rights for its people if the insight of cultural relativism can be understood.

Keywords: *universality, relativism, functioning, capabilities, human rights, indigenous people, land-grabbing*

ABSTRAK:

Sifat keuniversalan hak asasi manusia menjadikan timbulnya pemikiran bagaimana nilai yang sama dapat dimplementasi dan adaptasikan terhadap waktu, ruang dan buadaya yang berbeda. Di sisi lain, Capability Approach membantu kita untuk dapat memahami bagaimana kapabilitas manusia yang sama dapat dinterpretasikan dan diaplikasikan dengan pemfungsian yang berbeda-beda pula. Penelitian ini melakukan pendekatan sosiologis hukum dalam memahami persoalan yang ada sehingga dapat melihat perspektif yang berbeda dalam menggunakan Capability Approach dalam melihat pemenuhan terhadap Hak Asasi Manusia di berbagai belahan dunia. Lebih lanjut, bukti dan penerapan Cultural Relativism di Indonesia pada bidang akuisisi lahan dan partisipasi politik akan disajikan untuk mendukung hipotesis penelitian ini. Temuan utama dari penelitian ini menggaris bawahi bahwa pada kondisi tertentu, dengan adanya cultural relativism, pemerintah ataupun masyarakat dapat dianggap tidak melanggar hak asasi manusia meskipun telah ada ketentuan secara universal yang mengaturnya.

Kata Kunci: *universalitas, relativitas, pemfungsian, hak asasi manusia, penduduk asli, pengambilalihan lahan, partisipasi politik*.

Introduction

Human Rights is a universal concept. That is what people mostly have in mind. A natural right that embedded anyone since the first time he or she was born in this world. The concept is almost rigid and broadly acceptance in the world. The primary recognized document that wrote this universal insight is Universal Declaration on Human Rights 1948. It became the ground for the majority of people or particular institution who has concern on Human Rights.

The universal rule may perform and provoke to the judgment that if something occurs beyond the concept of Universal Declaration of Human Rights, then it must be wrong.[1] There ought to be a violation of human rights. For instance, land procurement that has been done by a government can be accused as Land-grabbing because involving a sensitive land acquisition issue of indigenous people.[2] Universal human rights is evident about the right to own property that no one should be forced to release its right, not even by the government. Therefore, many governments are being stipulated for violating human rights to its civilians on land procurement issue by the notion of universal human rights and likewise being bolstered by capability theory.[3]

The absolute right granted to person at some point may overextend human`s freedom especially in which has been set-up partly by capability approach. Besides, the universality of human rights itself is questionable. Donnelly acknowledged that universality of human rights is relative towards cultural which is missed, at some extent, by the concept of Human Capability Theory.[4] Missing this cultural relativism perspective on human rights` fulfillment will lead us to misjudge certain condition on the breach of human rights towards human development. Therefore, this research will present the insight of cultural relativism that should be understood as one of the factors of different function of human capabilities. By fathom this concept, it encourages us to take a broader perspective of human capabilities and human rights realization throughout the entire globe.

Methodology

In the sense of understanding the realm of cultural relativism, it is important to take a socio legal approach. This paper employs that approach by presenting the notion of human rights, human capabilities, dan functioning towards cultural relativism development in our society. In order to justify the hypothesis of this paper, there will be cases of cultural relativism from the perspective of Indonesia.

This paper is divided into two main parts. First, there will be an introduction of capability, cultural relativism, functioning, and Human Rights` fulfilment. Second, we will examine and discuss the relative concept of the recent human rights` cases through the perspective of Indonesia which contain land acquisition and politic

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[1] Clifford Chilasa Agbaeze Christopher Emenyonu, Aloysius Nwosu, Henry Ikenna Eririogu, Maryann Nnenna Osuji, Onyekachi Umeadi Ejike, "Analysis of Land Grabbing and Implications for Sustainable Livelihood: A Case Study of Local Government Areas in Nigeria," *Journal of Economics and Sustainable Development* 8, no. 8 (2017): 149–57, https://iiste.org/Journals/index.php/JEDS/article/view/36606.

[2] Gustavo de L.T. Oliveira, Ben M. McKay, and Juan Liu, "Beyond Land Grabs: New Insights on Land Struggles and Global Agrarian Change," *Globalizations*, 2021, https://doi.org/10.1080/14747731.2020.1843842.

[3] Poul Wisborg, "Human Rights Against Land Grabbing? A Reflection on Norms, Policies, and Power," *Journal of Agricultural and Environmental Ethics*, 2013, https://doi.org/10.1007/s10806-013-9449-8.

[4] Jack Donnelly and Daniel J. Whelan, "The Relative Universality of Human Rights," in *International Human Rights*, 2019, https://doi.org/10.4324/9780429456862-3.

participation field. These two fields are chosen because they can represent the case of adaptation of cultural relativism towards universal human rights fulfilment at one side and the case of cultural relativism that prevail over universal human rights at the contrary side. Afterward, the conclusion of this paper will look to find an acceptable notion of cultural relativism towards human rights` fulfillment and whether we should agree on it or not.

Discussion

1. Capabilities, Cultural Relativism, Functioning and Human Rights` Fulfilment

Since its first inception, the capability approach imparts highly important concept to understand the fulfillment of human rights. It started with an introduction by Human Development Reports of the United Nations Development Programme in 1990, and subsequently, the theory was developed by Amartya Sen and Nussbaum.[5]

Amartya Sen defines capability as '[t]he opportunity to achieve valuable combinations of human functionings — what a person is able to do or be'.[6] Capability approach is a useful tool for him to understand how human rights entitlement can be achieved through 'opportunity' and 'functioning.' Meanwhile, Martha Nussbaum has its own perspective for human capability.

Despite the term itself rather tantamount which expanded as '[t]he substantive freedom to achieve alternative functioning combinations',[7] Nussbaum has gone further by determining s stricter definition of capabilities. She established so-called 'Ten Central Human Capabilities' which listed what she believed as necessary or minimum standard for personal entitlements.

Nussbaum`s ten central capabilities are *life, bodily health, bodily integrity, sense-imagination & thought, emotions, practical reason, affiliation, other species, play and control over one`s environment - political & material*.[8] By embodying this option, Nussbaum is criticized by Sen as he argued that to capture human capabilities in an exact and final list will impair the space for improvement and public reasoning.[9]

Listed capabilities are possible, according to Sen, for a particular purpose and only if we understand how to use it.[10] He pointed out, for example, the work that he had done in 1989 with his colleague, Mahbub ul Haq, to list capabilities for creating Human Development Index.[11]

Moreover, Sen was questioning the ability of fixed list to encounter the problem of public reasoning and cultural diversity.[12] Indeed, Sen believed in the presence of cultural diversity whereby can create the relativism on understanding or judging human capabilities and human rights` fulfillment.

Sen's notion in this matter inevitably supports the idea to develop the limitation of human rights through cultural relativism whereby the universal concept of basic human capabilities and human rights fail to scrutinize. The

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[5] Martha Nussbaum, "Human Rights and Human Capabilities," *Harvard Human Rights Journal*, 2015.

[6] Amartya Sen, "Human Rights and Capabilities," *Journal of Human Development*, 2005, https://doi.org/10.1080/14649880500120491.

[7] Martha C. Nussbaum, "Creating Capabilities: The Human Development Approach and Its Implementation," *Hypatia*, 2008, https://doi.org/10.1111/j.1527-2001.2009.01053.x.

[8] Nussbaum, above n 2, 23-24.

[9] Sen, above n 3, 158.

[10] Ibid 159.

[11] Ibid.

[12] Ibid 160.

insight of *cultural relativism* in different functioning of human capabilities will complete the list which Sen had made such as (1) *physical or mental heterogeneities; (2) variations in non-personal resources; (3) environmental diversities; or (4) different relative positions vis-a`-vis others.*[13]

Cultural relativism is not a novel concept if we also understand that human rights is outdated and recognized concept by society all over the globe. Human Rights` recognition in the past was available not only in western countries but also in Africa, Arab countries (which can be found in Quran) and Eastern countries as well.[14]

Since it already stood in different parts of the world, the notion of cultural relativism is something we are arduous to deny. Without inserting this concept, the appropriate interpretation of capabilities into functioning will fail at certain condition and indeed, mislead.

Consequently, Human Right`s fulfillment will be seen in the wrong direction. The worst partis it can create a huge disturbance in the middle of the society where culture lingers in their mind and heart. In this instance, functioning becomes an essential tool for determining whether human rights` fulfillment can be achieved or not. On another word, it can stipulate whether there is a breach or violation towards human rights or not.

Less variable on functioning will lead to a lesser perspective. In contrast, more variable will establish a broader perspective. That is why adding cultural relativism into the variable of functioning capabilities is a fundamental work to understand human rights` fulfillment a way better.

2. Different Function of Human Capabilities

As a starting point on this part, we will discuss an example of simple human capability; feeling love. We agree that this capability is universal for a person to feel love and be loved. Kissing in public is recognized and allowed to function it in many western countries.

Meanwhile, in most eastern countries, that kind of freedom is not allowed, and thus functioning this capability is forbidden. In fact, people may get arrested by police due to violating public orderliness. This case shows us that functioning human capabilities is not universal and the relativity insight is strengthened by cultural difference.

We also agree with the notion that every person has fundamental right to be treated as a human which inherent with its dignity. All individuals in the world, no exception. That is universal. However, one thing should be considered likewise with this issue is, since someone has rights, other person or even a collective group of persons will also have rights. In the real world, there should be a harmonize form between a person`s rights, others` rights, and collective rights.

It is great to have a right to feeling love, being able to feel and share it with the partner we love. However, how to function it may not be the same in the different culture. That lays us to the concept of different function on our capabilities.

In most western countries, embodying love feeling in front of the public is possible without any moral or legal consequence. Meanwhile, in several eastern countries, particularly which culturally based on Islam religion, the way to function love capability is

[13] Ibid 154.

[14] Donnelly, above n 1, 284.

different. It should not be shown in the middle of public, but can be done in a private area. Even, if we do it in private area to function our capability, we have to ensure not to breach certain moral or legal rules.

For instance, to do it with underage or somebody`s wife or husband. Local authority`s measure to punish if we breach that rule will not be apprehended as human rights violation. In fact, it will be seen as a necessary act to restore public orderliness. This kind of punishment is acceptable due to it necessity for the majority of people, society, religion, and state where the culture lingers.

Thereby, we could not employ if such thing, for example, happens in Indonesia as a violation towards human rights. Meanwhile, in another country in the world, we can pursue for that. Human rights` judgment can be varying in the different place in the world by exercising public reasoning which can be today`s social condition or long-lived cultural value.

In so far, we have established that the value and capability of human rights are universal. However, various functions to realize them can be different. These below cases from the perspective of Indonesia show how capabilities can be functioned differently from the 'normal' concept in a society or country. This condition leads to what we called as cultural relativism.

a. Land Acquisition

Land procurement case can likewise be treated with cultural relativism. Many sides were accusing the Government of Indonesia (hereinafter is GOI) violated human rights in the activity of land acquisition for development. F

or example, what happened in PLTU Batang coal-fired power plant, which started in 2010. The project was slowing down because the government received a rejection from the villagers who denied selling their land.[15] Human rights defender point-out that the government and investor from Japan were not respecting the local or indigenous people.[16]

One thing should be clear and answer first, is Indonesia recognized indigenous people as universally stipulated by world consensus? The answer is a slightly tricky. To compare it with the condition in USA, New Zealand and Australia certainly 'overrated'.

The occupation of states as mentioned above is related to the existence local people that already being settled there as aboriginals. The new civilian who came to that country through colonization period certainly overtook the mainland and control of the territory while the native became the minority and powerless.

That is the background history of what so-called indigenous people. Meanwhile, the concept of indigenous people in Indonesia (and in many countries in Asia) is not relevant as compared to previous cases in some western countries.[17] Therefore, the use of indigenous people term instead of local people should be taken carefully.

[15] Panjaitan Agi, "Land Acquisition in Indonesia – Progress and Challenges' on EU-Indonesia Trade Cooperation Facility," n.d., http://www.euind-tcf.com/land-acquisition-in-indonesia-progress-and-challenges/.

[16] Panjaitan Agi, "Indonesian Rights Commission Tells Japan to Review Power Project," The Japan Times, 2016, https://www.japantimes.co.jp/news/2016/01/09/national/indonesian-rights-commission-tells-japan-review-power-project/#.WSlD7WiGM2w.

[17] DESA, "State of the World ' s Indigenous," *New York*, 2009. Retrieved from www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_web.pdf.

Meanwhile, to determine if there is a violation of human rights by a government, we have to measure to what extent the government has its sovereignty to undertake the land acquisition of civilian.

Once again, at some point, we also must look at the cultural perspective, in companion with universal or exact human rights. In its culture, the life of people in Indonesia well-known for its 'common interest above all individual interest'.

Far away from the modern life, ancient people in Indonesia are used to do mutual work or cooperation, and even they had sacrificed some of their property for the public purpose. This conceptual remained and afterward accommodated in *the 1945 Constitution of the Republic of Indonesia*.[18]

The 1945 Constitution is the fundamental law and the highest rule in Indonesia`s law hierarchy system. In its provision of Article 33 stands the regulation that stipulated all the wealth and resources within the territory of Indonesia, including land, water, and everything under it, are controlled by the state. Furthermore, specific regulation of Law number 5 of 1960 on Agrarian Basic Principles determined that due to its duty to control and regulate the wealth and resources, GOI allows civilian as a person or group to use and own land (Article 4).[19]

However, the rule of this law also stipulates that state`s duty to control its resources is to maximize the benefit nation`s prosperity (Article 2.3). Therefore, for the public interest of the country, the right to own land may be deprived with adequate compensation by prompt regulation according to the law (Article 18). Furthermore, in Article 27, the right to own land can be revoked and become the property of state based on the provision of Article 18, voluntary submission or being abandoned for times.

In the specific regulation of Land Procurement for Public Interest on Law number 2 of 2012,[20] the right of civilian towards its land is well stipulated. This adoption partly because since 2006 GOI has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR)[21] and the awareness to respect human rights is growing amongst society.

However, Law number 2 of 2012 is still stubbornly consistent with the sovereignty of state which can be seen in Article 2 that land procurement activity is based on public purpose`s principle. It implies that ''common interest above all individual interest' principle is in force. In this matter, civilians` right to hold their land is limited. Universal human rights might misinterpret this limitation of right and declare it as human rights violation.

There might be a confusion, particularly when a question arises that if international law is considered lower than domestic law for this instance. Article 17 of Universal Declaration of Human Rights in 1948[22] stated that everyone has the right to own property and no one shall be arbitrarily deprived of his property. Consequently, the term of 'arbitrarily deprived' could be ambiguous

[18] "Indonesia 1945 Constitution," n.d., http://www.wipo.int/edocs/lexdocs/laws/en/id/id048en.pdf.,

[19] "Agrarian Act," n.d., https://zerosugar.files.wordpress.com/2014/08/law-no-5-of-1960-on-basic-agrarian-principles-etlj.pdf.

[20] "Land Procurement for Public Interest Act," n.d., http://extwprlegs1.fao.org/docs/pdf/ins142768.pdf.

[21] UN, "International Covenant on Economic, Social and Cultural Rights (ICESCR)," n.d., http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf.

[22] UN General Assembly, "Universal Declaration of Human Rights | United Nations," *General Assembly Resolution*, 1948.

in the standpoint of Indonesia`s culture and law. Universal right forbids deprivation of one property by meaning of arbitrary measure. Therefore, government act must be measured by its nature. Is it done arbitrarily or is it underlying by fair and legitimate act.

GOI certainly will defend its sovereignty to control the resources within its territory in the name of public purpose and common interest which in the process could be apprehended a little harsh if people refuse by any means to sell their land.

Thereby, in the perspective of the capability approach, this creates the limited function of civilians to hold their property. The self-determination which is prescribed by Article 1 of ICESCR becomes narrow where it should be understood as a free process without limitation at all. If there is a curtailment in the process, ICESCR could see it as a violation of human rights.

Meanwhile, this is only a merely limited and different function of capability, not as a violation of human rights because Article 19 and 20 of Law number 12 of 2012 require GOI to undertake an appropriate inform consent by establishing public consultation with the affected people of land acquisition. There is also a path for affected people to convey their objection through district and appeal court (Article 23).

Furthermore, Article 33-36 provide the information concerning compensation and Article 38 allows the affected people to bring the dispute regarding payment to the district and appeal court. In addition, there is a mandatory requirement for GOI to impart the inform consent about the plan and information of the project (Article 55).

We underline the cultural relativism in land acquisition in the perspective of Indonesia. Despite the fact that GOI acknowledges and respects the Universal Declaration of Human Rights 1948 and the ICESCR, the capability of people to hold their right is limited by the functioning process due to the value of 'common interest above all individual interest' which has been well-written under the constitution.

Without understanding this culture value, surely, the indictment for violating human rights of affected people to hold their property possibly evokes. However, for the remain capabilities such as; to receive inform consent, adequate and prompt compensation, there should be no cultural relativism.

Therefore, GOI ought to ensure the possible condition of function for achieving those capabilities in land acquisition. Several measures that had to be taken must be done carefully. For example, the possibility of irresponsible local apparatus which potentially disrespect the inform consent procedure and being unfair or corrupt on the compensation issue.

b. Political Participation

Another compelling fact in the different function of human capabilities in Indonesia is shown in politic participation. Legally, based on the Indonesia *1945 Constitution,* Article 28 D.3 stipulated every citizen has the right to participate in the government.

This rule follows the universal concept of human rights for political participation which can be tracked by International Covenant on Civil and Political Rights (ICCPR) regulation that has been ratified by Indonesia in 2006.[23] The constitution and ICCPR mandates equal right to be a leader in Indonesia through political participation. However,

[23] UN, "International Covenant on Civil and Political Rights (ICCPR)," n.d., http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf.

that is not the case that occurs mostly in Indonesia. The fact is not every person has the right to become a president, governor or major at some point in Indonesia due to the religious and cultural concept that in a majority of moslem country the leader must be a moslem.

However, despite this conflict exists, it is not appeared in the level of rule of law where everyone has the right to choose and be chosen as government leader. In many occasions, moeslem candidate won the election and prevailed upon non-moeslem candidates. The ground for this rule is based on the Al Maidah verse 51 of Holy Quran which stipulates a prohibition for choosing a leader that is not from the same faith (non-moslem).

One notable case occurred in 2017 when a former and strong candidate for governor of the capital city of Indonesia was a non-moslem.[24] Despite, legally there was no challenge for the non-moslem participation, the process of the election proved to be more complicated when religion and cultural concept soared during that period on the basis of the Al Maidah verse 51 of Holy Quran.

Adding by political tension, the governor election in 2017 in Indonesia presented a conflict between the cultural concept which based on Holy Al Quran and the rights granted by the constitution and the provision on Article 25 of ICCPR that ensures the right of each person to participate either directly or indirectly in conducting in public affairs, to vote and to be elected.

Unlike in the case of land acquisition where the constitution in Indonesia stipulates the 'reservation' of cultural relativism towards universal human rights vividly, the mentioned case in 2017 shows that the universal concept of human rights can be not in line with religion and cultural values that lead us to cultural relativism.

The law of the constitution itself, indeed, grants the freedom and equality of each person to participate in the government. The Article of 28 D.3 of the constitution is a part of amendment article which was made in 2000 to only support the value of international concept which means Article 28 D.3 is not genuinely come from the culture value in Indonesia, but as a new compromise to promote and respect human rights.

By implementing this regulation, GOI tried to overwrite the culture value for leader`s requirement where religion should be opt-out. However, in practice, the result showed that in critical and intense period, voters still uphold and ted to force the culture value to choose their leader based on their religion`s guide only, by neglecting the concept of fair and justice beyond specific religion issue.[25]

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[24] The governor election that ended on April 2017, in Jakarta, the capital city of Indonesia. There were two candidates for the election with one of them named Basuki Tjahaya Purnama alias Ahok. He is a Christian which comes from the minority religion population in Indonesia (at least 90% of faith in Indonesia is Islam). The other candidate is Anies Rasyid Baswedan who is a Moslem. As the politic battle went on, the election became another sensitive issue involving religion. Anies` supporters blew up the faith issue by recited the Al Maidah verse 51 of Holy Quran which refers to a prohibition for choosing a leader that is not from the same faith. Some people believed that this was a malicious plan to decrease the potential vote for Ahok who was recognized gaining 76% of satisfaction rate for his job as the incumbent governor. See Riana Friski, "Survey Shows Increase of Support For Ahok-Djarot," Tempo, 2017, https://en.tempo.co/read/news/2017/04/12/057865427/Survey-Shows-Increase-of-Support-For-Ahok-Djarot.

[25] Johanes Herlijanto, "Commentary: Why Jakarta's Voters Turned Away from Ahok," Channel NewsAsia, 2017, http://www.channelnewsasia.com/news/asiapacific/commentary-why-jakarta-s-voters-turned-away-from-ahok-8754154%3E.

This anomaly, which differs us from previous case of land acquisition case, shows a form of 'culture shadow' which means that political and social condition are arduous to change the long-lived value of culture. Even if the effort has been made and ready to challenge it, it will take an enormous and slowly endeavor to replace it with the new one.

Eventually, it proves that even if a capability is recognized and its functioning is allowed by law, it takes time to change the culture, even its shadow, to promote the universal of human rights` fulfillment.

Conclusion

In the earlier section, we understand that human rights are recognized by the entire civilization across the states. Thereby, it is impossible to expect the same value that can be precisely accepted without any deviation. People may agree on the same capabilities. Afterward, it depends on the available opportunities and how to function it. Sen was aware on this, and that is why he was arduous to establish the exact and final capabilities and how to function it. He believed that each society on different space and time could see things differently.

This paper is vigorously based on that thought and believe there should be space for cultural relativism on functioning the available opportunities of capabilities to achieve human rights.

In the last part, this paper has demonstrated how cultural relativism affects the deviation of universal human rights. What we can learn from this is, we believe universal human rights is significant for political and constitutional purpose. Something has to be written as clear legal norms. However, the real law is what people have in their mind and heart, the sense of justice and moral to believe what is wrong and what is right.

As long as it feels right according to vast majority of people in the society, then it must be accepted as the real justice, the real human rights. Sometimes it has tantamount with the written law; sometimes they have not. Eventually, human rights are what people believe what they ought to choose and to be as common acceptable thought in which they find the appropriate way to fulfill it; otherwise, it will be only a selfish right.

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Legal Protection of Health Workers Who Experience Violence from Patients and Their Families in the Time of the Covid-19 Pandemic

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ABSTRACT

Along with the number of deaths among health workers during the COVID-19 pandemic, violence against health workers also often occurs. This shows that there is a need for an analysis related to legal protection for health workers. The problems that will be discussed in this research are: What are the legal provisions related to protection for health workers during the COVID-19 pandemic? And what about legal protection for health workers who experience violence The research method uses a normative juridical approach with qualitative analysis. The results of the study indicate that legal protection is an effort to maintain the rights of individuals or groups that can be fulfilled from strong or powerful parties such as the government or businessmen and other parties for the creation of security and public order. Legal protection for health workers is regulated in Article 57 of Law no. 36 of 2014 concerning Health Workers. Meanwhile, health workers who have been attacked have been protected and regulated in Articles 170 and 351 of the Criminal Code.

***Keywords**: Legal Protection, Health Workers, Covid-19 Pandemic.*

ABSTRAK

Seiring dengan banyaknya kematian di kalangan tenaga kesehatan selama pandemi COVID-19, kekerasan terhadap tenaga kesehatan juga kerap terjadi. Hal ini menunjukkan perlu adanya analisis terkait perlindungan hukum bagi tenaga kesehatan. Permasalahan yang akan dibahas dalam penelitian ini adalah: Apa saja ketentuan hukum terkait perlindungan tenaga kesehatan selama masa pandemi COVID-19? Dan bagaimana perlindungan hukum bagi tenaga kesehatan yang mengalami kekerasan. Metode penelitian menggunakan pendekatan yuridis normatif dengan analisis kualitatif. Hasil penelitian menunjukkan bahwa perlindungan hukum merupakan upaya untuk menjaga hak-hak individu atau kelompok yang dapat dipenuhi dari pihak yang kuat atau berkuasa seperti pemerintah atau pengusaha dan pihak lain demi terciptanya keamanan dan ketertiban masyarakat. Perlindungan hukum bagi tenaga kesehatan diatur dalam Pasal 57 UU No. 36 Tahun 2014 tentang Tenaga Kesehatan. Sedangkan tenaga kesehatan yang diserang telah dilindungi dan diatur dalam Pasal 170 dan 351 KUHP.

Kata Kunci: Perlindungan Hukum, Tenaga Kesehatan, Pandemi Covid-19

Introduction

The SARS-CoV-2 (covid-19) virus was first detected in China in late 2019 and has spread worldwide.[1] By June 2021, the COVID-19 virus caused more than 178 million confirmed cases and 3.9 million deaths.[2] Some The initial cases were linked to a wet market in Wuhan City, where the first cluster of COVID-19 infections was recorded. Over the past few months, scientists have reached a broad consensus that the virus spreads as a result of "zoonotic spillover" or "virus that jumps" from infected animals to humans, before becoming highly human-to-human.[3]

The entry of the virus is very likely to occur through gates in several parts of Indonesia. Since January when this new type of corona virus was announced it can be transmitted between humans, and has colonized in various countries other than Wuhan in China. The Indonesian government does not immediately close access to direct flights to and from Wuhan, which is around six airports. These include Batam, Jakarta, Denpasar, Manado, Makassar.[4]

On March 31, 2020 the government issued a Government Regulation of the Republic of Indonesia. No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19) (PP No. 21 of 2020). PP No. 21 of 2020 is an implementing regulation of several existing laws and regulations such as: Law Number 4 of 1984 concerning Infectious Disease Outbreaks (Law No. 4 of 1984); Law No. 24 of 2007 concerning Disaster Management (Law No. 24 of 2007); Law Number 6 of 2018 concerning Health Quarantine (Law No. 6 of 2018).[5]

Through some of the laws and regulations above, the government establishes policies and measures to deal with COVID-19, both in terms of financing, procurement of facilities and infrastructure, vaccinations and law enforcement against law violators. The existence of covid-19 has resulted in 157,000 people died in Indonesia.[6]

A total of 1,697 are health workers, both doctors and nurses.[7] The large number of health workers who died because health workers were dealing directly with patients with COVID-19, in which case there were obstacles and lack of facilities such as personal protective equipment (PPE), medical equipment and the presence of parties who committed violence against health workers as happened. in Lampung, Medan, Garut, Aceh and other areas.

In the case of Lampung, a Kedaton Public Health Center nurse named Rendy Kurniawan (26) was beaten by three of the patient's family on Sunday which left him with bruises on his face, head and neck[8],

[1] Yi Chi Wu, Ching Sung Chen, and Yu Jiun Chan, "The Outbreak of COVID-19: An Overview," *Journal of the Chinese Medical Association*, 2020, https://doi.org/10.1097/JCMA.0000000000000270

[2] Tati Nuryati Mirnawati Hi.Hamjah, Pradnya Paramita, "Analysis of Adolescent Compliance Factors Implementing The Covid-19 Health Protocol in North Ternate High School in 2021," *Jurnal Inovasi Penelitian* 2, no. 8 (2022): 2647–55.

[3] Kenji Mizumoto, Katsushi Kagaya, and Gerardo Chowell, "Effect of a Wet Market on Coronavirus Disease (COVID-19) Transmission Dynamics in China, 2019–2020," *International Journal of Infectious Diseases*, 2020, https://doi.org/10.1016/j.ijid.2020.05.091.

[4] Ellyvon Pranita, "Diumumkan Awal Maret, Ahli: Virus Corona Masuk Indonesia Dari Januari," www.kompas.com, 2020.

[5] Muhamad Beni Kurniawan, "Politik Hukum Pemerintah Dalam Penanganan Pandemi Covid-19 Ditinjau Dari Perspektif Hak Asasi Atas Kesehatan," *Jurnal HAM* 12, no. 1 (April 22, 2021): 37, https://doi.org/10.30641/ham.2021.12.37-56.

[6] Satuan Tugas Penanganan COVID-19, "Covid 19 Indonesia Official Website," 2022.

[7] Kompas.Com, "Hingga Akhir Agustus 2021, 1.967 Tenaga Kesehatan Di Indonesia Meninggal Akibat Covid-19," Kompas, 2021, www.kompas.com.

[8] Tribunnews.Lampung, "Fakta Perawat Dianiaya Di Lampung, Pelaku Ngaku Keluarga

while in Medan several nurses and doctors at the Balige HKBP Hospital persecuted by a group of people. The same thing happened in Garut, Aceh and several other areas.[9]

Along with the number of deaths among health workers during the COVID-19 pandemic, violence against health workers also often occurs. This shows that there is a need for an analysis related to legal protection for health workers. The problems that will be discussed in this research are: What are the legal provisions related to protection for health workers during the COVID-19 pandemic? And what about legal protection for health workers who experience violence?

Methodology

This research uses normative juridical research. Primary data is obtained by using legal materials and secondary data obtained from primary legal materials, secondary legal materials, and tertiary legal materials. Furthermore, the data obtained for analysis purposes will first be identified according to the research objective group.

Discussion

1. **Legal Protection of Health Workers in the Time of The Covid-19 Pandemic**

A health worker is every person who devotes himself to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts. Health Workers are regulated in the Law of the Republic of Indonesia Number 36 of 2014 concerning Health Workers (Law No. 36 of 2014). This statutory regulation is the implementation of the provisions of Article 21 Paragraph (3) of Law No. 36 of 2009 concerning Health (Law No. 36 of 2009).[10]

Various problems arose for health workers during the COVID-19 pandemic. All health workers are compared to health workers who are facing tremendous stress due to COVID-19, especially those related to suspected or confirmed cases, due to the high risk of infection, inadequate protection, lack of experience in controlling and managing disease, long working hours, longer duration, negative feedback from patients, emerging stigma, and lack of social support from the surrounding environment.[11]

During the COVID-19 pandemic, health workers are at the forefront of handling positive patients with corona virus infection. In such a task that makes them a group that is also vulnerable to infection. Therefore, the mention of being the frontline in handling Covid-19 as a consequence of health workers directly dealing with patients exposed to Covid-19.

Here, Health workers are very susceptible to the amount or dose of virus that enters the body when they are dealing with positive patients. Therefore, it is important for health workers to use complete Personal Protective Equipment (PPE) when dealing with patients related to Covid-19, especially those in isolation rooms. In addition, it is also important to maintain health and provide more

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Pejabat Hingga Ngotot Bawa Tabung Oksigen," 2021, www.tribunnews.lampung.com.

[9] Tirto.id, "Kekerasan Pada Nakes Yang Terus Berulang Saat Pandemi COVID-19," Tirto ID, 2022, https://tirto.id/kekerasan-pada-nakes-yang-terus-berulang-saat-pandemi-covid-19-gheB.

[10] Harif Fadhillah, Endang Endang Wahyati, and Budi Sarwo, "Pengaturan Tentang Tenaga Kesehatan Dalam Peraturan Perundang-Undangan Dan Azas Kepastian Hukum," *SOEPRA*, 2019, https://doi.org/10.24167/shk.v5i1.1653.

[11] Aziz Yogo Hanggoro et al., "Dampak Psikologis Pandemi Covid-19 Pada Tenaga Kesehatan: A Studi Cross-Sectional Di Kota Pontianak," *Jurnal Kesehatan Masyarakat Indonesia*, 2020, https://doi.org/10.26714/jkmi.15.2.2020.13-18.

training, related to handling the corona virus for health workers and hospital workers. This is because they are at the forefront of patient care[12].

The study of legal protection can be drawn from several opinions of legal experts as follows: Satjipto Rahardjo states: Legal protection is an effort to protect a person's interests by allocating a human right to power to him to act in the context of his interests.

Setiono stated: Legal protection is an act or effort to protect the public from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings.

Muchsin stated: Legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are manifested in attitudes and actions in creating order in the social life between fellow human beings.

Philipus M. Hadjon stated: It is always related to power. There are two kinds of government power and economic power. In relation to government power, the problem of legal protection is for the people (who are governed), against the government (which governs)[13].

Based on the opinions above, it can be said that legal protection is primarily aimed at individuals and groups in society from arbitrary actions by stronger parties such as the government or employers against workers or other parties in the context of realizing security and order public.

The regulation of legal protection for health workers is contained in Article 57 of Law no. 36 of 2014 which states that health workers in carrying out their practice have the right to:

1) Obtain legal protection as long as carrying out duties in accordance with professional standards, professional service standards, and standard operating procedures;
2) Obtain complete and correct information from health service recipients or their families;
3) Receive service fee;
4) Obtain protection for occupational safety and health, treatment in accordance with human dignity, morals, decency, and religious values;
5) Get the opportunity to develop their profession;
6) Refuse the wishes of the recipient of health services or other parties that are contrary to professional standards, codes of ethics, service standards, standard operating procedures, or provisions of laws and regulations; and
7) Obtain other rights in accordance with the provisions of the legislation.

In this period of the COVID-19 pandemic, health workers should receive more adequate medical facilities and infrastructure, such as personal protective equipment (PPE), increased remuneration and others.

Health workers also experience occupational safety protection from certain parties, such as neglect of health protocols, refusal of vaccinations, and acts of violence by patients and their families.

2. Legal Protection for Health Workers Who Experience Violence from Patients and Their Families

Besides being vulnerable to COVID-19 infection due to the lack of Personal Protective Equipment, health workers also experience psychosocial issues, such as stigmatization and discrimination from

[12] Theresia Louize Pesulima and Yosia Hetharie, "Perlindungan Hukum Terhadap Keselamatan Kerja Bagi Tenaga Kesehatan Akibat Pandemi Covid-19," *SASI*, 2020, https://doi.org/10.47268/sasi.v26i2.307.

[13] Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi* (Sinar Grafika, 2009).

certain groups in society. Not even a few health workers have been refused or asked to move from their rental homes for handling COVID-19 patients.

In addition, the bodies of health workers who will be buried in public cemeteries are rejected by the local community. It is also difficult for health workers to obtain social support due to their busy work schedule and having to live separately from their families while dealing with COVID-19 patients.[14]

These various social obstacles experienced by health workers became one of the attacking factors experienced by health workers during the COVID-19 pandemic.Violence by patients and their families can be subject to Article 170 and 351 of the Criminal Code.

Article 170 paragraph (1) of the Criminal Code the elements are: (1) whoever; (2) blatantly; (3) with joint power; (4) using force; and (5) against people or goods.

1). The element of whoever/they:

Mr. H.J. Smidt (in by PAF Lamintang, 1986), states Zij or them, this means that those who can be sentenced according to the criminal provisions regulated in article 170 paragraph (1) of the Criminal Code are "a lot of people", meaning people who have participated in the crime. take part in acts of violence against people or property that are carried out openly and collectively. But this does not mean that everyone who takes part in such riots can be punished. Those who can be punished are only those who have actually participated in committing such acts themselves. The fact that a person is in the midst of a crowd that commits violence against people or property does not in itself make that person liable to be convicted.

SR. Sianturi, 1989, stated: The subject here is anyone. In the original language it is "Zij", not "hij". However, this offense cannot be carried out by only one person, although in the event of a consequence as mentioned in paragraph (2), only one person may be held criminally responsible based on paragraph (2). In this case, for the rest who do not participate in "causing" the result, paragraph (1) is applied. Therefore, the question becomes, how many people should be acted upon to fulfill the element of the subject matter of this offense?

Some scholars argue that it is not enough just two people. The reason, among other things, is that the term "with collective power" indicates a crowd of people. Then it was added that if two subjects were deemed to have fulfilled the elements of the subject matter of this offense, why not just use the term "two or more people" which is familiar in the terminology of criminal law? see among others Articles 167, 168, 363, 365, etc. While other scholars (among others: Noyon) argue that this subject has met the requirements if there are two (or more) people.

Furthermore, it is important to note that the making of this offense according to his explanation (*memorie van toelichting*) is not directed at groups, masses, groups of people who do not participate in the violence. This offense is only aimed at people among these groups who really openly and collectively carry out the violence.

2) Openly

Prof. Mr. D. Simons (in PAF Lamintang, 1986), because Article 170 paragraph (1) of the Criminal Code does not provide any restrictions on the meaning of the word openlijk geweld or

[14] Christa Gumanti Manik, Sri Mardikani Nugraha, and Maya Ryandita, "Kebijakan Perlindungan Tenaga Kesehatan Dalam Menghadapi Coronavirus Disease 2019 (COVID-19) Di Indonesia," *Jurnal Penelitian Dan Pengembangan Pelayanan Kesehatan*, 2020, https://doi.org/10.22435/jpppk.v4i2.3274.

violence that is carried out openly itself, then any violence if it is carried out openly and carried out together with many people, can be included in its meaning.

Furthermore, it has been said by Prof. Simons, that by paying attention to the history of the formation of this article and by taking into account its placement in Chapter V of Book II of the Criminal Code, Hoge Raad is of the opinion that what can be included in the meaning of openlijk geweld according to Article 170 paragraph (1) of the Criminal Code is only "violence that disturbs public order" , on the grounds that these requirements can be known from the word openlijk or openly in the formulation of Article 170 paragraph (1) of the Criminal Code itself.

On the other hand Prof. van Hamel has intended to limit the meaning of the word violence based on the fact that the act must be carried out openly, so what is meant by openlijk geweld or open violence is only violence that can be seen by everyone.

Prof. Mr. G.A. van Hamel (in P.A.F. Lamintang, 1986) What is meant by openlijk geweld or open violence is only violence that can be seen by everyone.

Prof. Mr. T.J. Noyon – Prof. Mr. G.E. Langemeijer (in P.A.F. Lamintang, 1986) turned out to have the same opinion as the opinion of Prof. van Hamel about the word openlijk geweld mentioned above. About this said Prof. Noyon-Langemeijer stated that: “Violence must be carried out openly, meaning that it must be visible to the public. Such violence does not need to be done in a public place.

The law makes a distinction between the two words. Thus, violence can also be carried out at home, but in order to be punished, the act must be visible to the public. Even so, that the word openlijk also needs to be limited in such a way, so that not every violence that can actually be seen by the public, but which in reality is not visible to the public must also be included in the meaning of openlijk geweld or violence carried out openly.

Decision of the Supreme Court of the Republic of Indonesia No. 10 K/Kr/1975 dated 17-3-1976: Openlijk in the original article 170 Wetboek van Stafrecht is more accurately translated "openly", which term has a different meaning from openbaar or "in public". "Obviously" means not in secret, so it doesn't need to be in public, just if it's not needed or there is a possibility that other people can see it.

3) With energy together/together

PAF Lamintang, 1986 states: Both from the law and from jurisprudence, it turns out that there is no explanation about what is actually meant by the word met verenigde krachten or "together", so we have to look into the doctrine to find out the true meaning of the word. Within the doctrine itself, it turns out that there is no communis opiniono doctorum (same opinion among experts) about what the legislators actually meant by the word met verenigde krachten or "together".

Prof. Mr. T.J. Noyon – Prof. Mr. G.E. Langemeijer (in P.A.F. Lamintang, 1986) argues that the word verenigde krachten must be interpreted as verenigde personen or several people in one bond. According to these professors, in this case the perpetrators need to at least know that in an act of violence several people were involved.

That there are two people who have committed an action is sufficient to say that the action has been carried out by met verenigde krachten. About this said Prof. Noyon-Langemeijer stated that: “Two people can do something together. This article does not explicitly specify how many people must be involved in the crime in question, so that the crime can be called as having been committed together, it is different with the provisions stipulated in Article 214 of the Criminal Code.

Wherever the law speaks of being together, it always mentions two or more people."

4) Using violence

The law itself does not provide an explanation of what is meant by violence, but in Article 89 of the Criminal Code "only equates" with committing violence, namely the act of "making one faint or helpless". R. Soesilo, 1996, stated: What is prohibited in this article is: "doing violence". To commit violence means: to use force or physical strength that is not small in an illegal manner, for example hitting with the hands or with all kinds of weapons, kicking, kicking, and so on.

Doing violence in this article is not a tool or an effort to achieve something as in Articles 146, 211, 212 and others, but it is a goal. In addition, it does not include delinquency in Article 489, persecution in Article 351 and damage to goods in Article 406 and so on.

5) Against people or goods/against people or things

Tegen personen of goederen or against people or things, means that violence committed by several people openly and collectively must be directed against people or things.R. Soesilo, 1996, stated that violence must be directed against "people or things".

Animals or animals are also included in the sense of goods. This article does not limit that the person (body) or property must "belong to someone else", so that own property is also included in this article, even though there will be no person committing violence against themselves or their own property as a goal; if as a tool or effort to achieve something, maybe it can also happen[15].

Regarding light torture, the regulation can be seen in Article 352 of the Criminal Code, while severe persecution in Article 354 of the Criminal Code:

Article 352 of the Criminal Code:

1. Except as referred to in articles 353 and 356, persecution which does not cause illness or impediment to carrying out a job or search, is threatened as light maltreatment, with a maximum imprisonment of three months or a maximum fine of four thousand five hundred rupiahs. The penalty can be increased by one third for the person who commits the crime against the person who works for him, or becomes his subordinate.
2. Attempting to commit this crime is not punishable.

Article 354 of the Criminal Code:

1. Anyone who intentionally injures another person, is threatened with serious mistreatment with a maximum imprisonment of eight years.
2. If the act results in death. guilty shall be punished by a maximum imprisonment of ten years.

R. Soesilo[16] said that the criminal incident in Article 352 of the Criminal Code is called "mild mistreatment" and includes "minor crimes". Included in Article 352 is persecution that does not:

1. Make sick ("*ziek*" not "*pijn*") or
2. Inhibited to carry out his position or daily work.

Furthermore, R. Soesilo[17] gave an example, for example A slapped B three times on the head, B felt sick (*pijn*), but did not get sick (*ziek*) and could still do his daily work, so A did "light abuse".

[15] Eddy Rifai, "Perkara Pengeroyokan Nakes Dan Unsur Pasal 170 KUHP", Poskota Lampung, Agustus 2021," *Poskota Lampung*, August 2021.

[16] R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal* (Bogor: Politira, 1996).

[17] *Ibid*.

For example again: A slightly injured B's left little finger (an orchestra violinist), until B's little finger was bandaged and had to be prevented from playing the violin (his daily work), so even though the wound was small, this abuse was not light abuse, because B hindered in his work.

As for serious abuse in Article 354 of the Criminal Code, R. Soesilo[18] explained that in order to be subject to this article, the intention of the maker must be aimed at "severely injuring", meaning "severe injury" must be meant by the maker. If it is not intended and the serious injury is only a result, then the act is considered "ordinary torture which results in serious injury" (Article 351 paragraph (2) of the Criminal Code).

If the abuse causes the victim to be unable to perform his or her work because of the illness (pijn/pain) experienced, but does not result in serious injury or is not intended to cause serious injury, then the abuse can be punished with Article 351 paragraph (1) of the Criminal Code:

1. Persecution is punishable by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiahs.
2. If the act results in serious injury, the guilty person is threatened with a maximum imprisonment of five years.
3. If it results in death, it is punishable by a maximum imprisonment of seven years.
4. Persecution is equated with intentionally damaging health.
5. Attempt to commit this crime is not punishable.

Regarding persecution in Article 351 of the Criminal Code, R. Soesilo[19], said that the law does not provide any provisions as to what "persecution" means. According to jurisprudence, "persecution" is intentionally causing bad feelings (suffering), pain, or injury. According to paragraph 4 of this article, it also includes the definition of persecution as "deliberately damaging people's health".

R. Soesilo[20] in the book also gives examples of what is meant by “bad feeling”, “pain”, “injury”, and “damaging to health”:

1. “bad feeling” for example pushing people into the river so that they get wet, telling people to stand in the hot sun, and so on.
2. "pain" for example pinching, backing up, hitting, slapping, and so on.
3. "wounds" for example slicing, cutting, stabbing with a knife and others.
4. "damaging health" for example people sleeping, and sweating, opened the window of his room, so that person catches a cold.

Based on the provisions of the laws and regulations above, it can be said that the perpetrators of violence against health workers can be subject to Article 170 of the Criminal Code if the perpetrator is more than one person or Article 351 of the Criminal Code (1 person) which causes the health worker to be injured or damage his senses or hinder his work, while if the health worker gets a light injury, the health worker can not damage the senses or hinder his work.

To provide protection for health workers during the COVID-19 pandemic, it is necessary to increase the provision of health facilities and infrastructure such as personal protective equipment, service fees, and others. There needs to be maximum law enforcement against perpetrators of violence against health workers.

[18] *Ibid*

[19] *Ibid.*

[20] *Ibid.*

Conclusion

Legal protection is an effort to maintain the rights of individuals or groups that can be fulfilled from strong or powerful parties such as the government or businessmen and other parties for the creation of security and public order. Legal protection for health workers is regulated in Article 57 of Law no. 36 of 2014 concerning Health Workers.

Meanwhile, health workers who have been attacked have been protected and regulated in Articles 170 and 351 of the Criminal Code. It is necessary to improve medical facilities and infrastructure such as personal protective equipment (PPE) and remuneration for health workers during the COVID-19 pandemic as well as streamlining criminal law enforcement by implementing Article 170 or 351 of the Criminal Code against perpetrators of violence against health workers.

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The Role of Community Policing for Law Enforcement in Resolving Issues Outside of Court

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ABSTRACT

The role of the Community Development Unit (Binmas) of the Bone Bolango Police is very important. Its existence can be one of the efforts to prevent crime through community-based prevention efforts. The type of research used is empirical legal research. The results show that the role of the Community Development Unit (Binmas) of the Bone Bolango Police is being played with an emphasis on improving the efficiency and technical capabilities of the police, but it still has shortcomings because even though the handling or resolution of problems that occur in the community is only a matter of violations, minor crimes need to be improved. The inhibiting factors are first in terms of the quantity of the number of personnel; second, the supporting facilities or facilities are still minimal; and thirdly, the lack of legal awareness of the community participating in counseling or socialization activities.

Keyword: *Bhabinkamtibmas, Community Policing, Crime*

ABSTRAK:

Peran Satuan Pembinaan Masyarakat (Binmas) Polres Bone Bolango sangat penting. Keberadaanya dapat menjadi salah satu upaya mencegah terjadinya kejahatan melalui upaya pencegahan berbasis masyarakat.. Jenis penelitian yang digunakan adalah penelitian hukum empiris. Hasil penelitian menunjukkan bahwa Peran Satuan Pembinaan Masyarakat (Binmas) Polres Bone Bolango adalah dengan penekanan pada peningkatan efisiensi dan kemampuan teknis polisi telah terlaksana namun masih memiliki kekurangan karena meski penanganan atau penyelesaian masalah terjadi di masyarakat hanya masalah pelanggaran, pidana ringan saja sehingga perlu ditingkatkan lagi di tahun berikutnya kemudian faktor penghambat Pertama dari segi kuantitas jumlah personil, Kedua sarana atau fasilitas pendukung yang masih minim dan Ketiga kurang kesadaran hukum masyarakat mengikuti kegiatan penyuluhan atau sosialisasi..

Kata Kunci: *Bhabinkamtibmas, Pemolisian Masyarakat, Kejahatan*

Introduction

The Law on the Police of the Republic of Indonesia states that the purpose of the establishment of the Polri institution is to realize internal security, which includes the maintenance of public security and order, order and enforcement of the law, the implementation of protection, protection, and service to the community, as well as the establishment of public peace by upholding human rights.[1]

One of these tasks is the development of security and order for the community (bhabinkamtibmas), namely for members of the National Police who are tasked with fostering public security and order (kamtibmas).[2]

The concept of community policing demands that the police prioritize civil democracy, so the character of the police must be more civil. The police are civilians, which means that when they do their job, the police must not make people lose their human dignity by using militaristic methods like violence.

Bhabinkamtibmas is a member of the National Police who has the task of carrying out the development of security and public order and, at the same time, carrying out the function of community policing in the village or sub-district.[3]

The goal to be achieved in the Bhabinkamtibmas activity is the realization of a stable and dynamic security and security situation in the context of securing and succeeding in national development. Meanwhile, what is meant by kamtibmas is a dynamic condition of society that is marked by the assurance of order and law enforcement as well as the establishment of peace, which has the ability to foster and develop the potential and strength of the community in preventing, preventing and overcoming all forms of law violations and other forms of disturbance that can be troubling. Community, which is one of the conditions for the implementation of national development.

The main guideline for implementing Bhabinkamtibmas duties is the Field Manual on Bhabinkamtibmas in Villages and ward No. Pol.: Bujuklap/17/VII/1997, which was amended by Decree of the Chief of Police of the Republic of Indonesia No. Pol.: Kep/8/XI/2009 dated November 24, 2009 regarding the Amendment to the Field Manual for the Chief of Police of the Republic of Indonesia No. Pol.: Kep/618/VII/2014, which became the Smart Book of Bhabinkamtibmas 2014, Law Number 2 of 2002 concerning the Indonesian Nation.

In fact, according to research by Yoslan K. Koni in 2019 that in Gorontalo Province it has not been fully implemented because there are still many shortages of police personnel assigned to each work area.[4] Many criminal acts faced by police investigators need assistance from community policing to jointly prevent the occurrence of criminal acts.[5]

Along with the development, in order to carry out the duties of the police in maintaining security and public order,

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[1] Dkk Ramadhan, Rinaldi, "Peran Polisi Masyarakat Dalam Mewujudkan Sistem Keamana Dan Ketertiban Masyarakat," *Ilmiah Metadata* 3 (2021): 274–92.

[2] Koesparmono Irsan and Anggreany Haryani Putri, "Polisi, Kekerasan Dan Senjata Api," *Krtha Bhayangkara* 12, no. 1 (2018): 1–24, https://doi.org/10.31599/krtha.v12i1.28.

[3] Bayu Suseno, "E-Polmas: Paradigma Baru Pemolisian Masyarakat Era Digital," *Jurnal Keamanan Nasional* 2, no. 1 (2016), https://doi.org/10.31599/jkn.v2i1.39.

[4] Yoslan K Koni, "Penerapan Peraturan Kapolri Nomor 3 Tahun 2015 Tentang Pemolisian Masyarakat Dalam Penegakan Hukum Di Provinsi Gorontalo," *Kertha Patrika* 41, no. 1 (2019): 52, https://doi.org/10.24843/kp.2019.v41.i01.p05.

[5] Zasima Margawaty Djamil, "Peran Phayangkara Pembina Keamanan Dan Ketertiban Masyarakat (Bhabinkantibmas) Kepolisian Sektor Yendidori Dalam Penanganan Tindak Pidana Ringan," *Jurnal Ilmu Hukum Kyadiren* 2, no. 1 (2020): Hlm. 1-11.

enforcing the law, providing legal protection, protection and service to the community, it is necessary to have the ability of members of the police to implement community policing strategies to build partnerships and cooperation by involving the community in maintaining security and order in the community. environment. Bhabinkamtibmas members are usually easy to spot early on, especially when it comes to gathering information about an event or a new trend.

Police for the community, as regulated in Article 1 Point 2 of the Regulation of the Chief of Police of the Republic of Indonesia Number 3 of 2015, is an activity to invite the community through partnerships with members of the police of the Republic of Indonesia and the community, so that they are able to detect and identify problems of security and public order (Kamtibmas) in the environment and find a solution to the problem. In the Gorontalo Province, the Bone Bolango Police Resort, the Bhabinkamtibmas are important because they play a big part in making sure that crime doesn't happen in the community.

Method

The type of research used in this research is empirical legal research. The research was carried out in the Binmas Unit of the Bone Bolango Police Legal Area. Sources of data in the form of primary and secondary data. Data collection techniques in the form of observation, interviews, and literature studies Data analysis is used using qualitative data to obtain prescriptive truth.

Discussion

1. The Role Of Binmas Police Of The Bone Bolango Resort In Carrying Out Community Policing In The Bone Bolango District

According to Siswanto Sunarso in the theory of the law enforcement system or criminal law enforcement, as part of a criminal policy or crime prevention efforts, there are two means of crime prevention through law enforcement, namely using penal facilities or law enforcement by imposing criminal sanctions and law enforcement by using non-penal means of imposing criminal sanctions (penal).

That is, without law enforcement by means of a pen, the goal is for people to obey the law. People's obedience to the law is caused by three things, namely: a) fear of sinning, b) fear because the power of the authorities is related to the imperative nature of law, c) fear of being ashamed to commit a crime. Law enforcement with non-penal means has goals and objectives for internalization purposes.[6]

Law enforcement with non-penal means is also carried out by Bhanbainkamtibas, which is mentioned as community policing. In this context, the application of the National Police Chief Regulation Number 3 of 2015 concerning community policing in law enforcement at the Boealano Resort Police is seen as one of the main tasks of the Indonesian National Police.

The police structure assigned to each village, called Bhabhinkantibmas, has not been fully fulfilled in accordance with the mandate of the National Police Regulation because there is still a shortage of police personnel, so one Bhabhinkantibmas member can develop one village, or even up to five villages within the respective sub-districts or police stations, so if there is a commotion

[6] Mustating D G Maroa, "Penegakan Hukum Dalam Penanggulangan Tindak Pidana Penyalahgunaan Narkotika Di Kabupaten Banggai," *Jurnal Yustisiabel* I, no. I (2017): 56–68.

or a problem in the village, the Bhabhinkantibmas members assigned are tired of dealing with them and are usually late in coming to the problem areas in their fostered villages. [7]

Community policing is proof that in dealing with crimes that have harmed the nation and the state, the apparatus is not sufficient if they only rely on their own abilities. The presence of the community's role to maintain or protect forest areas will make criminals who intend to carry out logging deal directly with the community. [8]

1) Community Development

The police and society are two inseparable subjects and objects: the police are born from the community, and society requires the presence of the police to maintain order, security, and order in society.That's the theory of the birth of the police. (Politedari Yunani Kuno), until the birth of this modern police theory. Therefore, there is a country that does not have one of its armed forces, but there is not a single country that does not have a police force as an orderly, protector, and law enforcer in a country.

The police of the Republic of Indonesia will not be successful in managing a conducive kamtibmas situation if the people in the surrounding environment do not play an active role in cooperating with the police. Based on the data that the author obtained from the Bone Bolango Resort Police, during the last 2 years, community policing, which was formed in partnership between the police and the community through the Police and Community Communication Forum (hereinafter abbreviated as FKPM), in the Bone Bolango area, has succeeded in helping the police work by completing 21 cases.

The author argues that Binmas aims to prevent and deal with crime by studying the characteristics and problems that exist in a particular environment. The results obtained will be analyzed and resolved jointly, through partnerships developed by the police and the community.

Building and fostering mutual trust is the main goal in fostering partnerships with the community. The police must recognize the importance of partnership and cooperation with the community and the benefits that such cooperation can bring. Bhabinkamtibmas realizes the mission of serving the community in a tangible form so that the role of the police can be felt directly by the village community in the form of a service approach. [9]

Gaining the trust of the community is difficult to obtain because it requires a process, especially communication and social contact, time, and the will of each police officer. The community still expects an increase in the role and duties of the police as protectors, protectors, and community services as well as as clean law enforcers. [10] Meanwhile, the community must also recognize the need to create a strong partnership with the police to create a safe, orderly, and fear-free area.

Where in this case, Bhabinkamtibmas is present in the midst of the community to provide advice and mediate between the disputing parties as

[7] Koni, "Penerapan Peraturan Kapolri Nomor 3 Tahun 2015 Tentang Pemolisian Masyarakat Dalam Penegakan Hukum Di Provinsi Gorontalo."

[8] Siti - Marwiyah, "Model Pemolisian Masyarakat Sebagai Upaya Penanggulangan Pembalakan Hutan," *Yustisia Jurnal Hukum* 3, no. 1 (2014), https://doi.org/10.20961/yustisia.v3i1.10118.

[9] Dkk Safrin Salam, *Perkembangan Filsafat Hukum Kontemporer* (Yogyakarta: Zifatama Jawara, 2020).

[10] Diana Verjenia, "Model Pemolisian Masyarakat Sebagai Upaya Pencegahan Tindak Pidana Pencurian Kendaraan Bermotor Di Wilayah Hukum Polsek Dau," *Jurnal Ilmiah Ilmu Hukum2* 26, no. 13 (2020): 1655–70.

stipulated in Community Policing model B in Article 11 Letter B Number 1 Regulation of the Chief of Police of the Republic of Indonesia Number 3 of 2015. In its application, it is not always running well.

There are obstacles that occur, including: the low understanding of community policing, the community's legal awareness is still lacking, and the lack of awareness of the importance of mutual attention with the surrounding environment (indifference). People still don't understand the concept of being a policeman for themselves. [11]

The factors that complicate the creation of mutual trust between the police and the community For decades, people have judged the policing system as tending to be militaristic. The actions and behavior of the police officers of the Republic of Indonesia who deviate in the midst of people's lives, are not firm in handling cases, which increasingly cause the public to distrust the police.

In connection with the number of cases like this, it triggers the best solution for the community in law enforcement, but in practice, sometimes the police of the Republic of Indonesia act arrogantly in solving the cases they face. In contrast, Binmas reflects a change in the way of thinking regarding the effective delivery of police services with an emphasis on achieving goals.

2) Mediator

The role of Binmas in handling cases to find a solution based on cases that have been successfully resolved by BHABINKAMTIBMAS for the past 2 years from the results of interviews with AIPDA Muh. Taufik Aziz as PS Kanit Binmas Suwawa Sector Police, said identification of case problems was needed to be able to deal with problems that occurred in the community, taking the initial steps to resolve through family methods, deliberation.

Where community policing acts as a mediator as well as a facilitator to both parties involved in the dispute to be able to resolve these problems before stepping up to the investigators and court hearings. [12] According to Bripka Kennedy N.Senduk as PS Kanit Binmas Polsek Bone Pantai, explained that an investigator in Binmas acts as a coach if there are problems that cannot be resolved by Binmas then they are delegated to investigators in the existing regional unit/sector police.

In order to prevent the transfer of duties of investigators and Binmas where Binmas is to prevent crime and handle minor crimes (TIPIRING). However, Binmas also play a big role in the community and work with the Indonesian National Police to keep Kamtibmas safe. This is shown, for example, by :

a. Support existing village/kelurahan development programs as well as LKMD programs.
b. Receive directions from Babinkamtibmas in the context of Kamtibmas, provide the necessary information, and report on activities that have been and will be carried out locally;
c. Hold a meeting between members of community policing to discuss planned activities and solutions to solve security and security issues in their area.
d. Provide intensive counseling and appeals to every community in the

[11] Verjenia.

[12] Maroa, "Penegakan Hukum Dalam Penanggulangan Tindak Pidana Penyalahgunaan Narkotika Di Kabupaten Banggai."

environment about the importance of Kamtibmas, thereby indirectly increasing public awareness in the field of Kamtibmas;

e. In the field of Kamtibmas, neutralize social institutions that have a negative impact and lead to social institutions that have a positive impact.

f. Interact with the community to detect social issues early.

3) Counseling

According to AIPDA Leonard as PS Kanit Binmas Kabila Bone Police, the role of Binmas ideally is to balance fast reactions to emergency events and situations with proactive efforts in the form of problem solving.

One of the tasks of Binmas is dialogical patrols in their environment. They do this by walking, cycling or using a motorbike. There are two main goals: to teach people about the law in person and to let police officers get away from the fast-paced environment of patrol cars.

Based on this, according to the author, the situation of kamtibmas is different from one place to another, so the organizational structure does not always have to be the same. Adaptation is characterized by the decentralization of decision-making with authority given to the lowest units.

Thus, the old habit of formulating the strategy above and implementing it by the unit below must be changed. The lower units must plan and adapt the use of resources according to their needs. Community policing is an activity to invite the community through partnerships between members of the National Police and the community, so that they are able to detect and identify problems of security and public order (Kamtibmas) in the environment and find solutions to them. [13]

Binmas' role is very good in the Binmas community because it adheres to the decentralization policy so that Binmas officers feel they have their own neighborhood. Binmas also decentralizes decision-making. This is not only to give the police autonomy and freedom of action, but also to empower all officers to participate in community-based problem solving.

2. Factors Affecting the Role of Binmas in Preventing Crime in Bone Bolango District

The Community Policing Policy has been issued by the National Police Chief through the Decree of the Chief of Police Number 737 of 2005, which was then updated with the National Police Chief's Regulation (Perkap) Number 7 of 2008 concerning Community Policing.

As a strategy, community policing is understood as the implementation of proactive policing that emphasizes equal partnerships between the police and the community in the prevention and deterrence of crime, solving social problems that have the potential to cause disturbances in Kamtibmas in order to improve legal compliance and the quality of life of the community, so that it is no longer merely an object in the implementation of Polri functions, but as a determining subject in managing their own efforts to create a safe and orderly environment facilitated by police officers. [14]

Therefore, the implementation of community policing in the context of realizing order and security in society requires the cooperation of the community with the police to find, identify, analyze, and find solutions to the problems of security and order

[13] Suseno, "E-Polmas: Paradigma Baru Pemolisian Masyarakat Era Digital."

[14] Ramadhan, Rinaldi, "Peran Polisi Masyarakat Dalam Mewujudkan Sistem Keamana Dan Ketertiban Masyarakat."

disturbances that are being faced. The concept of community policing demands that the police prioritize civil democracy; therefore, the character of the police must be more civil.

The police are civil in character, meaning that in carrying out their work, the police must not cause humans to lose their human dignity by avoiding militaristic methods in the form of violence. Instead, the police must be able and willing to listen to and find out the nature of human suffering. [15] Police actions or behavior should be based on the idea of dialogue and interaction that is full of human nuances.

Therefore, according to Soerjono Soekanto, there are at least four factors for a regulation to really function, namely first, the rule of law or the regulation itself; second, officers who enforce or implement; third, facilities that are expected to support the implementation of the rule of law; and fourth, the four community members who are affected by the scope of the regulation. [16] If it's about Binmas's role, there are a lot of things that affect Binmas's role, like:

1) Law Enforcement Factor

The legal function, mentality, or personality of law enforcement officers play an important role. If the regulations are good, but the quality of the officer is not good, there is a problem. Therefore, one of the keys to success in law enforcement is the mentality or personality of law enforcement. The administrative approach views law enforcement officials as part of a management organization that has a working mechanism that has both horizontal and vertical relationships in accordance with the organizational structure that applies within the organization. The system used is the administrative system. [17]

The law enforcement factor is one of the obstacles to carrying out the role of Binmas in the police area of the Bone Bolango resort in community policing because, in terms of quantity, the number of personnel is still minimal.

On the other hand, the legal area of the Bone Bolango Resort Police that they have to cover is 1,984.31 km, consisting of 17 sub-districts and 1 preparatory sub-district (Pinogu area), 152 villages, and 4 urban villages. Confirmed from an interview with Mr. IPTU Gustin Kasim, Head of Binmas Police of Bone Bolango Regency, stated that the area of Bone Bolango Regency is not supported by the number of personnel that is still minimal.

The Binmas section only has one person for the police area. Meanwhile, the community policing program should ideally be carried out by several members per sub-district or police station. This regulator of law enforcement factors is closely related to the role of Binmas in realizing legal goals, namely legal justice, expediency, and legal certainty. The essence of the presence of Binmas is to create order and order in society. [18]

2) Facilities Factors and Facilities

Factors supporting facilities or facilities include software and hardware. One example of software is education. The education received by the police today tends to be practically conventional, so that in many cases, the police experience obstacles in their goals, including knowledge of computer crimes and special crimes that have so far been given authority to prosecutors. This is

[15] Ramadhan, Rinaldi.

[16] Supriyanta, "Demokratisasi Dalam Penegakan Hukum," *Wacana Hukum* VII, no. 1 (2008): 90–99.

[17] Supryanto, "Perkembangan Sistem Peradilan Pidana," *Wacana Hukum* 2, no. 4 (2003).

[18] Safrin Salam, "Rekonstruksi Paradigma Filsafat Ilmu: Studi Kritis Terhadap Ilmu Hukum Sebagai Ilmu," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 18, no. 2 (2020): 885–96, https://doi.org/10.30863/ekspose.v18i2.511.

because, technically, the police are considered legally incapable and not ready. although it is also realized that the tasks that must be carried out by the police are very broad and many. Factors supporting facilities or facilities include software and hardware.

One example of software is education. The education received by the police today tends to things that are practically conventional, so that in many cases, the police experience obstacles in their goals, including knowledge of computer crime and special crimes that have still been given authority to the prosecutor.

This is because, technically, the police are considered legally incapable, not ready. Despite the fact that it is recognized that the tasks that must be performed by the police are very broad and numerous. [19]

If it is related to the role of the Binmas Police of the Bone Bolango Resort in carrying out community policing, the supporting facilities that are still minimal can be seen from the lack of vehicles to be used to jump into the community. In addition, the budget factor is also very influential in the procurement of this vehicle facility because it must be adjusted to the availability of the budget each year.

3) Community Factor

Law enforcement comes from the community and aims to achieve peace in society. Every member of the community or group has more or less legal awareness. The problem that arises is the level of legal compliance, namely high, moderate, or low legal compliance. The degree of community legal compliance with the law is one indicator of the functioning of the law concerned. Community factors are an obstacle to the implementation of community policing in the jurisdiction of the Bone Bolango Resort Police carried out by Binmas, namely the community's laziness in participating in outreach or socialization activities.

This was explained by Mr. IPTU Gustin Kasim, Head of Binmas Polres, Bone Bolango, that sometimes people have many reasons when invited to participate in socialization related to the importance of community policing programs.

4) Cultural Factor

According to Soerjono Soekanto's definition of culture, the daily culture of the surrounding community has a very large function for humans and society, namely regulating how humans should act and act when they relate to other people. Law enforcement comes from the community and aims to achieve peace in society.

Every member of the community or group has more or less legal awareness. The problem that arises is the level of legal compliance, namely high, moderate, or low legal compliance. The degree of community legal compliance with the law is one indicator of the functioning of the law concerned. [20] Thus, culture is a basic line of behavior that establishes rules about what to do and what not to do. [21].

[19] Rustam Lutfi Rumkel, Darwin Rukua, "Efektifitas Fungsi Satuan Pembinaan Masyarakat Menurut Peraturan Kepala Kepolisian Negera Republik Indonesia Nomor 3 Tahun 2015 Tentang Pemolisian Masyarakat," *Uniqbu Journal of Social Sciences (UJSS)* 1, no. September 2011 (2020): 22–34.

[20] Lutfi Rumkel, Darwin Rukua.

[21] S. Salam et al., "Corporate Legal Responsibility Against Environmental Damage," *IOP Conference Series: Earth and Environmental Science* 343, no. 1 (2019), https://doi.org/10.1088/1755-1315/343/1/012137.

Conclusion

As can be seen from the handling of cases over the last two years, almost everything has been resolved through deliberation, with Binmas acting as a mediator for the disputing parties, and it is hoped that work activity will increase in the coming year.Through increasing public awareness of a comfortable and safe environment, it will also further support the role of Binmas.

Therefore, the ranks of the Bone Bolango Resort Police continue to be proactive towards social phenomena experienced by the community, especially regarding a sense of security, peace, and order. Factors that hinder the role of Binmas of the Bone Bolango Police in implementing community policing in Bone Bolango Regency The first factor is law enforcement, because, in terms of quantity, the number of personnel is still minimal.

On the other hand, the extent of the jurisdiction of the Bone Bolango Police that they must cover The two supporting facilities or facilities are still minimal, as can be seen from the lack of vehicles to be used by the community to use privately owned vehicles.

In addition, the budget factor is also very influential in the procurement of this vehicle facility because it must be adjusted to the availability of the budget each year. Third, community factors are an obstacle in the implementation of community policing in the jurisdiction of the Bone Bolango Resort Police carried out by Binmas, namely the community's laziness in participating in outreach or socialization activities. The four cultural factors of the community itself are aware of the importance of maintaining peace in their environment.

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A Jurisdictional Approach to Indonesia's Wildlife Trade

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ABSTRACT

Indonesia is one of the countries that lack a sense of concern for animals due to the rampant wildlife trade that occurs in the country. Bushmeat is not consumable since it is not regulated inside the Indonesian Law Number 18 of 2012 concerning food (hereinafter abbreviated as Law on Consumables). Various traded wild animals are believed by several individuals to have contained many good properties when consumed and can cure various diseases. But Bushmeat is a source of diseases such as Emerging Infectious Diseases (EIDs) and Coronavirus Disease (Covid-19) while also endangering the preservation of biodiversity. This bushmeat trade also sells the meat of protected endangered animals, which are proven to have violated Law Number 5 of 1990 concerning Conservation of Biological Natural Resources Article and its Ecosystem (hereinafter abbreviated as Law on Conservation of Biological Natural Resources Article and its Ecosystem), as well as other laws. The research method applied in this research would be normative juridical, which uses positive Law as a source of existing Law. The goal of this research is to understand the regulations related to Bushmeat trading based on the Law and the application towards bushmeat dealers established in Indonesia's Law Number 41 of 2014 concerning Amendments to Law Number 18 of 2009 concerning Animal Husbandry and Health (hereinafter abbreviated as Law on Livestock and Animal Health), Law on Consumables, Law on Conservation of Biological Natural Resources Article and its Ecosystem, Government Regulation Number 7 of 1999 concerning Preservation of Plant and Animal Species, Law Number 8 of 1999 concerning Consumer Protection (hereinafter abbreviated as Law on Consumer Protection) and the Criminal Code.

***Keywords**: Constitution; Consumption; Bushmeat; Trading; Wild animal.*

ABSTRAK

Indonesia adalah salah satu negara yang minim rasa kepedulian terhadap hewan karena maraknya perdagangan satwa liar yang terjadi. Padahal, daging satwa liar bukanlah daging yang dapat dikonsumsi, karena tidak diatur dalam Undang-Undang Nomor 18 Tahun 2012 Tentang Pangan (untuk selanjutnya disingkat UU Pangan). Berbagai satwa liar yang diperdagangkan ini dipercayai oleh beberapa masyarakat memiliki banyak khasiat yang baik dan dapat menyembuhkan berbagai penyakit. Kenyataannya, daging satwa liar adalah sumber terjadinya wabah penyakit seperti *Emerging Infectious Disease* (EIDs) dan *Coronavirus Disease* (Covid-19) serta mengancam kelestarian keanekaragaman hayati. Perdagangan daging satwa liar ini terkadang juga menjual daging satwa liar dilindungi yang terbukti melanggar Undang-Undang Nomor 5 Tahun 1990 Tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya (untuk selanjutnya disingkat UU Konservasi Sumber Daya Alam Hayati dan Ekosistemnya), serta Undang-Undang lainnya. Metode penelitian yang digunakan dalam penelitian ini adalah yuridis normatif yang menggunakan hukum positif. Adapun tujuan penelitian ini yaitu memahami pengaturan terkait perdagangan satwa liar berdasarkan Undang-Undang yang berlaku dan mengetahui penerapan hukuman terhadap para pelaku penjual daging satwa liar ditinjau dari Undang-Undang Nomor 18 Tahun 2009 Tentang Peternakan dan Kesehatan Hewan yang dirubah dengan Undang-Undang Nomor 41 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 18 Tahun 2009 Tentang Peternakan dan Kesehatan Hewan (untuk selanjutnya disingkat UU Peternakan dan Kesehatan Hewan), UU Pangan, UU Konservasi Sumber Daya Alam Hayati dan Ekosistemnya, Peraturan Pemerintah Nomor 7 Tahun 1999 Tentang Pengawetan Jenis Tumbuhan dan Satwa (untuk selanjutnya disingkat PP No. 7/1999), Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen (untuk selanjutnya disingkat UU Perlindungan Konsumen) dan Kitab Undang-Undang Hukum Pidana (untuk selanjutnya disingkat KUHP)

Kata Kunci: *Daging; Konsumsi; Perdagangan; Satwa Liar, Undang-Undang.*

Introduction

Food is essential to all living organisms, including humans. Food is defined as a material consumed to gain nutrients and energy.[1] Food consumption is a way to acquire various nutrients such as carbohydrates, proteins, fats, minerals, and vitamins. Consuming meat is done to meet human growth needs by obtaining protein from animals.[2] Getting animal protein can be done by consuming milk, eggs, and various livestock meats allowed to be consumed, such as chicken, beef, lamb, and goat meat.

However, humans cannot consume all meat. This is because there are some animals whose meat contains bacteria and can cause disease outbreaks when consumed. Chicken meat, one of the most common meats to consume, may also contain pathogenic microorganisms capable of causing disease.[3] Especially meats that are not recognized in the Law on Consumables, would they not have a higher chance of containing diseases?

Bacterial contamination of food can become a disease-carrying medium[4] One of the disease outbreaks caused by bushmeat consumption is the Coronavirus Disease 2019 (Covid-19) outbreak.[5] According to the World Health Organization (WHO). The leading cause of the Covid-19 pandemic originated from consuming wild animals such as snakes, bats, mice, dogs, cats, etc.[6]

China is among the countries that consume wild animals. They were the first country affected by the global Covid-19 outbreak. It is since the people of Wuhan ate those odd foods. Not only in China but several markets in Indonesia also sell various Bushmeat, one of which is the Beriman Tomohon Market, located in Manado, North Sulawesi.[7]

Beriman Tomohon market is very different from markets in general because it sells Bushmeat such as snake, bat, rat, dog, cat, and other bushmeats.[8] Several locals consume Bushmeat because it is a tradition to eat during a family gathering. In addition, some local people also believe that some bushmeat can be used as medicine to cure diseases.

As a result, the community has become a bushmeat consumer. Consumption of wild animals is also not included in the consumable meat category because Bushmeat is sold separately from livestock and forestry goods. If these wild animals are regularly consumed, there is a potential that they will go extinct.

That being the case, the wildlife trade must be addressed since it may cause a conflict with the Food Law and the Consumer Protection Law. Selling

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[1] Agata Pransiska; Novie Revlie Pioh; Welly Waworundeng Launde, "Tugas Dan Fungsi Badan Pengawas Obat Dan Makanan Dalam Melindungi Kesehatan Masyarakat Di Kota Manado (Studi Kasus Tentang Penggunaan Bahan Makanan Berbahaya Di Kota Manado)," *Jurnal Eksekutif* 2, no. 5 (2020): 1–17, https://ejournal.unsrat.ac.id/index.php/jurnaleksekutif/article/view/29457/28578.

[2] Yuli Astuti Hidayati et al., "Pengolahan Hasil Ternak Untuk Memenuhi Kebutuhan Protein Hewani Di Kelompok PKK Kelurahan Padasuka Cimahi," *Media Kontak Tani Ternak* 1, no. 2 (December 12, 2019): 7–11, https://doi.org/10.24198/mktt.v1i2.23662.

[3] Nadifa Rafika; Khaerani Kiramang Irmawati, "Tingkat Cemaran Bakteri Escherichia Coli Pada Daging Ayam Yang Dijual Di Pasar Tradisional Makassar," in *Prosiding Seminar Nasional Mega Biodiversitas Indonesia 4*, 2018, 42–50.

[4] Irmawati.

[5] Walsyukurniat Zendrato, "Gerakan Mencegah Daripada Mengobati Terhadap Pandemi Covid-19," *Jurnal Education and Development* 8, no. 2 (2020): 242–48.

[6] Sodikin Amir, "Sodikin, Amir. 2021. "Desak Jokowi Setop Konsumsi Dan Jual Beli Daging Anjing Serta Satwa Liar," *Harian Kompas*, April 12, 2021.

[7] Yunita Wahyu; and Mella Ismelia Farma Rahayu Medyawati, "Analisa Perlindungan Hukum Terhadap Hewan Liat Yang Teraniaya Dan Diperjualbelikan (Studi Kasus: Perdagangan Daging Kucing Dan Anjing Di Pasar Tomohon Sulawesi Utara)," *Jurnal Hukum Adigama* 4, no. 2 (2021): 1183–1207.

[8] *Ibid.*

Bushmeat is also against the Criminal Code regarding Animal Protection Articles 302 and 406 because those animals are not categorized as livestock or forestry animals, so it is classified as an act of animal abuse. In addition, cases regarding bushmeat trades are still common in our country.[9]

According to food.detik.com, on January 23rd, 2022, there is news regarding various traded wild animals with their price ranges. The Tomoho Beriman Market is a market that is quite famous for selling multiple bushmeats. This trade is carried out because it is a habit of the surrounding community to consume it as a dish.[10]

In addition to the Tomohon Beriman Market, this wildlife trade case also occurred in 2021, to be precise, in Pasar Jaya, Pasar Senen, Central Jakarta. Reporting from Suara.com, the market was found to be selling dog meat for the past few years. However, the market manager did not know the trade, indicating that observations had not been carried out efficiently, causing consumer protection to be set aside on behalf of profit.[11] In addition, there were cases of selling 1007 turtle eggs in the Riau Islands in 2020, reporting from tribunbatam.id there were 5 (five) people who carried out this turtle egg trade.[12]

The turtle eggs were also obtained from Bintan and Anambas.[13] All types of sea turtles have also been included in Government Regulation No. 7/1999, stating that Law protects them. Even though Indonesia has established multiple regulations to minimize the occurrence of such actions, it is still encounter-able today

Humans and animals live side by side, fulfilling needs in food and clothing, where the skin and fur of these wild animals can be used as materials to make clothes. The actions of these perpetrators are acts that are fatal and in violation. Based on the statements above, 2 (two) problems were found, "how regulations related to wildlife trade are based on the applicable law?" and "How should the violators of Indonesian positive legislation be punished for selling wild animal meat?".

This research aims to understand the regulations related to the wildlife trade based on the applicable laws and determine the punishments for the perpetrators selling Bushmeat in Indonesia's positive Laws.

Methodology

This research implements the normative juridical law research methodology with an approach to legislation (*statute approach*) or positive Law as a source of existing Law.[14] Normative juridical research methods can also be carried out by examining, studying, investigating, and observing research theories, concepts, and legal principles.[15]

Hence, the primary legal material to use would be "Livestock and Animal Health Law, the Food Law, the Law on

[9] Mathilda Eleonora and Frans Santoso, "Eksplorasi Perdagangan Daging Anjing Sebagai Pendukung Perancangan Film Animasi Pendek," *Visual Heritage: Jurnal Kreasi Seni Dan Budaya*, 2019, https://doi.org/10.30998/vh.v1i03.37.

[10] Riskia Fitria, "Segini Harga Daging Ular Hingga Monyet Yang Dijual Di Pasar Tomohon," *Detik.Com*, 2022.

[11] Agung Sandy; and Fakhri Fuadi Muflih Lesmana, "Kasus Pasar Senen Jual Daging Anjing, IKAPPI: Selama Ini Kerjaan Pasar Jaya Ngapain Aja?," *Suara.Com*, September 13, 2021.

[12] Dewi Haryati, "Jual Telur Penyu Di Kepri, 5 Orang Masuk Bui, Terancam Pidana 5 Tahun," *Tribun News Batam*, April 12, 2020.

[13] Haryati.

[14] M. Najibur Rohman, "Tinjauan Yuridis Normatif Terhadap Regulasi Mata Uang Kripto (Crypto Currency) Di Indonesia," *Jurnal Supremasi* 11, no. 2 (August 31, 2021): 1–10, https://doi.org/10.35457/supremasi.v11i2.1284.

[15] Mohammad Mashulin Amjad, "Tinjauan Yuridis Sanksi Rehabilitasi Terhadap Pengguna Narkotika," *Jurnal Juristic* 1, no. 2 (2020): 1–11.

Conservation of Biological Natural Resources and Their Ecosystems, Government Regulation No. 7/1999), Consumer Protection Act and the Criminal Code".

Discussion

1. Regulations Related to Wildlife Trade Based on Applicable Laws.

Food is an inseparable aspect of human life, and meat is one of the most sought-after foods by humans. Humans eat meat to meet their nutritional requirements, which are proteins derived from animals.[16] But of course, humans cannot consume all meat freely due to the rampant "*Zoonosis*" virus. Or "*Zoonotic*," which are present in an animal.[17]

Those two viruses can cause diseases such as *Emerging Infectious Diseases* (EIDs) that can infect humans if consumed.[18] Referring to the state of Information development at the moment, it is stated that in the last three decades, approximately 75% of EIDs have attacked and infected humans.[19]Based on the statement above, it can be concluded that 75% of EIDs that have attacked humans originated from the actions of humans that consume meat freely.

The Food Law defines food as anything that comes from plants or animals or is usually categorized as agriculture, plantation, forestry, fishery, and animal husbandry, which aims to be consumed or used as human food and drink. Based on this definition, it can be interpreted that an individual cannot treat acts of consumption arbitrarily because there are conditions that must be met to consume food to maintain food safety.

Food safety is essential, but it is regrettable because until now, food safety awareness in Indonesia is still low.[20] This can be seen from the lack of farmers' knowledge about the impact of not maintaining proper sanitation while in intimate contact with the livestock.[21] The feces produced by the livestock may trigger disease due to improper treatment. Thus, diseases may arise and be transmitted from animals to humans and vice versa. Not only that, but many breeders still choose to reside near their animal breeding facilities.[22]

The lack of knowledge about animal welfare is also a factor that hinders human awareness of the importance of food safety. This can be proven through the rampant activity of buying and selling Bushmeat in several markets in Indonesia. Article 3, number 6, regarding Livestock and Animal Health Law, explains that wild animals are wild and free to roam, including animals that humans keep.

Based on the explanation, it is clear that keeping wild animals is not a prohibition. Still, it becomes different when an individual consumes an animal

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[16] Hidayati et al., "Pengolahan Hasil Ternak Untuk Memenuhi Kebutuhan Protein Hewani Di Kelompok PKK Kelurahan Padasuka Cimahi."

[17] Yadi C Sutanto, "Konsumsi Daging Satwa Eksotik Dan Daging Anjing, Kontroversi Serta Aspek Hukumnya," Direktorat Kesehatan Masyarakat Veteriner, 2018, http://kesmavet.ditjenpkh.pertanian.go.id/index.php/berita/berita-2/205-tomohon.

[18] Kementerian Kesehatan Republik Indonesia, "Media Informasi Resmi Terkini Penyakit Infeksi Emerging," Kementerian Kesehatan Republik Indonesia, 2022, https://infeksiemerging.kemkes.go.id/mengenal-penyakit-infeksi-emerging.

[19] Indonesia.

[20] Gede Ari Sastrawan, "Peran Hukum Perlindungan Konsumen Dalam Menindaklanjuti Kuliner Extrim Berupa Satwa Liar Di Masa Pandemi Covid 19," *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 3, no. 2 (2021): 100–107.

[21] Oky Setyo Widodo, Sunaryo Hadi Warsito, and Shelly Wulandari, "Peningkatan Kesehatan Masyarakat Melalui Pengetahuan Penyakit Zoonosis Di Kecamatan Kepohbaru Kabupaten Bojonegoro," *Jurnal Layanan Masyarakat (Journal of Public Services)*, 2020, https://doi.org/10.20473/jlm.v2i2.2018.56-59.

[22] Widodo, Warsito, and Wulandari.

that is not included in the category of livestock that may be consumed.

Livestock is animals kept to produce food, industrial raw materials, services, and byproducts related to agriculture. The quality and quantity of the livestock must be maintained to ensure that the livestock can produce meat and products that are safe, healthy, and halal. Behind the maintenance of the quality and quantity of livestock, there must be an intervention from the government to carry out various efforts such as supervision, inspection, testing, standardization, certification, and up to the registration of these animal products.

President Jokowi strictly prohibits the consumption of meats that are not in the category of consumables, as well as the sale and purchase of Bushmeat, such as dogs, rodents, snakes, and other Bushmeat, by closing all wildlife markets in Indonesia, such as the Tomohon Market in North Sulawesi.[23]

However, there are still some markets in Indonesia that remain to sell meat that does not originate from livestock. One of them is the Tomohon Beriman Market which is quite famous in North Sulawesi Province. The Tomohon Beriman Market is quite famous for its uniqueness.[24] Tomohon market raises various pro and con arguments for selling a variety of wild animals Bushmeat. Several things are suspected to be the factors that trigger the illegal wildlife trade:

a. Lack of knowledge of sellers and traffic controllers about what wildlife is protected.[25]

The lack of knowledge about protected wild animals has been regulated in Government Regulation No. 7 the Year 1999. However, many wildlife traders are still clueless because of the lack of education and information, resulting in the supposed to be protected animals being traded for their meat. Therefore, supervisions from the border authorities are still not optimal due to the thought that Bushmeat is allowed to be consumed.[26]

b. Perception or belief that Bushmeat can cure disease.

Until now, some people in Indonesia still believe that Bushmeat can cure diseases when consumed. Cobras and Patola snakes are examples of meats that are considered to have the ability to cure diseases. Some say snakes are wild animals whose flesh may cure skin-related conditions such as itching.[27]

According to some people, the snakes' blood, bile, and marrow are believed to contain excellent benefits for health.[28] Bats are also one of the Bushmeats that is quite popular because they have a unique taste and are believed to cure asthma.[29] Lizard meat is also quite popular within the community. Usually, the monitor lizard's meat itself can be

[23] Amir, "Sodikin, Amir. 2021. "Desak Jokowi Setop Konsumsi Dan Jual Beli Daging Anjing Serta Satwa Liar."

[24] Liana and Witno, Op. Cit p.28

[25] Riky Ilhamsyah Diningrat, "Hukum Terhadap Tindak Pidana Perdagangan Satwa Liar Yang Dilindungi Menurut Undang-Undang Nomor 5 Tahun 1990 Tentang Konservasi Sumber Daya Alam Hayati Dan Ekosistemnya (Studi Kasus Terhadap Perdagangan Burung Paruh Enggang Di Provinsi Kalimantan," *Jurnal Nestor Magister Hukum* 2, no. 2 (2015): 1–15.

[26] Budhy Nurgianto, "Mengapa Satwa Dilindungi Masih Marak Dijual Di Pasar Beriman, Kota Tomohon," Ekuatorial, 2020, https://www.ekuatorial.com/2020/09/mengapa-satwa-dilindungi-marak-dijual-di-pasar-beriman-kota-temohon-conservation/.

[27] Ignasius Mirdat, Siti Masitoh Kartikawati, and Sarma Siahaan, "Jenis Satwa Liat Yang Diperdagangkan Sebagai Bahan Pangan Di Kota Pontianak," *Jurnal Hutan Lestari* 7, no. 1 (March 14, 2019), https://doi.org/10.26418/jhl.v7i1.31792..

[28] *Ibid.*

[29] Liana and Witno., op. cit, p. 32

served in the form of a soup-like Soto. Lizards are consumed to treat skin diseases, flu, and bites from venomous animals.[30]

Rodents are also one of the meats that the community of Tomohon Beriman Market loves to consume to treat itching and asthma.[31] Even dogs that are generally kept as pets are consumed because they are believed to be able to increase blood platelets when suffering from dengue fever.

c. The Natural Resources Conservation Center lacks officers to carry out animal conservation programs. [32]

The Natural Resources Conservation Center manages the area of Wildlife Reserves, Nature Reserves, Nature Tourism Parks, and Hunting Parks, as well as the conservation of wild plant and animal species both inside and outside the area.[33] However, it is regrettable that the duties carried out by the Natural Resources Conservation Center (BKSDA) in several regions of Indonesia are still scarce. As a result, the supervision of wild animals cannot be carried out optimally. [34]

d. The bushmeat trade is treated as means of supporting the life necessities.

Being a merchant is a job that brings a lot of profits. Wildlife traders sell a variety of Bushmeat to meet their needs because most of these merchants are the sole income for the family. Hence, selling Bushmeat is one of the jobs that can help them earn money to meet the needs of their family.

The presence of these types of markets evolving into businesses is based on the local community's trust. Locals believe that Bushmeat contains an excellent nutritional value and can cure various diseases.

2. Punishment Application Against Wild Animal Meat Sellers in Indonesian positive laws.

1) The Responsibilities of the Wildlife Merchants based on the perspective of Biological Resources and Their Ecosystems.

The prohibition of selling protected animals is clearly stated in the Law on Conservation of Biological Natural Resources and their Ecosystems in Article 21, paragraph 2, where there is a prohibition on trading protected wild animals. Criminal liability will also be imposed on the seller under Article 40 verse 2, resulting in imprisonment of a maximum of 5 (five) years and a maximum fine of Rp. 100,000,000 (one hundred million rupiah).

2) The Responsibilities of Wildlife Merchants based on the perspective of Consumer Protection.

Consumer protection may be used to combat the sale of Bushmeat, as the globe is currently dealing with an ongoing outbreak of the Covid-19 disease. This disease outbreak is thought to be a virus originating from wild animals traded in one of the markets in Wuhan. Even though these wildlife merchants are only selling and not consuming the Bushmeat, they are indirectly involved in causing the

[30] *Mirdat, Kartikawati, and Siahaan, Op.Cit, p. 289*

[31] Sahiu et al., op. cit, p 4

[32] Anggalih Bayu Muh. Kamim and Khandiq, "Rente Ekonomi Perdagangan Satwa Liar Dan Terpinggirkannya Kesejahteraan Hewan," *Jurnal Ekonomi Dan Kebijakan Public Indonesia* 7, no. 1 (2020): 54–76, https://doi.org/https://doi.org/https://doi.org/10.24815/ekapi.v7i1.17372.

[33] BKSDA, "Tugas Pokok Dan Fungsi BKSDA," 2015, https://bksdadki.com/page/tugas_pokok-dan-fungsi#:~:text=Fungsi Organisasi.-,Tugas Pokok Organisasi,baik didalam maupun diluar kawasan..

[34] Diningrat, op. cit, p. 9

Covid-19 disease outbreak and violating consumer protection.

Every consumer is entitled to legal protection in several laws:

a. Article 27 of the 1945 Constitution, Article 5 verse (1), Article 33, and Article 21 verse (1).
b. Circular Letter of the Director-General of Domestic Trade No. 235/DJPDN/VII/2001 concerning Handling of Consumer Complaints addressed to all Province/District/City Industry and Trade Offices.
c. Government Regulation Number 58 of 2001 concerning Supervision and Implementation of Consumer Protection.
d. Consumer Protection Act.
e. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.
f. Director-General of Domestic Trade Circular No. 795/DJPDN/SE/12/2005 concerning Guidelines for Consumer Complaint Services.

The existence of the Consumer Protection Law is intended to ensure and enforce the protection of consumer rights in Indonesia. However, it is regrettable that there are still no sanctions assertive enough to overcome this problem.

Consumers should be provided with protection, security, and safety based on the premise of consumer protection. To avoid infections or diseases, consumers have various rights that must be safeguarded. Therefore, merchants must pay attention to their merchandise and possess sufficient education and understanding about the commodities being marketed because consuming is defined as the process of eating something to obtain energy and advantages for the body.

However, if you consume something harmful and has a bad influence, it will almost certainly hurt consumers to death due to viral infection or diseases. Therefore, selling and consuming Bushmeat has violated several articles from the Consumer's Protection Law Article 4 letter A concerning protecting consumers' rights to obtain safety, security, and comfort in consuming goods and services.[35]

3) Bushmeat merchants' responsibilities are based on the perspective of the Criminal Law.

Bushmeat merchants may be categorized to have committed several criminal acts because they have indirectly participated in committing acts of abuse and acts of violence against animals. The definition of abuse is a deliberate act to cause pain or injury to another person.[36] Violence is using physical force by coercion against people or objects.[37]

So based on those two definitions, it is possible to conclude that animal abuse is an intentional act to cause pain to animals. Meanwhile, violence against animals is a physical act that forces animals. Carrying out wildlife trade activities is categorized as one of the

[35] I Made Bramastra De Putra, I Nyoman Gede Sugiartha, and I Putu Gede Seputra, "Pertanggungjawaban Pidana Terhadap Pelaku Penjualan Daging Anjing Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999," *Jurnal Interpretasi Hukum* 2, no. 2 (June 24, 2021): 409–15, https://doi.org/10.22225/juinhum.2.2.3450.409-415..

[36] Tirtaamidjaja, "Pokok-Pokok Hukum Pidana," in *Fasco*, 1955..

[37] Aletheia Rabbani, "Pengertian Kekerasan Menurut Para Ahli," 2017, https://www.sosiologi79.com/2017/04/pengertian-kekerasan-menurut-ahli.html..

activities of animal abuse which can be found in Articles 170, 302, and 406 of the Criminal Code concerning Crimes Against Violent Practices: including beatings, stabbing, strangulation, and animal disposal.

Article 170 of the Criminal Code regulates the prohibition of using violence against goods or objects, which, if done, will be punished with imprisonment for a maximum of 5 (five) years and 6 (six) months. Although Article 170 of the Criminal Code does not explicitly regulate the prohibition of violence against animals, they are certainly categorized as living goods or objects since animals are capable of experiencing pain as humans do.

Explicit arrangements can be found in Article 302 of the Criminal Code, which stipulates that even the slightest abuse may be subjected to a maximum imprisonment of 3 (three) months or a maximum fine of Rp. 4,500 (four thousand five hundred rupiah).

Furthermore, suppose the act disables the animal from walking and causes death to the animal. In that case, the individual responsible for causing such actions shall be sentenced to a maximum imprisonment of 9 (nine) months or a maximum fine of Rp. 300,000 (three hundred thousand rupiah) for animal abuse.

As reported from news.detik.com in 2018, a video taken by activists in Tomohon City showed dogs being beaten with clubs to death before being burned and sold to the consumers.[38] Sanctions of Rp. 4,500 and Rp. 300,000 are insignificant compared to what illegal wildlife dealers do because the meat of these wild creatures is taken in a brutal and inhumane manner, resulting in the death of the living being.

As a result, law enforcement officers should draft a new regulation regulating acts of animal cruelty and imposing severe penalties to deter such irresponsible individuals. If the sentences are mild, such merchants may repeat their misdeeds and are not concerned about the consequences.

These wildlife merchants may also be charged with Article 406 paragraph 2 of the Criminal Code for damaging, killing, and eliminating the lives of animals. As indicated in the background and examples above, several cases have demonstrated animal abuse. As a result, the wildlife trade is an animal cruelty crime due to the murder of living animals.

Conclusion

The act of wildlife trade violates several laws and regulations: Livestock and Animal Health Law, the Food Law, the Law on Conservation of Biological Natural Resources and Their Ecosystems, Government Regulation Number 7 of 1999 concerning Preservation of Plants and Animals, the Consumer Protection Law and the Criminal Code. The punishments for the violators of the Law may be subject to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000 (Article 40 Verse 2 of the Law on Conservation of Biological Natural Resources and Their Ecosystems) and maximum imprisonment of 3 (three) months or a maximum fine of Rp. 4,500 as regulated in Article 302 Verse 1, maximum imprisonment of 2 (two) years 8 (eight) months or a maximum penalty of Rp. 4,500 as stipulated in Article 406 Verse 1, and imprisonment of 5 (five) years 6 (six) months as specified in Article 170 Verse 1.

[38] Elza Astari Retaduari, "Video Anjing Dibakar Hidup-Hidup Di RI Jadi Sorotan Internasional," *Detik News*, January 25, 2018.

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Legal Protection Prospects toward General Practitioners in the Medical Specialist Study Program (PPDS) on Health Services through Third Party Insurance Institutions (Futuristic Review)

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ABSTRACT

Over the years, the relationship between doctor and patient has transformed. Initially, the relationship between doctors and patients was based on the principle of father knows best. In other words, doctors knew what was best for the patient, so the relationship that existed between the two was a paternalistic relationship, in which the relationship between doctors and patients was not equal, considering the control and the decision on the patient's treatment is in the hands of the doctor. The patient is subject to the power of the doctor. The relationship between doctor and patient today is more partnership; they have the same position. Changes in the pattern of doctor-patient relationships and the increasing public awareness of their lead rights cause people not to remain silent if there is an error or alleged negligence due to the doctor's actions, leading to the emergence of demands from the patient and/or patient's family. Doctors must work very carefully because they are vulnerable to lawsuits, and medical services are handled by doctors who take specialist programs (PPDS). Lawsuits proposed to doctors can also be submitted to PPDS because PPDS also carries out medical services the same as doctors in charge of medical. One of the demands that can befall the PPDS doctor is a civil lawsuit. Therefore, insurance can be used as a risk transfer institution to overcome this problem. This study focuses on how the legal protection of PPDS doctors in carrying out medical practice services and whether the responsibility of the PPDS doctor in resolving claims against medical services can be transferred to the insurance company. This study uses a normative juridical approach and descriptive-analytical method, which focuses on efforts to find the juridical basis for the use of insurance institutions in protecting PPDS doctors when carrying out medical practice services. The study results show that Indonesia does not have a law that explicitly regulates the transfer of legal responsibility for the medical actions of PPDS doctors to patients through insurance institutions. The responsibility of PPDS doctors in carrying out medical practice services can be transferred to insurance institutions as long as within the scope of the claim for compensation (civil).

Keyword*: Doctor's Profession; PPDS; Medical treatment; dare to take risks; Coverage*

ABSTRAK

Seiring perkembangan zaman, hubungan antara dokter dan pasien mengalami transformasi dari paternalistic ke partnership memiliki kedudukan sejajar. Bila terdapat dugaan adanya kelalaian pasien atau keluarga dapat melakukan penuntutan. Dokter dituntut bekerja sangat hati – hati karena rentan gugatan, tetapi bagaimana bila pelayanan tersebut dilakukan oleh dokter PPDS (program pendidikan dokter spesialis). Tuntutan juga dapat mengenai PPDS karena secara umum yang dilakukan oleh dokter dilakukan oleh PPDS. Salah satu tuntutan dokter PPDS adalah gugatan keperdataan. Untuk mengatasi persoalan ini dapat mengunakan asuransi sebagai lembaga peralihan risiko. Penelitian difokuskan bagaimana perlindungan hukum dokter PPDS dalam menjalankan pelayanan medik dan apakah tangung jawab dokter PPDS dalam menjalankan pelayanan medik dapat dialihkan pada pihak ketiga (asuransi). Penelitian ini menggunakan metode pendekatan yuridis normatif dan metode deskriptif analitis, yaitu memfokuskan pada upaya menemukan dasar yuridis digunakannya lembaga asuransi dalam melindungi dokter PPDS saat menjalankan pelayanan medik. Hasil penelitian menunjukan bahwa sampai saat ini di Indonesia belum memiliki Undang-undang secara eksplisit mengatur mengenai pengalihan tanggung jawab hukum tindakan medik dokter PPDS terhadap pasien melalui lembaga asuransi serta tanggung jawab dokter PPDS menjalankan pelayanan medik dialihkan pada lembaga asuransi sepanjang dalam ringkup gugatan ganti kerugian (keperdataan)

Kata Kunci: *Profesi Dokter; PPDS; Tindakan Medis; Pengalihan risiko; Asuransi*

Introduction

Health is a human right, meaning that everyone has the same rights in obtaining access to health services. The doctor-patient relationship is a professional (doctor) and client (patient) relationship. This relationship underlies all aspects of medical practice, both in establishing a diagnosis and in managing patients. If the patient has decided to choose a doctor to treat his medical problems, it means that the patient completely surrenders the management of his disease and believes that the doctor will not act without his consent.

The relationship is called paternalistic. The current paternalistic relationship has shifted towards a partnership relationship between the patient and the doctor who has an equal position.[1] This relationship gives rise to rights and obligations in the field of health services which creates a legal relationship on both sides.

What is meant by a legal relationship (*rechtsbetrekking*) is a relationship between two or more legal subjects or between legal subjects and legal objects that apply under the rule of law, or are regulated / exist in law and have legal consequences. The legal relationship between the two legal subjects' forms rights and obligations.[2]

There is increasing awareness of the right to national health care and expectations for monetary compensation, doubts for malpractice, distrust of doctors, and the absence of rational steps to deal with medical disputes.[3] Allegations of negligence are a form of problem in public health services. This problem involves two things, firstly due to allegations of negligence on the patient's health and secondly compensation that is often not in accordance with patient expectations. As an example of a malpractice case at a leading hospital in Tangerang City with suspicion of having malpractice 17 cataract patients, when the operation failed and caused blindness.

After the operation they developed an infection and had to have their eyes removed. It is known that RS M offered compensation for this alleged malpractice of Rp. 170 million which was not in accordance with the patient's demands.[4]

A doctor in his profession there are three responsibilities. First, official law. Second, civil law and third, criminal law responsibility. "The doctor's responsibility towards the patient according to civil law arises based on two things, namely:[5]

1. As a result of the existence of a contractual relationship between the patient and the doctor, where both have agreed on their respective rights and obligations. In this case, the doctor is obliged to strive so that the patient can recover from the illness he is suffering from and is entitled to payment as an honorarium. Meanwhile, the patient is obliged to pay for the services of a doctor and is entitled to the care and treatment provided by the doctor in order to return to health. This responsibility arises if the doctor defaults on the patient and for that default, causes harm to the patient.

[1] ManojChandra Mathur, "Professional Medical Indemnity Insurance - Protection for the Experts, by the Experts," *Indian Journal of Ophthalmology* 68, no. 1 (2020): 3, https://doi.org/10.4103/ijo.IJO_2279_19.

[2] Andi Hamzah, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 1997).

[3] (Eun-Mi Yang, Ji-Hee Kim, Soo-Myung Bae, Jong Hwa Yum and Hye Jin Kim, "*A Study on the Medical Dispute Experience and Educational Needs of Dental Hygienists According to Expansion of Health Insurance Coverage for Dental Treatment*", International Journal of Bio-Science and Bio-Technology, Vol. 6, No. 6, 2014, P 129.
Eun-Mi Yang, et all 2014)

[4] Bimo Aria Fundrika, "Pasien Katarak Buta Karena Dugaan Malpraktik, RS Mulya Tanggerang Digeruduk," *Suarajakarta.Id*, 2020.

[5] R. Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: PT. Intermasa, 1993). P 123

2. Liability arising from the law due to the actions of someone who violates the law (Article 1365 of the Civil Code), where every unlawful act requires paying losses, if due to his fault there has been a loss to another person.

These conflicts of interest have led to conflicts/disputes as well as allegations of criminal and civil acts in medical practice which have subsequently entered the realm of law, both civil and criminal. Regarding civil lawsuits against doctors, namely default or unlawful acts (*onrechtmatige daad*). This fact is a fact that cannot be put down those doctors are vulnerable to legal proceedings without seeing the real problem.[6]

What if the surgery was carried out by a PPDS doctor and got a lawsuit for the money? Insurance is an alternative transfer of risk or loss that a person may suffer, such as: death, illness, accident, and damage or destruction of his property either partially or completely due to an uncertain cause.

The doctor's responsibility arises when there is a lawsuit filed by the patient against the doctor to claim compensation for a negligence by the doctor in carrying out his obligations that are not in accordance with medical professional standards, causing harm and violating the patient's rights. To relieve the responsibility of the doctor in relation to the risks he carries and carrying out his professional duties, it can be done by transferring the risk to another party. Such an agreement is referred to as an insurance agreement for coverage.[7]

The insurance company or insurer provides medical professional liability insurance, where the doctor can transfer all risks of a patient's lawsuit against him to the insurer by paying a certain premium, and the insurer provides compensation to the patient who filed the lawsuit (if found guilty by the insurer). judge)[8].

To ensure that the economic value of a person and their property is guaranteed and protected from risks as a result of uncertain events, the person concerned can insure these risks to an insurance company as an alternative. right to take the risk.[9] Can this type of insurance be used in resolving medical disputes that befell the PPDS doctor?

Insurance is currently growing rapidly accompanied by quantity and quality in medical dispute resolution. Rights and interests occur because of a legal relationship between the parties contained in a written contract agreement called an insurance policy.[10] The potential for lawsuits filed by patients against doctors and PPDS is increasing along with the increase in patient understanding of their rights.

As was the case in 2010 the alleged medical error by a final resident in Manado involved three midwifery resident doctors, each dr. Dewa Ayu Sasiary Prawani, dr. Hendry Simanjuntak and dr. Hendry Siagian who was jointly accused of negligence which resulted in the death of another person. Manado District Court Decision No.

[6] Efa Laela Fakhriah Yussy Adelina Mannasa, "Legal Protection of Doctors as Health Services Providers: Implementing the Balance Principle in Indonesia," *International Journal of Innovation, Creativity and Change* 10, no. 5 (2019), www.ijicc.net.

[7] Sri Rejeki Hartono, *Hukum Asuransi Dan Perusahaan Asuransi*, 4th ed. (Jakarta: Sinar Grafika, 2001). P 15

[8] Wirjono Prodjodikoro, *Hukum Asuransi Di Indonesia*, 9th ed. (Jakarta: Intermasa, 1991). P 43-44

[9] Febrina Lorence Sitepu, "Legal Review Doctor's Professional Liability Insurance To Patients," *Journal of Law Science* 2, no. 1 (January 30, 2020): 34–42, https://doi.org/10.35335/jls.v2i1.1613.

[10] Ni Putu Ayu Myra Gerhana Putri, "Asas Proporsionalitas Dalam Pembayaran Ganti Rugi Melalui Asuransi Dalam Kasus Malpraktik Dokter," 2019.

90/Pid.B/2011/PN.MDO said that the three doctors were not legally and convincingly proven guilty of committing the crime that they were charged with.

The decision of the Manado District Court acquitted them of the charges. Decision of the Supreme Court of the Republic of Indonesia No. 365 K/Pid/2012 stated that the three doctors were legally and convincingly proven guilty of committing a criminal act because their negligence caused the death of another person.

The Supreme Court of the Republic of Indonesia imposed a prison sentence of 10 (ten) months. The three doctors submitted a judicial review to the Supreme Court of the Republic of Indonesia and in the judicial review decision no. 79 PK/Pid/2013 stated that the three doctors were not proven guilty and gave their acquittal.[11]

In addition, the similar characteristics of medical services carried out by PPDS are also carried out by the doctor in charge if it is suspected that he has committed an act of negligence or malpractice becomes a legal subject and can be prosecuted.

The relationship between a doctor and a patient in a medical practice, there is a relationship between a doctor and a patient known as a therapeutic relationship, which is a legal relationship because it is carried out by legal subjects and has legal consequences. By paying attention to the existence of a lawsuit against PPDS so that the author is interested in writing about the protection of PPDS doctors against risk transfer against alleged negligence or negligence

malpractice can be transferred by the doctor as the insured with the insurance company and focus on efforts to find the juridical basis for the use of insurance institutions in protecting PPDS doctors when carrying out medical practice services.

Methodology

This study uses a normative juridical approach, namely focusing on efforts to find the juridical basis for the use of insurance institutions in protecting PPDS doctors when carrying out medical practice services, while descriptive analysis is directed at efforts to describe problems that arise related to the potential use of insurance as a risk transfer institution for PPDS doctors when carrying out their duties. Furthermore, the results of the description will be analyzed to find solutions to problems that arise.

Discussion

From a sociological-juridical point of view, the position of the doctor is higher than that of the patient. Doctors can be said to have dominance in terms of health and in general patients believe in the abilities and skills of doctors so that almost all decisions are in the hands of doctors. This is due to: (1) Patient's trust in the doctor's abilities and expertise. (2) the patient's familiarity with the medical profession. (3) solidarity among medical colleagues and isolation towards other professions.[12]

The existence of medical ethics that applies to medical practice is inseparable from morals. According to the British Medical Association (BMA), "medical ethics" or EM is "the application of ethical reasoning to medical decision making". EM is a rich and varied discipline often involving calls for different perspectives and principles of terms with different types of information and guidance. EM is concerned with

[11] Yussy A. Mannas, "Penerapan Asas Keseimbangan Dalam Perlindungan Hukum Terhadap Dokter Sebagai Pemberi Jasa Pelayanan Kesehatan Menuju Pembaharuan Hukum Kesehatan Nasional," in *Disertasi Pada Program Pasca Sarjana Fakultas Hukum Universitas Padjadjaran*, n.d.

[12] Soerjono Soekanto, *Aspek Hukum Kesehatan (Suatu Kumpulan Catatan),* (Jakarta: IND-HILL-CO, 1989). P 149

critical reflection on norms or values, good or bad, right or wrong, and what ought to be done or not done.[13]

Medical ethics is used to refer to the subject of the traditional view as "the standards of professional competence and conduct which the medical profession expects of its members". The rapid development of health and information technology in society, has an influence on the perspective of the dominant relationship between doctors and patients, which is slowly changing.

Because trust is no longer focused on doctors personally, but on the ability of health science and technology. The duty of doctors is not only to heal but also to treat, people say that being healthy is not just a state of being without illness but more about physical, mental and social well-being.

The number of legal protections for patients so that patients increasingly know and understand their rights in relationships with doctors. Thus, in providing services and efforts to help patients, doctors have legal responsibilities. These legal responsibilities can follow professional responsibilities. The basic objective of universal law enforcement in cases of medical disputes between doctors and patients includes also covering professional responsibilities in law enforcement.

Seeing some of the legislation above, doctors or other health workers in carrying out their duties are full of risks,[14] because the possibility of disabled patients and even death after being treated by doctors or staff can occur, even though doctors have performed their duties in accordance with Professional Standards, Standard Operating Procedures (SOP). SOP) and/or good Medical Service Standards. This kind of situation should be called a medical risk, and this risk is sometimes interpreted by parties outside the medical profession as medical malpractice.[15]

The legal protection of the medical profession includes three legal dimensions, namely administrative, civil and criminal. In the event that a doctor is suspected of committing malpractice, the administrative dimension is placed as a premium ultimatum.

Handling is passed through a medical code of ethics trial. If the doctor works in accordance with the SPK, SOP and IC are communicative, then the Honorary Magistrate of Medical Ethics (MKEK) must declare that the doctor is innocent.

However, if the MKEK declares guilt, it will be sued in a civil manner. If the doctor does not carry out his duties according to the SPK, SOP and IC, then the violation meets the elements of a criminal act, as stipulated in Article 359, Article 361 jo. Article 55 paragraph (1) of the Criminal Code and Article 76 of Law No. 29 of 2004 concerning medical practice.

Doctors can also be charged with criminal penalties if they are suspected of committing gross violations, such as falsifying practice licenses, selling organs, abortion and so on. The trial process at MKEK did not stop the patient's lawsuit from being civil or criminal.

The role of resident/PPDS doctors as participants in specialist doctor education is to carry out education through the process of serving patients in main teaching hospitals and network

[13] British Medical Association, *Medical Ethics Today The BMA's Handbook Of Ethics And Law*, Second edi (London: British Ethics Departement, 2004). P 3

[14] Joe Hannan, *Residents Can Be Sued, Too: Experts Offer Mitigation Strategies*, June 7, 2022 https://www.mdlinx.com/article/residents-can-be-sued-too-experts-offer-mitigation-strategies/5NIS24wclLLlYEAUbegQAE

[15] Syahrul Machmud., *Penegakan Hukum Dan Perlindungan Hukum Bagi Dokter Yang Diduga Melakukan Medikal Malpraktek* (Bandung: CV. Mandar Maju, 2008). P 1

hospitals.[16] Although the resident/PPDS plays a major role in providing health services, the service process is part of the education process.

In the education process, residents receive multilevel supervision from specialist consultant doctors at teaching hospitals. The consultant specialist doctor is the Patient Responsible Doctor (DPJP) so that all responsibilities including legal responsibility will be in the hands of the hospital and the DPJP.

Resident Competency Certificate is written evidence issued by the head of the collegium or head of the study program on behalf of the head of the collegium of each specialist field which explains that the Specialist Doctor Education Participant/Special Dentist Education Participant has completed certain stages of education and has competence in understanding or implementing certain medical procedures.

On the other hand, the independent stage resident can be given full responsibility in managing the patient according to the assignment he received from the hospital clinical appointment.[17]

1) Rights and Obligations of PPDS in Health Services

Doctors participating in residens/PPDS in their education have two roles, namely as students as well as providers of health services in hospitals. The rights and obligations of PPDS doctors in health services are greatly influenced by the position of PPDS doctors in teaching hospitals. PPDS doctors in carrying out their education make a major contribution to health services in hospitals. The duty of the PPDS doctor is to study and provide health services. In relation to the resident's role as a health service provider, the resident should also have the right to legal protection.[18]

Different perceptions of criminal law consider that negligence is an individual error, but in the context of saving patients, negligence or negligence is a team error or a system error. Technically, knowing the level of errors made by doctors, especially PPDS doctors who work in a team or in supervising the implementation of medical actions if they are suspected of having committed medical negligence, is to conduct a medicolegal analysis.

A medico-legal audit is needed to find medico-legal problems that may occur and become the responsibility of the hospital so as to prevent negligence by medical personnel. The implementation of a medicolegal audit is carried out as an implementation of the medical management function in improving medical governance.[19]

Medicolegal analysis is carried out by a Medicolegal Team from a third party, namely an insurance company or a designated audit team consisting of doctors who are experienced in their fields. The analysis carried out by the Medicolegal Team in malpractice cases is as follows:[20] (1) In-depth medicolegal analysis to obtain the real cause of the

[16] Zhao B, Cajas-Monson LC, Ramamoorthy S. Malpractice allegations: A reality check for resident physicians. American Journal of Surgery. 2019;217(2):350-355.

[17] Myers LC, Gartland RM, Skillings J, et al. An examination of medical malpractice claims involving physician trainees. Academic Medicine. 2020;95(8):1215-1222.

[18] Regina A. Bailey, MD, JD, *Resident Liability in Medical Malpractice*, American College of Emergency Physicians. http://dx.doi.org/10.1016/j.annemergmed.2012.04.024

[19] Fitrianti Yulia Mia, "Peranan Audit Medikolegal Dalam Pelayanan Medis: Studi Pada Kematian Pasien Dengan Fraktur Tulang Panjang Di RSUP Dr. Hasan Sadikin Bandung Periode Tahun 2016 – 2020." (Fakultas Kedokteran Universitas Padjadjaran., 2021).

[20] Ni Putu Ayu Myra Gerhana Putri, "Asas Proporsionalitas Dalam Pembayaran Ganti Rugi Melalui Asuransi Dalam Kasus Malpraktik Dokter," 2019.

problem in terms of professional discipline; (2) Analysis of the cost-effectiveness of dispute resolution; (3) Analysis of lessons learned and risk management to prevent similar events in the future; (4) Determine the steps (contingency plans). This step is very individual and varies; (5) The medicolegal team concludes their opinion orally (and will then publish a written opinion which includes: material facts, considerations and conclusions about the things above).

When an error occurs in hospital management, it can be classified in various levels:[21] (1) patients and society: namely the failure in the relationship between the patient and the doctor, in this case there is no administrative sanction for the doctor who fails to establish a relationship, (2) micro system: no DPJP responsibility in teaching hospitals; (3) organization: no SIP, no anesthesiologist in surgery, no hospital staff to assist with the implementation of informed consent (4) environment:

The Health Office does not monitor the quality of hospital services, does not provide PPDS SIP, does not see a resident work monitoring system by FK and Hospital, the FK does not protect PPDS which are members. In the case of 3 resident doctors who received a lawsuit alleging malpractice caused the death of the victim, the Supreme Court's decision to punish three resident doctors in the main teaching hospital shows that the resident is the weakest party, and this position can be even weaker if it occurs in an educational network hospital.

On that basis, it is necessary to have a policy to strengthen legal protection for resident doctors, especially in educational network hospitals and transfer accountability to the insurance company.

Hospitals are considered as social institutions with impunity based on the doctrine of charitable immunity, because of their consideration, punishing hospitals to pay compensation is tantamount to reducing their assets, which in turn will reduce their ability to help the community at large. This paradigm shift occurred since the case of Darling vs. Charleston Community Memorial Hospital (1965), which was the first case that equated hospital institutions as persons (legal subjects) so that they could therefore be targeted for lawsuits for their performance that was detrimental to patients.

The considerations are, among other things, because many hospitals are starting to forget their social functions and are managed like an industry with modern management, complete with risk management and with such risk management, it is appropriate for hospitals to start placing claims for compensation as a form of business risk and take it into account for the risk itself (risk financing retention) or will be transferred to insurance companies (risk financing transfers) through a malpractice insurance program.[22]

If there is a lawsuit for the actions taken by the doctor, the insurance company will replace all the costs of the loss. Provision of loss costs is not only carried out after a permanent judge's decision is made. Even the granting of this loss can be done if there is a settlement outside the law, in other words if the two parties make peace with each other.

This protection includes the protection of doctors and patients. With insurance as a third party doctors and PPDS doctors will work more calmly because the insurance party will provide legal protection. Without insurance, if a doctor is claimed, he will use his personal

[21] Adnan Murya dan Urip Sucipto, Etika dan Tanggung Jawab Profesi, Deepublish, Yogyakarta, 2019, P. 85.

[22] "'Malpraktik Dan Tanggung Jawab Korporasi'," n.d.

property to replace all losses and his position will be difficult in court. The insurer's role here is because it can represent the client accused of malpractice, and can provide legal assistance.

2) Legal Aspects that can be imposed on residents as legal subjects

One of the examples raised by PPDS received a lawsuit with allegations of negligence causing death which was found guilty by the Supreme Court (MA). The basis for the Supreme Court's cassation decision is Article 359 of the Criminal Code concerning negligence. From the perspective of criminal law, Article 359 of the Criminal Code "...whoever, because of his negligence, causes another person to die and is threatened with imprisonment for a maximum of 5 years or 1 year in prison..." indicates that the word "whoever" refers to a person/human who is not a business entity or corporation (in this case the hospital).

However, to prove the existence of negligence that caused death, there must be evidence that the defendant committed an act that was not in accordance with his authority and or the defendant did an act that was not in accordance with the procedure, where the action caused death.

The quality of health services based on international declarations on human rights and social welfare (UN Charter 1945 and UDHR 1948) was developed on the occasion of the "Declaration of Helsinki 1964" which was later refined or updated by the results of the congress "The 29th of World Medical Assembly, Tokyo 1975" and later known as New Helsinki 1976. One of the results of the 1976 New Helsinki declaration that became very important was "The health of my patient will be my first consideration".[23]

All health efforts and health facilities, including hospital health services, must carry the 1976 New Helsinki health doctrine. Referring to the developments for the quality of health services (PSRO and JCOAHC) above, it means that hospitals since 1964/1975/1976 must implement the basic philosophy of law and doctrine. development of "Professional Standards and Accreditation of Health Services".

The legal philosophy and doctrine of health care in hospitals later became an international agreement, as contained in the 1964 Declaration of Helsinki (I), the 1975 WMA Tokyo, and Helsinki (II) 1976 which were rooted in the 1945 United Nations Charter and the 1948 UHDR.

"Hospital Patient's Charter, 1979 Regarding the relationship between patients and doctors or hospitals, it includes three moral norms: respecting patient rights, professional standards, and social functions or responsibilities for health services, especially health services in hospitals.[24]

Health services are realized in the form of organizing medical practice. Regarding Medical Practice, it is regulated in Law Number 24 of 2009 concerning Medical Practice (hereinafter referred to as the Medical Practice Law), where Article 1 number 1 states that medical practice is a series of activities carried out by doctors and dentists for patients in carrying out health efforts.

The implementation of medical practice consists of several interrelated components such as health facilities, the medical profession and patients. Medical practice is carried out for the benefit of the patient. Doctors and patients have equal status with binding rights and obligations. The obligation in question is

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[23] Nusye KI Jayanti, *Penyelesaian Hukum Dalam Malapraktik Kedokteran* (Yogyakarta: Pustaka Yustisia, 2009). P 57-58

[24] Nusye KI Jayanti.P 59-60

dealing with professional doctors and patients in accordance with the norms of the medical profession.[25]

Based on this research, the following results were obtained: First, Indonesia does not yet have a law that explicitly regulates the transfer of legal responsibility for medical actions of doctors against patients to insurance companies. The provisions that become the legal umbrella are only Minister of Health Regulation No. 755/MENKES/PER/IV/2011 concerning the Organization of Medical Committees in Hospitals, number 12 point D which lacks coercive power. Law Number 24 Year 2009 concerning Medical Practice and Medical Education Law.

3). Efforts to Strengthen Legal Protection for Resident Doctors and Insurance

Before the author explains about the potential use of insurance institutions to protect PPDS doctors in carrying out their duties as well as the protection provided to doctors, first of all, the legality of PPDS in carrying out medical services will be described. This is important as a basis for reference in providing an overview that PPDS doctors have the same responsibilities as doctors. As for the basis of legality, among others:

a. The hospital where the PPDS doctor is assigned must ensure that all doctors sent are equipped with a Resident Competency Certificate from their respective KPS (according to Permenkes No. 2052 of 2011 concerning Practice Permits and Implementation of Medical Practices Article 3 paragraph (4) and Article 12 paragraph (3) and Permenkes No. 9 of 2013 concerning Special Assignments for Health Workers Article 15) Resident's Certificate must contain a list of competencies possessed.
b. Dokter residen yang bertugas di RS Partner or local must bring a Registration Certificate (STR), IDl Membership Card (KTA) or IDl Certificate.
c. The local District Health Office must issue a Practice Permit (SIP) for all resident doctors on duty at Mitra B Hospital according to the assignment period (in accordance with Permenkes No. 2052 of 2011 concerning Practice Permits and Implementation of Medical Practices Article 3 paragraph (4); and Permenkes No. 9 of 2013 concerning Special Assignments for Health Workers Article 15), SIP management must be assisted by Mitra B Hospital
d. Mitra B Hospital must issue a Director's Decree regarding Clinical Assignments (clinical appointments) for all resident doctors on duty after the Medical Committee of Mitra B Hospital conducts the credentialing process (in accordance with Minister of Health Regulation No. 755 of 2011 concerning the Organization of Medical Committees in Hospitals Article 3).
e. Mitra B Hospital must stipulate that resident doctors act as DPJP for cases according to their competence. If the case is beyond competence and is not an emergency condition, the resident doctor needs to refer to another hospital or ask a consultant who handles it directly..
f. Mitra B Hospital must prepare all Standard Operating Procedures (SPO) for all types of diseases/cases that will be handled by resident doctors (in accordance with Minister of Health Regulation 1438 of 2010 concerning Medical Service Standards). The SOP must be specially prepared for Mitra B

[25] Chrisdiono M. Achadiat, *Bunga Rampai Hukum Kedokteran (Tinjauan Dari Berbagai Peraturan Perundangan Dan UU Praktik Kedokteran)* (Jakarta: EGC, 2007). P 3

Hospital, not just using the SOP owned by Mitra A Hospital. It is hoped that Mitra A Hospital can assist the process of preparing the SOP.

g. The resident doctor on duty must comply with the SPO from Mitra B Hospital and complete the required documents, especially the completeness of the medical record including notes if there are actions outside of the SPO (according to the rules in Permenkes 1438 concerning Medical Service Standards 2010 article 13)
h. Mitra B Hospital is obliged to protect and provide legal assistance for resident doctors on duty in the form of providing legal advice and funds (in accordance with Law 44 of 2009 concerning Hospitals article 29)
i. The local government needs to develop a mediation mechanism in the case of a resident case involving the support of Mitra A Hospital and Mitra B Hospital, DPRD and professional organizations at the provincial and district levels
j. Mitra B Hospital is required to carry out patient safety and risk management programs

Taking into account the description above, of course, the obligations of PPDS in carrying out medical service duties have similarities with doctors. The juridical consequence of this same obligation is that the rights attached to the PPDS doctor are actually the same as the rights of a doctor.

One of the rights attached to doctors is the right to obtain legal protection as regulated in Article 50 of Law no. 29 of 2004 concerning the practice of medicine, namely that doctors obtain legal protection as long as they carry out their duties in accordance with professional standards and standard operating procedures. Second, article 27 of Law no. 36 of 2009 concerning health, namely that health workers are entitled to compensation and legal protection in carrying out their duties in accordance with their profession and the third article 24 of PP No. 32 of 1996 namely legal protection is given to health workers who carry out their duties in accordance with professional standards of health workers whose rights are to obtain legal protection is manifested in the form of providing protection through insurance institutions.

As stipulated in the Regulation of the Minister of Health of the Republic of Indonesia No. 755/MENKES/PER/IV/2011 concerning the Organization of Medical Committees in Hospitals, among others, states that "Doctors have Professional Indemnity Insurance. Another thing that allows the provision of insurance to the medical service provider profession is implicitly mandated by Law Number 44/2009 Article 46, "Hospitals are legally responsible for all losses incurred due to negligence committed by health workers in hospitals".

In comparison, in the United States the obligation to have a protective instrument in the form of insurance is also given to medical students, either in the form of elective clinical, rotation or just observing, considering that medical students are also possible to make demands from patients and or their families.

Therefore, by considering the similarity of responsibilities borne by PPDS doctors in carrying out health services, it is necessary to have a risk transfer institution in the form of professional compensation insurance that can provide protection and manage medical risks. This insurance provides protection for disputed liabilities resulting in injury or death of the patient

Conclusion

Until now, Indonesia does not have a law that explicitly regulates the transfer of legal responsibility for the medical actions of PPDS doctors to patients through insurance institutions and the responsibility of PPDS doctors in carrying out medical practice services can be transferred to insurance institutions as long as they are within the scope of a claim for compensation. (civil).

Therefore, it is recommended that legislation be established as the legal basis for providing legal protection through insurance institutions to PPDS doctors when performing medical services. There needs to be a common understanding that doctors who provide services and doctors of PPDS have the same rights and obligations as doctors

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Authority of Revocation of Mining Business Permits in the Perspective of Administrative Law Towards Good and Environmentally Friendly Mining Governance

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ABSTRACT

The President's authority to revoke thousands of mineral and coal Mining Business Permits (IUPs) is part of the efforts of a Good & Environmentally Friendly Mining Governance system. In the management of natural resources, aspects of environmental sustainability are needed. The research method used is normative juridical, with qualitative data analysis techniques. The results of this study are: first, the mechanism for revocation of IUP through a comprehensive evaluation from planning to post-mining activities, based on administrative, technical, environmental, and financial evaluations. The criteria for IUPs to be revoked are IUPs that do not submit Work Plan and Cost Budget reports, IUPs that are not operating, and IUPs that do not carry out post-mining reclamation obligations, and do not carry out environmental management. Second, the revocation of an IUP has three implications, namely juridical implications, namely policies for regulating and improving the mining governance system. The sociological implications are getting the social carrying capacity of the community and access to natural resource management rights. Finally, the implications of environmental insight, as a global commitment to implementing sustainable development principles, are integrated into the mining business activity licensing system.

Keywords: *Mining, Revocation, Environment*

ABSTRAK

Kewenangan Presiden untuk mencabut ribuan Izin Usaha Pertambangan (IUP) mineral dan batubara merupakan bagian dari upaya sistem tata kelola pertambangan yang baik & ramah lingkungan. Dalam pengelolaan sumber daya alam, aspek kelestarian lingkungan sangat diperlukan. Metode penelitian yang digunakan adalah yuridis normatif, dengan teknik analisis data kualitatif. Hasil penelitian ini adalah: pertama, mekanisme pencabutan IUP melalui evaluasi menyeluruh mulai dari perencanaan hingga kegiatan pascatambang, berdasarkan evaluasi administratif, teknis, lingkungan, dan keuangan. Kriteria IUP yang dicabut adalah IUP yang tidak menyampaikan laporan Rencana Kerja dan Anggaran Biaya, IUP yang tidak beroperasi, dan IUP yang tidak melaksanakan kewajiban reklamasi pascatambang, serta tidak melakukan pengelolaan lingkungan. Kedua, pencabutan IUP memiliki tiga implikasi, yaitu implikasi yuridis, yaitu kebijakan pengaturan dan penyempurnaan sistem tata kelola pertambangan. Implikasi sosiologisnya adalah mendapatkan daya dukung sosial masyarakat dan akses terhadap hak pengelolaan sumber daya alam. Terakhir, implikasi wawasan lingkungan, sebagai komitmen global untuk menerapkan prinsip pembangunan berkelanjutan, diintegrasikan ke dalam sistem perizinan kegiatan usaha pertambangan.

Kata Kunci: *Pertambangan, Pencabutan, Lingkungan*

Introduction

President Jokowi's policy in early January 2022 announced to revoke 2,078 mineral and coal Mining Business Permits (Indonesian: Izin Usaha Pertambangan/IUP) because the holders of these thousands of IUPs never submitted work plans, various permits that had been granted for years but were not carried out, causing obstacles in the use of natural resources to improve people's welfare.

The President said that the government continues to improve natural resource management so that it is equitable, transparent, and fair to correct injustices and natural damage.[1]Forestry mining permits, as well as state land use, continue to be thoroughly evaluated. Permits that are not executed, are not productive, are transferred to other parties, and are not by the designation and regulations, will be revoked.

Efforts to make improvements to natural resource governance are necessary to overcome the increasingly threatening environmental crisis, while at the same time ensuring the realization of sustainable development. For this reason, new perspectives in national development need to be developed without compromising environmental aspects and community welfare.[2]

Every business and activity basically has an impact on the environment that needs to be analysed from the beginning of its planning, so that negative impact control measures. Every mine must be destructive like, there are open pits and closed mines.[3] Underground mining is the process of extracting a type of mining goods by making wells or tunnels into rock layers due to the location of the mines far from the earth's surface. Meanwhile, open-pit mining (surface mining) is a mining method where all mining activities are carried out above the earth's surface.

The President ordered the Ministry of Energy and Mineral Resources (ESDM), State-Owned Enterprises (BUMN), and State Electricity Company (PLN) to find the best solution for the national interest. For example, in the context of coal supply, there needs to be a priority scale with the fulfilment of domestic needs for PLN and industry. In addition to the coal mining sector, there is also the plantation sector and other natural resource management by prioritizing domestic needs, before exporting.

This is a necessity for the welfare of the community through private companies, BUMN, and their subsidiaries engaged in various sectors in the management of natural resources.

The central government's policy to revoke Mining Business Permits (IUPs) is based on changes to the provisions of Article 119 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, that an IUP or IUPK (Indonesian: Izin Usaha Pertambangan Khusus) can be revoked by the Minister if a. the IUP or

[1] CNBC Indonesia, "Jokowi Untung 2078 Izin Usaha Pertambangan," CNBC Indonesia, 2022, https://www.cnbcindonesia.com/news/20220106131609-4-305137/breaking-news-jokowi-untung-2078-izin-usaha-pertambangan. accessed on March 18, 2022.

[2] Deonisia Arlinta, "Tata Kelola SDA Penting Untuk Kelestarian Lingkungan Dan Kesejahteraan Rakyat," *Kompas*, January 20, 2011, https://www.kompas.id/baca/utama/2020/01/11/tata-kelola-sda-penting-untuk-kelestarian-lingungan-dan-kesejahteraan-rakyat., accessed on March 26, 2022.

[3] Syarifah Rahmatillah and Tasbi Husen, "Penyalahgunaan Pengelolaan Pertambangan Terhadap Kerusakan Lingkungan Hidup Di Kecamatan Kluet Tengah," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 7, no. 1 (December 4, 2018): 149–52, https://doi.org/10.22373/legitimasi.v7i1.3969.

IUPK holder does not fulfil the obligations stipulated in the IUP or IUPK as well as the provisions of laws and regulations; b. the holder of an IUP or IUPK commits a crime as referred to in this Law; or c. IUP or IUPK holders are declared bankrupt.

In addition to administrative sanctions in the form of revocation of IUP or IUPK, criminal sanctions are also imposed for IUP/IUPK that have been revoked or expired and do not carry out reclamation and post-mining obligations, placement of reclamation and post-mining guarantee funds, can be sentenced to imprisonment for a maximum of 5 (five) year or a fine of Rp. 100,000,000,000.00 (one hundred billion rupiah). This is by the provisions of Article 161B paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

The author observes that the pattern of regulation in the Mineral and Coal Mining Law (Undang-Undang Pertambangan Mineral dan Batubara) and the Job Creation Act (Undang-Undang Cipta Kerja), in the mineral and coal mining cluster, is more dominated by the imposition of administrative sanctions.

According to Wicipto Setiadi, there are several purposes for including and implementing the provisions of sanctions in-laws and regulations, including administrative sanctions.[4] *First*, as an effort to enforce the provisions of the legislation. The provision of sanctions will facilitate the enforcement of these norms, and the effectiveness/effectiveness of the use of the laws and regulations can be seen, and the provisions of the laws and regulations can be complied with. *Second*, to provide punishment for anyone who violates a statutory norm. People who violate a norm should indeed be given punishment according to the severity of the violation. *Third*, deter someone from violating the law again. With the imposition of sanctions, it is hoped that people will not repeat violations. *Fourth*, prevent other parties from violating the law. With the threat of sanctions, it is hoped that people will not violate the law.

The regulatory policy in the mineral and coal mining sector is in its development. Some of the content material in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, has undergone changes which are included in the mineral mining cluster and coal in Law Number 11 of 2020 concerning Job Creation.

Furthermore, about the implementation of mineral and coal mining business activities, it has been further regulated in Indonesian Government Regulation (PP) Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities.

Based on Article 62 of the Regulation of the Minister of Energy and Mineral Resources Number 7 of 2020 concerning Procedures for Granting Areas, Licensing, and Reporting on Mineral and Coal Mining Business Activities, the obligations of IUP holders have been regulated, some of which are: prepare and submit the Annual Plan & Cost Budget (RKAB) to the Minister or governor by their respective authorities for approval, submit periodic written reports on the Annual RKAB as well as the implementation of mining business

[4] Wicipto Setiadi, "Sanksi Administratif Sebagai Salah Satu Instrumen Penegakan Hukum Dalam Peraturan Perundang-Undangan," *Jurnal Legislasi Indonesia* 6, no. 4 (2009): 606–7.

activities carried out, including the implementation of cooperation with IUJP holders, comply with the tolerance limits for the carrying capacity of the environment, and ensure the application of environmental quality standards and standards by the characteristics of an area. IUP or IUPK holders are also required to manage and monitor the mining environment, including reclamation and post-mining activities.

Ministerial Regulation (Peraturan Menteri) is clear that the revoked IUP is a permit that does not submit the Work Plan & Cost Budget (RKAB). In addition, other reasons for revocation include permits that do not operate and permits that are not followed up with business permits, as well as IUP holders who do not pay attention to the environment and do not take care of the Environmental Impact Analysis/EIA (*Indonesian: Analisis Mengenai Dampak Lingkungan/AMDAL*).

Data from the Ministry of Investment/Investment Coordinating Agency (*BKPM/Badan Koordinasi Penanaman Modal*), states that a total of 2,087 IUP licenses will be revoked with a total land area of 3,201,046 hectares and an additional 19 IUPs, bringing the total to 2,097 IUPs, 192 forestry sector permits: Permission to Borrow and Use Forest Area/IPPKH (*Indonesian: Ijin Pinjam Pakai Kawasan Hutan*), Forest Concession Rights/HPH (*Indonesian: Hak Pengusahaan Hutan*), and Industrial Forest/HTI (*Indonesian: Hutan Tanaman Industri*), with a total area of 3,126,439 hectares, and HGU Plantations with a total area of 34,448 hectares.[5]

The revocation of IUP on the one hand is part of the government's authority from the point of view of administrative law, but on the other hand, it must have implications for improving the mining governance system that is good and environmentally friendly. The process of evaluating the implementation of permits must, of course, be viewed holistically and integrally by the government to use its authority as mandated by law.

IUP revocation as part of the supervisory function and state administration actions to provide administrative sanctions to IUP holders. In the context of administrative law, supervision is the process of observing, and comparing the work tasks assigned to implementing officials with the standards that have been set in a systematic plan with cooperative and corrective actions to avoid deviations for certain purposes.[6]State supervision through the central government of various IUPs in Indonesia should be directly proportional to the enforcement of administrative law.

However, supervision has been hyper since the transfer of authority in licensing and supervision from the governor to the central government,[7]through the Directorate General of Mineral and Coal at the Ministry of Energy and Mineral Resources, because it has implications for the central authority to supervise thousands of IUPs in some regions in Indonesia, the problems of which are quite complex from various points of view, including the non-compliance of

[5] Ade Miranti Karunia, "Pencabutan Izin Usaha Pertambangan, Bahlil: Tidak Ditujukan Pada Satu Kelompok Tertentu," *Kompas.Com*, January 11, 2022, https://money.kompas.com/read/2022/01/11/063600226/pencabutan-izin-usaha-pertambangan-bahlil--tidak-ditujukan-pada-satu-kelompok., accessed on March 30, 2022.

[6] Nurmayani, *Hukum Adminsitrasi Daerah*, 2009.

[7] It can be seen that the change in authority from the governor was withdrawn to the center through Law no. 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

obligations for reclamation and post-mining, and environmental management.

Based on this background and rationale, it is important to study it more deeply as the scope of this research is related to authority, mechanism, and criteria for Revocation of Mining Business Permits in the Perspective of Administrative Law and implications for revocation of IUPs which are oriented towards good mining governance & environmental perspective.

The scope of this research will examine 2 (two) main problems, namely first, what is the authority, mechanism, and criteria for Revocation of Mining Business Permits in the Perspective of Administrative Law? and second, does the revocation of the IUP have any implications for a good & environmentally sound mining governance system?

Methodology

In this study, using normative juridical research methods, through a study of various regulations in the mineral and coal mining sector, namely Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, Law Number 11 of 2020 concerning Job Creation in mineral and coal mining clusters, Government Regulation Number 96 of 2021 concerning Implementation of Mineral and Coal Mining Business Activities, and Regulation of the Minister of Energy and Mineral Resources Number 7 of 2020 concerning Procedures for Regional Granting, Licensing, and Reporting in Mineral and Coal Mining Business Activities.

Normative legal research is also known as library research or document study because this research is carried out or aimed only at written regulations or other legal materials. The research was conducted by examining library materials or secondary data, and tertiary legal materials.[8]

This normative juridical research is supported by empirical data related to the policy of revocation of Mining Business Permits (IUP) by the central government with data sourced from news media and ministry data.

In collecting data, the study of documents or library materials is used. Documentation studies are the first step of any legal research, both normatively and sociologically[9]. In this case the study of documentation with data collection techniques through library research. Library research by reviewing regulations and library sources from books and journals.

The analytical method used in this study is an analysis of qualitative data[10], and in the context of legal research, namely qualitative juridical analysis, by analyzing various primary and secondary

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[8] Elisabeth Nurhaini Butarbutar, *Metode Penelitian Hukum (Langkah Langkah Untuk Menemukan Kebenaran Dalam Ilmu Hukum)* (Bandung: Refika Aditama, 2018). P. 83-84

[9] Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia Press, 2012). P. 21 & 66.

[10] The considerations of researchers using qualitative methods are based on considerations, namely:

a. the adjustment of qualitative research is easier when dealing with multiple realities;
b. This method presents directly the nature of the relationship between the researcher and the respondent;
c. This method is more sensitive and more adaptable to the many sharpening of shared influences and value patterns encountered.

In addition, according to its level, this research is descriptive, namely research for careful measurement of certain social phenomena by developing concepts and gathering facts, but does not test hypotheses. *See*: Masri Singarimbun and Sofyan Effendi, "Metode Penelitian Survei, Edisi Revisi, PT," *Pustaka LP3ES, Jakarta*, 1995., P. 4-5. *See also*: Lexy J. Moleong, *Metodologi Penelitian Kualitatif, Remaja Rosdakarya*, 22nd ed. (Bandung: Remaja Rosdakarya, 2006)., P. 9-10.

data, as well as primary legal materials, secondary legal materials, and tertiary legal materials.[11]This qualitative data analysis technique follows the conceptual approach given by Miles and Huberman.[12]

Activities in qualitative data analysis are carried out continuously at each stage of the research until it is complete and the data is saturated. The process of collecting and analyzing information includes data reduction,[13]data display[14] and conclusion/verification data.[15]

Discussion

1. The conception of Permits and Authorities in the Study of State Administrative Law

The concept of authority or authority has a strategic meaning in the field of administrative law studies, so that authority or authority is used more by government administrative bodies or officials.[16]

Terminologically, the term authority has the same meaning as "authority" in English and "bevoegdheid" in Dutch. According to Black's Law Dictionary, the word "Authority" is defined as legal power; a right to command or to act; the right and power of public officers to require obedience to their orders legally issued in the scope of their public duties.[17]

Observing the importance of authority in the study of state administrative law, further emphasized by FAM Stroink and JG Steenbeek, through their statement: "*Het Begrip bevoegdheid is and ook een kembegrip in the staats-en administratief recht*".[18] This statement gives the meaning that authority is a core concept of administrative law.

Power in the state is legal power, especially in the Constitution as the highest law that gives authority to the government (executive) and other state government structures to act by the authority granted by law. The authority of this government is also a function of the people's control over the government acting.[19]

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[11] Soekanto; Sri Mamudji Soerjono, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003)., P. 23-54.

[12]B. Mathew dan Michael Huberman Miles, *Analisis Data Kualitatif Buku Sumber Tentang Metode-Metode Baru*, ed. Penerjemah Tjetjep Rohendi Rohidi, *Universitas Indonesia Press* (Jakarta: Universitas Indonesia Press, 1992)., P. 20.

[13] Data Reduction is the process of selecting, focusing on simplification, abstracting, and transforming 'rough' data that emerges from written records in the field. Researchers will summarize, code, explore themes, and write memos according to the problems, objectives, benefits of the research, and the framework of thought that has been set previously.

[14] Data Display or data presentation is a structured collection of information that gives the possibility of drawing conclusions and taking action. The presentation of this data will provide in-depth information about what happened, what to do, analyze, and take action to answer research questions. The presentation of this data is in the form of a narrative.

[15] Conclusion/Verification, namely the researcher records all patterns, explanations, configurations, causal flows, and proportions provided by the informants or their supporting documents. After being well organized, the researcher will conclude with an answer to the questions that have been set previously.

[16] It can be seen further in Law Number 30 of 2014 concerning Government Administration, that the authority lies in the legislative, executive, and judicial bodies, thus experiencing an expansion of meaning in the context of government administration.

[17] J. B. L. and Henry Campbell Black, "Black's Law Dictionary," *University of Pennsylvania Law Review and American Law Register*, 1911, https://doi.org/10.2307/3307452. p. 133.

[18] Nur Basuki Winarno, *Penyalahgunaan Wewenang Dan Tindak Pidana Korupsi* (Yogyakarta: Laksbang Mediatama, 2008)., P. 65.

[19] See: Nirahua Salmon Eliazer Marthen, *Orasi Inagurasi dalam rangka penerimaan jabatan akademik/fungsional dosen sebagai Profeser/Guru Besar dalam bidang Ilmu Hukum*, at Faculty of Law Pattimura University, with title: Nirahua Salmon Eliazer Marthen, "Penggunaan Diskresi Dalam Tindakan Pemerintah," n.d., https://fh.unpatti.ac.id/use-discretion-dalam-action-government.

In addition to the concept of authority, in the study of state administrative law, the term permit is also known. Permits or Vergunning according to the Dictionary of Legal Terms are defined as permits/permits from the government that is required for actions that generally require special supervision, but which in general are not considered as completely undesirable things.[20]

The government's authority in the concept of a rule of law comes from the applicable laws and regulations. According to Huisman, government organs cannot consider their government authority. Authority is only granted by law.[21]

The purpose of granting permits is to control government activities in certain matters because the provisions contain guidelines that must be carried out both by those concerned and by authorized officials. In addition, the purpose of licensing can also be viewed from 2 (two) aspects, namely from the side of the government and the community.[22]

From the government's perspective, the granting of permits is aimed at:

1) To implement the regulations, whether the provisions contained in the regulations are by the reality and practice or not, and at the same time to regulate order;
2) As a source of regional income, with a request for a permit, the government's revenue will directly increase because each permit issued by the applicant must pay a levy first. There is also more income in the field of user fees, the ultimate goal is to finance development.

Furthermore, from the community side, the issuance of permits aims to:

a) For legal certainty;
b) For the certainty of rights;
c) To make it easier to get facilities. If the building already has a permit, it will be easier to get facilities.

2. Authority, mechanism, and criteria for Revocation of Mining Business Permit in Administrative Law Perspective

The authority through the central government's policy to revoke Mining Business Permits (IUP) is based on changes to the provisions of Article 119 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, that an IUP (Indonesian: Izin Usaha Pertambangan) or IUPK (Indonesian: Izin Usaha Pertambangan Khusus) can be revoked by Minister if:

a) The IUP or IUPK holder does not fulfill the obligations stipulated in the IUP or IUPK as well as the provisions of laws and regulations;
b) The holder of an IUP or IUPK commits a crime as referred to in this Law; or
c) IUP or IUPK holders are declared bankrupt. In addition, it is also based on Law Number 11 of 2020 concerning Job Creation, in mineral and coal mining clusters, which contain more administrative sanctions than criminal sanctions.

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[20] HR. Ridwan, *Hukum Administrasi Negara* (Jakarta: Raja Grafindo Persada, 2006).P. 198.

[21] Diyan Isnaeni, "Implikasi Yuridis Kewenangan Pemerintah Daerah Dalam Pemberian Ijin Usaha Pertambangan Menurut Undang-Undang Nomor 23 Tahun 2014," *Yurispruden* 1, no. 1 (January 24, 2018): 35, https://doi.org/10.33474/yur.v1i1.734..

[22] Sutedi Andrian, *Hukum Perizinan Dalam Sektor Pelayanan Publik* (Jakarta: Sinar Grafika, 2010). P. 193.

In-state administrative law, the use of administrative sanctions is the application of government authority, and this authority comes from written and unwritten administrative law rules.

Administration law enforcement is the authority of the state administration to straighten out the occurrence of violation by taking an action by giving sanctions.[23] In general, giving the government the authority to determine certain administrative legal norms, is accompanied by giving the authority to enforce those norms through the application of sanctions for those who violate the administrative law norms.[24]

In this context, it is under the authority of the Ministry of Energy and Mineral Resources (ESDM), through the Directorate General of Mineral and Coal Mining.

Based on Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, most of them contain provisions that can be subject to administrative sanctions. Some of the provisions that can be subject to administrative sanctions are the domain of the state through the central government (Minister) to take actions in the form of administrative sanctions.

Government action in the form of imposing administrative sanctions aimed at IUP, IUPK, IPR, SIPB holders as stated in Article 151 paragraph (2) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining regulating types of administrative sanctions, including:

a) written warning;
b) fine;
c) temporary suspension of part or all of the Exploration activities or Production Operations; and/or
d) revocation of IUP, IUPK, IPR, SIPB, or IUP for sale.

The authority to cancel the central government in the form of revocation of permits is regulated in Article 64 of Law no. 30 of 2014 with criteria if the decision contains defects in authority, procedure, and or substance. If the decision is revoked, a new decision must be issued by stating the legal basis for the revocation and taking into account the general principles of good governance.

The revocation of the decision can only be carried out by government officials who make decisions, superiors of officials who make decisions, or by court order. Decisions on revocation made by government officials and superior officials are carried out no later than 5 (five) working days while decisions on revocation made by court order are made within a maximum of 21 (twenty-one) working days.[25]

The authority authorized to carry out the revocation of the IUP is the Minister or the Governor who issues the mining business permit by their respective authorities so that it is in line with the *Contrarius Actus* principle.[26]The principle of contrarius actus attaches automatically to state administrative officials without having to be explicitly

[23] Sri Nur Hari Susanto, "Karakter Yuridis Sanksi Hukum Administrasi: Suatu Pendekatan Komparasi," *Administrative Law and Governance Journal*, 2019, https://doi.org/10.14710/alj.v2i1.126-142.

[24] Anggara Sahya, *Hukum Administrasi*, 1st ed. (Bandung: Pustaka Setia, 2018)., P. 133.

[25] Sahya.., P. 144.

[26] *Contrarius actus* is a term for an action taken by a state administrative agency or official that issues a State Administrative Decree by itself or automatically has the authority to cancel the said State Administrative Decree. This principle is a juridical term. *See*: M. Lutfi Chakim, "Contrarius Actus Kamus Hukum," *Majalah Konstitusi* (Jakarta, 2017). P.78

mentioned in the law.[27]According to the provisions of Article 52 of Law no. 30 of 2014, a decision is valid if it meets the following requirements: it is determined by an authorized official, made according to the procedure, and the substance is by the object of the decision. The validity of the decision is based on the provisions of the legislation and the General Principles of Good Governance.[28]

The central government evaluates various existing IUPs and then exercises its authority to provide administrative sanctions with several types that have been regulated in various laws and regulations, as derivative regulations of Law no. 3 of 2020 concerning Mineral and Coal Mining, including Law No. 11 of 2020 concerning Job Creation in mineral and coal mining clusters, along with their implementing regulations.

The mechanism for revocation of IUPs, of course, begins with evaluations of IUPs, whose licensing authority has been with the Regent/Mayor and Governor, before the licensing authority is withdrawn to the center.

Based on the author's analysis of the legislation in the mineral and coal mining sector, the Minister conducts a comprehensive evaluation from planning to post-implementation of mineral and coal mining activities.

In general, the overall evaluation is classified into 4 things, the first is administrative evaluation; the second is technical evaluation; the third is environmental evaluation, and the fourth is the evaluation from the financial aspect.

Some criteria for IUPs to be revoked have been affirmed by President Joko Widodo in early 2022, including IUP holders who do not submit regular Work Plan and Budget (RKAB) reports, IUPs that are not operationalized, IUPs that do not carry out reclamation and post-mining obligations and do not carry out environmental management. One of the government's considerations to revoke the IUP by not submitting the RKAB that must be submitted to the Minister refers to the technical provisions based on Article 177 of Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities.

In addition to the general criteria that have been affirmed by the President, normatively referring to Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, and Law Number 11 of 2020 concerning Job Creation, in mineral and coal mining clusters, and their derivatives regulations.

Various provisions in the Law Number 3 of 2020 concerning Amendments to Laws Number 4 of 2009 concerning Mineral and Coal Mining (mineral and coal law regulate) the criteria for various actions that must be taken by the mining business license holder and may be subject to administrative sanctions if they do not carry out some of these obligations, among others: the obligation to carry out further exploration activities every year and provide a budget, community mining permits are required to comply with the provisions of mining technical requirements, holders of special mining business licenses who are not interested in exploiting other minerals are obligated to protect these other minerals from being used by other parties, obligation to use mining roads in the implementation of mining business activities, obligations to apply good mining regulations, obligations to implement good mining principles,

[27] Imam Sukadi, "Asas Contrarius Actus Sebagai Kontrol Pemerintah Terhadap Kebebasan Berserikat Dan Berkumpul Di Indonesia," *Mimbar Keadilan* 12, no. 2 (July 10, 2019): 181, https://doi.org/10.30996/mk.v12i2.2457. P.184.

[28] Mayer Hayrani DS, "Pengaturan Pengawasan Pusat Terhadap Izin Usaha Pertambangan Mineral Dan Batubara Di Era Otonomi Daerah," *Jurnal Legislasi Indonesia* 16, no. 1 (2018): 145.

obligations to ensure the application of environmental quality standards and standards according to the characteristics of an area, obligations to maintain the function and carrying capacity of resources water, the obligation to prepare and submit the Reclamation plan and/or Post-mining plan, must meet the balance of openings and manage ex-mining holes, must hand over land, have the obligation to provide and place a Reclamation guarantee fund and/or Postmining guarantee fund, obligation to prepare community development and empowerment programs, obligation to allocate funds for the implementation of community development and empowerment programs whose minimum amount is determined by the Minister, obligation to provide written reports on a regular basis, must carry out Reclamation and Postmining up to a 100% success rate (one hundred percent), must place a reclamation guarantee fund and/or a mining guarantee fund, and bonds for the settlement of land rights with the right holder, and several other obligations carried out by the IUP holder.

Some of the activities that must be carried out by IUP, IUPK, IPR, or SIPB holders mentioned above, and receive administrative sanctions if they do not carry out these obligations, are also subject to fines.

This is based on Article 185 paragraph (3) and paragraph (4) of Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities, the amount of which is adjusted to the provisions in the field of regional taxes and levies.

President Joko Widodo's policy in carrying out some of these provisions is related to the provision of administrative sanctions to mining business license holders in the form of revocation of mining business permits. In the theory of state administrative law, and based on Law Number 30 of 2014 concerning Government Administration, the President has delegated the authority to revoke Mining Business Permits (Indonesian: Izin Usaha Pertambangan/IUP) to the Minister of Energy and Mineral Resources. In addition, the supervisory system in state administrative law is in the form of administering administrative sanctions as part of enforcing administrative law in the mining business licensing sector.

The author analyzes based on the legal character contained in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, and Law Number 11 of 2020 concerning Job Creation, in mineral and coal mining clusters is administrative law, so that the sanctions are also dominated by administrative sanctions. In addition, there is no firmness in the provisions regarding non-compliance with several obligations of the IUP holder which may be subject to administrative and criminal sanctions.

There needs to be a clear norm between obligations that are not carried out, and are subject to administrative sanctions and criminal sanctions. Ambiguous and biased in-law norms will be followed by ambiguity or ambiguity of meaning in derived regulations.

3. Implications of Revocation of Mining Permits for Improvement of Mining Governance System & Environmentally Friendly

Government actions based on orders from Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, and Law Number 11 of 2020 concerning Job Creation, along with its implementing regulations regarding the revocation of thousands of IUPs in Indonesia will It has juridical, sociological, and environmental implications.

The juridical implication in this context is the policy of regulating and improving the mining governance system in Indonesia. The long process of managing IUPs to the stage of production operations where the authority is currently with the central government is corrective and evaluative action for the government for the issuance of IUPs.

On the one hand, there are state control rights over natural resources in the mineral and coal mining sector,[29]but on the other hand, there is a function of state oversight of IUP holders, as a continuation of permits issued by the state.

The central government's authority over the revocation of IUPs is the beginning to improve the mining governance system that is oriented toward environmental insight based on a green constitution, to be followed by the formation of green regulations in its technical implementation, of green policies, on the management of mineral and coal mining resources.

In addition to having juridical implications for regulatory policies in the mineral and coal mining sector based on the constitutionality of the state's right to control natural resources Article 33 of the 1945 Constitution, the revocation of IUPs also has sociological implications, namely gaining social support capacity and community groups who have concern for the environment. and access of local communities or customary law communities to land rights and the management of natural resources around them, so as not to cause social conflicts. In-Law Number 7 of 2012 concerning Handling of Social Conflicts, two of the sources of conflict come from first, natural resource disputes between communities and/or between communities and business actors; or second, unequal distribution of natural resources in society.[30]

Community groups, environmental organizations, and local communities or customary law communities are part of their contribution and participation in structuring mining management from planning, to licensing processes, to evaluations of the implementation of mining business activities.

Policy evaluation and followed by the revocation of IUP by the central government, taking into account and listening to the aspirations of various community groups, environmental organizations, and customary law communities or local communities in accessing natural resources. In front of the state, these various civil groups should not be positioned as opposing parties or vis a vis with the state and groups of capital owners.

In general the impact mining in the environment is a decrease in productivity land, soil density increases, erosion and sedimentation, ground motion or landslides, disruption of flora and fauna fauna, health problems community and impact to microclimate change.[31]

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[29] The State's right to control natural wealth as stated in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia is further regulated in Article 2 Paragraph 2 Number 5 of 1960 concerning Basic Agrarian Basic Regulations (hereinafter referred to as UUPA) which is the basis for the birth of the government's authority in granting permits related to the utilization and management of natural resources. *See*: Widodo & Rika Indra Dewi Hananto, *Problematika Kewenangan Pemberian Izin Usaha Pertambangan Setelah Berlakunya Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah* (Surabaya: Program Studi Ilmu Hukum, Fakultas Ilmu Sosial dan Hukum Universitas Negeri Surabaya, 2015), P. 2.

[30] Wahyu Nugroho, "Persoalan Hukum Penyelesaian Hak Atas Tanah Dan Lingkungan Berdasarkan Perubahan Undang-Undang Minerba," *Jurnal Hukum Ius Quia Iustum*, 2020, https://doi.org/10.20885/iustum.vol27.iss3.art7. P.571

[31] Nurul Listiyani, "Dampak Pertambangan Terhadap Lingkungan Hidup Di Kalimantan Selatan Dan Implikasinya Bagi Hak-Hak Warga Negara," *Al-'Adl* IX, no. 1 (2017): 76–77.

The next implication of IUP revocation is IUP holders who are environmentally sound. Since the planning and licensing process, it has been oriented toward environmental insight.

Serious environmental impacts in the implementation of mineral and coal mining business activities, both pollution and environmental damage, contribute to increased carbon emissions and global warming in the long term, while in the short term, deforestation, degradation, land conversion, and landscape changes, habitat loss occur. wildlife in forest areas, and flooding in some areas that are centers of mineral and coal mining business activities in Indonesia.

Environmental insight is not only jargon and state commitment at the national level but has become a global commitment to implement the principles of sustainable development to be integrated into the mining business activity licensing system.

The environment and ecosystems are disturbed and the damage is so severe. The central government's firm stance on the revocation of various IUPs that are problematic from an environmental aspect is part of the state's commitment to agreements in global forums on environmental problems experienced by people all over the world, to be handled collectively.

Conclusion

Based on the description can be concluded *first*, the mechanism for revocation of IUP starts from evaluations of IUP, whose licensing authority has been with the Regent/Mayor and Governor before the licensing authority is withdrawn to the center. The Minister conducts a comprehensive evaluation from planning to post-implementation of mineral and coal mining activities. Mechanisms in conducting evaluations are classified into 4 (four) things, administrative evaluation; technical evaluation; environmental evaluation; and evaluation from the financial aspect. The criteria for IUP to be revoked are IUP holders who do not submit regular Work Plan and Budget (RKAB) reports, IUPs that is not operationalized, IUPs that do not carry out reclamation and post-mining obligations, and do not carry out environmental management,

Then *second*, the revocation of IUP has three implications, namely juridical, sociological, and environmental implications. The juridical implication in this context is the policy of regulating and improving the mining governance system in Indonesia. The government's consistency in implementing a green constitution, which is then followed by the formation of green regulations in its technical implementation, to green policies on the management of mineral and coal mining resources.

The sociological implications are getting the social carrying capacity of people who have concern for the environment and access of local communities or customary law communities to the rights to manage natural resources around them, so as not to cause social conflicts. The next implication is environmental insight, integrated into the mining business activity licensing system.

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Plastic Waste Reduction Policy Model based on Sustainable Development Principles in Sultan Ageng Tirtayasa University

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ABSTRACT

Plastic is a part of human life. Plastic packaging dominates the packaging market share in the world, replacing cans and glass packaging. Plastic is used because it is an inexpensive material, not easily weathered, lightweight, and anti-rust. Human activities cannot be separated from the use of plastics, but the increasing use of plastic results in increased pollution of land and even oceans. This also certainly affects the world's ecosystem. Because of the dangers of plastic for the environment, the government has begun to aggressively create programs and policies aimed at educating the public about the impact of plastic consumption and its dangers on the environment. It also aims to change people's culture of using single-use plastics. Not only the government, but at the university policy level it is also necessary to make policies regarding the restrictions on the use of single-use plastics. This study uses an empirical juridical research method that uses a juridical approach by analyzing primary data in the form of interviews and secondary data derived from primary legal materials. The purpose of this study was to determine the policy of reducing single-use plastic waste in the Sultan Ageng Tirtayasa University environment. These policies will be reviewed based on the principles of sustainable development or sustainable development which balances four aspects, namely economic, social, environment and law aspects.

Keyword: plastic waste, policy, sustainable development

ABSTRAK

Plastik merupakan bagian dari kehidupan manusia. Kemasan plastik mendominasi pangsa pasar kemasan di dunia menggantikan kemasan kaleng dan gelas. Plastik dipakai karena bahan yang tidak mahal, tidak mudah lapuk, ringan, dan anti karat. Kegiatan manusia tidak dapat dilepaskan dari penggunaan plastik, namun meningkatnya penggunaan plastik berakibat pada bertambahnya polusi daratan bahkan lautan. Hal tersebut juga tentunya berpengaruh pada ekosistem dunia. Karena bahayanya plastik bagi lingkungan, pemerintah mulai gencar membuat program serta kebijakan yang bertujuan untuk mengedukasi masyarakat mengenai dampak konsumsi plastik serta bahayanya bagi lingkungan. Hal tersebut juga bertujuan untuk mengubah budaya masyarakat akan penggunaan plastik sekali pakai. Bukan hanya pemerintah, namun pada tingkat kebijakan universitas juga perlu dibuat kebijakan mengenai pembatasan penggunaa plastik sekali pakai. Penelitian ini menggunakan metode penelitian yuridis empiris yang menggunakan pendekatan yuridis dengan melakukan analisis terhadap data primer berupa wawancara dan data sekunder yang berasal dari bahan hukum primer. Tujuan penelitian ini adalah untuk mengetahui kebijakan pengurangan sampah plastik sekali pakai di lingkungan Universitas Sultan Ageng Tirtayasa. Kebiajakan tersebut akan dikaji berdasarkan prinsip sustainable development atau pembangunan berkelanjutan yang menyeimbangkan tiga aspek yaitu aspek ekonomi, sosial, dan lingkungan.

Kata Kunci: ***sampah plastik, kebijakan, sustainable development***

Introduction

The consumption pattern of the population in Indonesia has changed to ready-to-eat products and packaged drinks (ready to drink). The results of the National Socio-Economic Survey (Susenas) conducted in 2017 stated that the average monthly per capita expenditure on processed food continued to increase from 2016 to 2018 with an increase of 41.39%[1].

This is supported by the availability of these products in minimarkets that are easily accessible, even applications on cell phones in the form of an online motorcycle taxi application. This consumption habit can result in waste generation, especially plastic waste produced by eating utensils, straws, plastic wrapping, and even drinking water bottles.

Plastic is a part of human life. Plastic packaging dominates the packaging market share in the world, replacing cans and glass packaging. Plastic is used because it is an inexpensive material, not easily weathered, lightweight, and anti-rust [2].

Plastic packaging that dominates the food industry in Indonesia with the number of flexible plastic packaging is 80%. This flexible plastic packaging is widely used for food packaging, while rigid plastic packaging is widely used for beverage packaging [3]. Human activities cannot be separated from the use of plastics, but the increasing use of plastic results in increased pollution of land and even oceans. This also certainly affects the world's ecosystem [4]. Piles of plastic waste can damage the environment because plastic is non-biodegradable [5].

Based on data compiled from the Ministry of Environment and Forestry, 80% of waste disposed of into the sea comes from the land and 90% of it is plastic waste [6]. Plastics are part of waste. According to its characteristics, waste consists of liquid waste, gas /particle waste, solid waste and hazardous and toxic waste (B3). Data from the 2017 Environmental Statistics (2017) shows that solid waste or better known as waste is the most abundant waste in the environment [7].

The increase in the volume of plastic waste is influenced by the increase in population. The total population of Indonesia in 2017 reached 261.89 million, this number has increased compared to 2000, which was 206.26 million people [8]. Apart from being influenced by population growth, it is also influenced by industrial development, urbanization, and modernization.

Apart from the factors above, based on Law Number 18 Year 2008 concerning Waste Management, it is stated that population growth and consumption patterns have an effect on

[1] Badan Pusat Statistik Indonesia, *Statistik Sumber Daya Laut Dan Pesisir Sampah Laut Indonesia 2019*, 2019.

[2] Richard C. Thompson et al., "Plastics, the Environment and Human Health: Current Consensus and Future Trends," *Philosophical Transactions of the Royal Society B: Biological Sciences* 364, no. 1526 (2009): 2153–66, https://doi.org/10.1098/rstb.2009.0053.

[3] Reni Silvia Nasution, "Berbagai Cara Penanggulangan Limbah Plastik," *Journal of Islamic Science and Technology* 1, no. 1 (2015): 97–104.

[4] Siti Qonaah, "Strategy Kampanye Gerakan #BijakBerplastik PT Danone Aqua Dalam Merayakan Hari Lingkungan Hidup Sedunia 2018," *Jurnal Komunikasi* 10, no. 1 (2019): 48–55, https://doi.org/10.31294/jkom.v10i1.5182.

[5] Asia and Muh Arifin Zainul, "Dampak Sampah Plastik Bagi Ekosistem Laut," *Buletin Matric* 14, no. 1 (2017): 44–48.

[6] Sri Nurhayati Qodriyatun, "Sampah Plastik: Dampaknya Terhadap Pariwisata Dan Solusi," *Info Singkat, Pusat Penelitian Badan Keahlian DPR RI.* 10, no. 23 (2018): 13–18.

[7] Badan Pusat Statistik, "Statistik Lingkungan Hidup Indonesia Enviroment Statistic of Indonesia 2017," *Badan Pusat Statistik* 91, no. 1 (2017): 186–89.

[8] Badan Pusat Statistik, *Statistik Lingkungan Hidup Indonesia (SLHI) 2018*, ed. Subdirektorat Statistik Lingkungan Hidup, *Badan Pusat Statistik/BPS–Statistics Indonesia* (Badan Pusat Statistik/BPS–Statistics Indonesia, 2018), https://doi.org/3305001.

increasing the volume, types and characteristics of increasingly diverse waste. Data adapted from the Indonesian Central Bureau of Statistics states that waste generation also increases every year. In 2019 it is estimated at 67.1 million tons and an increase compared to 2018 (Badan Pusat Statistik Indonesia, 2018). This cannot be denied, where there is a large population, the more waste will be produced.

Because of the dangers of plastic for the environment, the government has begun to aggressively create programs and policies aimed at educating the public about the impact of plastic consumption and its dangers on the environment. It also aims to change people's culture of using single-use plastics.

Policy lies not only with the central government, but also at the university level as part of the academic field which has a role for the surrounding community as well. Seeing that there are still many academics and students using single-use plastics, a policy is needed to suppress this use along with additional solutions.

Moreover, this policy has been implemented at the main ministry level, namely the Ministry of Education and Culture. Restrictions on the use of plastic media must be applied to student activities, meetings, seminars and other activities in the Untirta environment. This policy needs to consider the principles of sustainable development, where these principles balance three important aspects, namely economic, social, and environmental to match Untirta's vision, namely Green Campus.

Methodology

The data collection technique in this study is based on the type of data, namely by using two data collection techniques. First is the technique of collecting data through interviews with parties related to the research theme, then field observations and documented in the form of research reports and published in scientific journals. In addition, secondary data is in the form of primary legal materials, namely statutory regulations and secondary legal materials, namely books, journals, data related to tourism as study material for primary data analysis in research and classified so that it is clear the relevance of literature to data in the field based on field observations. documented.

This research is classified as a descriptive analysis research with a qualitative approach, namely the research approach using primary data based on purposive sampling by paying attention to the representative elements of the research object. and secondary data as part of a literature review to support research analysis which is then described qualitatively to provide an understanding of the policy model for reducing single-use plastic waste in the Untirta environment.

Discussion

The purpose of this study was to determine whether or not there is a policy regarding the reduction of single-use plastic waste in the Sultan Ageng Tirtayasa University environment. If there is no, this research will examine how the policy model should be based on the principles of sustainable development or sustainable development which balances three aspects, namely economic, social and environmental aspects.

The benefit of the research carried out is the creation of a policy model to reduce the generation of plastic waste generated in the Sultan Ageng Tirtayasa University environment. If this policy has been implemented, it can be seen the level of awareness of the academic community at Sultan Ageng Tirtayasa University in protecting the environment by playing a role in reducing plastic waste.

The role that can be performed is the willingness to bringeating and drinking utensils reusable, reducing the use of single-use plastic products in activities held at Sultan Ageng Tirtayasa University, and other roles. According to Law Number 18 Year 2008 concerning Solid Waste Management, garbage is a national problem that comes from problems with population growth and consumption patterns.

Waste has become a national problem, so its management needs to be carried out comprehensively and integratedly from upstream to downstream so that it provides economic benefits, is healthy for the community, is safe for the environment, and can change people's behaviour.

The results achieved until this progress report is written will be described as follows. It should be noted beforehand, that the research team made and distributed questionnaires in the research process to the academic community of Sultan Ageng Tirtayasa University.

The academic community consists of lecturers, students, and educational staff. The questionnaire contains questions that support this research. However, based on the data the researchers got, the following is a description of the research results.

Starting with a question about knowledge about sorting waste, from 35 respondents consisting of lecturers and educational staff, 71% are employees who have worked at Sultan Ageng Tirtayasa University for more than ten years. A larger percentage was obtained from student respondents, from 43 respondents, 95.3% of them knew about waste sorting.

Almost all respondents know about waste sorting. Waste sorting is quite crucial because if the waste is not sorted, it will be difficult to recycle. This buildup usually occurs in landfills or landfills. Apart from being unsightly to the eye, the accumulation of garbage will also pollute the surrounding environment. Unlike the number of respondents who know how to sort waste, there are several units at Sultan Ageng Tirtayasa University that do not have a special trash can that separates organic waste and inorganic waste.

Movements and calls for limiting the use of single-use plastic waste have been increasingly held in recent years, however, 57% of the 35 respondents have never participated in these activities. Meanwhile, 51% of the student respondents had participated in the socialization regarding the limitation of single-use plastic waste.

There are many factors why this is done, data from the Ministry of Marine Affairs and Fisheries, for example, states that in 2030 it is predicted that the amount of plastic will be more than the number of fish in the sea. This happens because currently a lot of plastic waste is dumped into the sea. Throwing plastic waste into the sea is not a solution, but rather creates a new problem. Problems that will arise not only for more than 800 species of marine life [9], but will return to humans themselves.

This movement to protect the environment from the bad effects of plastic waste can also be carried out in an academic environment such as a campus, for example. Why? because there are many agents of change on campus. Not only that, the habit of always protecting the environment can also be carried out by the academic community other than students, namely lecturers and education staff.

The more individuals who do good habits by reducing or at least separating organic waste and inorganic

[9] Kementerian PPN/Bappenas, "Apa Itu SDGs ?," 2020.

waste produced, the greater the positive impact that will be generated. Such as the willingness to bringeating and drinking utensils reusable, has been carried out by 60% of respondents from lecturers and education staff and 81% from students.

However, this number can still change because the numbers do not reflect the representation of the academic community. In connection with the awareness to bring cutlery set and tumbler, reusable it turns out facilities that support the reduction of the use of disposable plastic products have been inadequate.

One of the things that can be emulated from the Faculty of Law, University of Indonesia, when research members attended the International Seminar on the Ten Years of Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) in August 2019 was that the committee did not provide mineral water or drinks. other types in packaging. How can this be done even when setting the agenda on an international level?

The answer is because supporting facilities are available. Participants who have received notification via e-mail (one week before the event) about the suggestion to bring personal drinking bottles can refill the drinking bottles through the dispenser that has been provided. The dispenser is not only provided when a certain agenda is held, but is available every day.

The use of single-use plastic products is still on most of the agenda, meetings for example. Usually, in a snack box provided at a meeting there are at least one or two of the three types of snacks wrapped in plastic. Likewise with bottled drinking water which is also in plastic bottles or cups plus a plastic straw too.

The use of how to serve snacks at a meeting by serving on a plate and using a glass cup can still be counted. Research members have encountered a presentation this way about three times in a span of two years. In fact, the more participants in the meeting, the more plastic waste will be generated. Sultan Ageng Tirtayasa University has a vision and mission for the years 2019-2023, namely:

1) *The Vision*

Realization of Untirta as an Integrated Smart and Green (It'S Green) University which is superior, has character and competitiveness, in the ASEAN region in 2030.

2) *Mission*

a) Improve the quality, relevance and competitiveness of education as well as graduates who are superior, have character and are competitive in the ASEAN region
b) Improve the quality and quantity of research and innovative community service based on real needs according to the times
c) Increasing the carrying capacity of good higher education governance as an implementation of the Integrated Smart and Green (It'S Green) University.

Having a vision and mission as an Integrated Smart and Green (It'S Green) University is a commitment from Sultan Ageng Tirtayasa University to play a role in environmental conservation. Green is not only related to green campus with lots of beautiful trees, but also other elements in the environment, including waste management, especially plastic waste.

There is a new vision and mission that makes Sultan Ageng Tirtayasa University have to adjust to making new policies that support the implementation of this vision and mission. The vision and mission raised by Sultan Ageng Tirtayasa

University are in line with the principles of sustainable development or sustainable development. Sustainable development is a conscious and planned effort that integrates environmental, social and economic aspects into a development strategy to ensure environmental integrity and safety, capability, welfare, and quality of life for present and future generations (Article 1 number 3 Law Number 32 of 2009 concerning Environmental Protection and Management).

The vision and mission of Sultan Ageng Tirtayasa University which is visionary above can be implemented in many stages. At the initial stage, this can be done by making policies that support the vision and mission.

Interviews conducted by the author on Wednesday, November 11, 2020 to several academics at the Sultan Ageng Tirtayasa University regarding some habits to reduce the use of single-use plastics, obtained mixed results. Questions are limited to the scope of knowledge about sorting waste, willingness to bring reusable drinking bottles, and reusable utensils. First, the results obtained from the students who were interviewed did not bring a drinking bottle.

Results can be different when students take part in teaching and learning activities as in normal conditions, because during interviews teaching and learning activities are carried out online due to the Covid-19 pandemic.

Currently, only students who are allowed to go to campus have an interest in the preparation of a thesis or final project. Several students answered that if they did not bring a reusable drinking bottle, it would be troublesome.

Apart from having to bring the empty bottles back home or to the boarding house, they also worry about how to refill them if the water in the bottle runs out. Because currently there are not yet drinking water refill facilities in all buildings, especially buildings that are the center of teaching and learning activities such as Building A, Pakupatan Campus.

However, there were also students who often brought reusable drinking bottles. One reason is that it can save pocket money. In addition, they also think that they know better about the quality of drinking water in their homes so that it is healthier and more secure.

The assumption that buying drinking water in disposable plastic packaging is easier and cheaper is also the reason why students do not bring reusable bottles. When associated with waste sorting, they know about how to separate trash bins for organic and inorganic waste.

They even know about waste sorting which has been taught since elementary school, but has not been implemented at this time. In fact, the three types of bins provided by the university contain the majority of plastic waste.

Reluctance to bring reusable cutlery also occurs. Re-washing cutlery after use is the reason why they are reluctant to bring reused cutlery. In fact, one of them realized that there was no guarantee of cleanliness to use the cutlery provided by the food seller in the canteen.

In addition, students also knew about environmental damage when using disposable plastic dishes. The reason is only one, do not want to be complicated by re-washing cutlery. This knowledge and awareness for some students of the Faculty of Law is obtained through courses in Environmental Law and the Capita Selecta of Environmental Law.

As a teacher in the Capita Selecta Environmental Law course, before the Covid-19 pandemic occurred, to be precise in the first week of the Odd Semester of the 2019-2020 Academic Year, the author once appealed to students to start bringing reusable drinking bottles.

This started with the large number of bottles of drinking water in disposable bottles when class was over, even though the classrooms would still be reused by other classes. As a result, changes began to be seen after the third week and continued to increase in the following weeks by checking before giving material and discussion.

Second, interviews were conducted with educational staff respondents. Researchers conducted interviews with staff at the Faculty of Law, Sultan Ageng Tirtayasa University. The results obtained are the staff who on the day of the interview get a shift to work from the office, most of them do not bring drinking bottles or reusable utensils.

Starting from forgetting to bring, being lazy because you have to cook first, to being practical because buying bottled drinking water is considered easier and more efficient. Whereas in reality, compared to students who have difficulty refilling drinking bottles, it is easier for staff to refill because there is a water dispenser in each section (academic and general).

A small proportion of staff who brought reusable drinking bottles said that saving money was one of the reasons why they brought reusable drinking bottles. If one drinking bottle containing 600 millilitres can be consumed for approximately three hours and working hours start at 08.00-16.00 or for eight hours, then it is refilled approximately 3-4 times, so as to save on purchasing drinking water in plastic bottles once use with an average price of Rp3,000.00, - or Rp12,000.00, - if multiplied by four bottles.

The habit of bringing reusable cutlery is not optimal either. The reason that arises is the fear that the cutlery is left behind and is considered a hassle. When the break time arrives, apart from buying food at the canteen, the staff occasionally orders food via a delivery service. Food that has disposable cutlery is the reason why they don't bring their own cutlery. In fact, apart from waste from disposable cutlery, there are other types of waste produced, namely food wrappers, plastic bags, and plastic straws.

Third, interviews conducted with the last academic community, namely lecturers, resulted in several varied responses. For first responders, bringing a reusable drinking bottle is considered practical, because it can be easily refilled.

The second respondent said that the unwillingness to bring reusable drinking bottles was due to the fact that carrying bottles was considered a complicated and troublesome matter. The desire to live practically is also a reason. If we look at the availability of facilities, the means of refilling drinking water in the form of a dispenser is sufficient because there are three dispensers in one two-story building.

Reusable cutlery, which is a natural thing to carry during the pandemic, has also been implemented by several lecturers. In fact, some of them brought food supplies at once. This is because the food that is cooked and brought from home is more hygienic. But on the other hand, using cutlery that has been provided by food vendors is considered effective and efficient, so there is no need to bring reusable cutlery by yourself.

Waste sorting is the next question in the interview conducted by the author. Most of the respondents answered that waste can be divided into two, namely organic and inorganic, as well as the place of disposal. Based on data collected from the Instagram page of the National Coordinating Team for Marine Waste Management (@tkn_psl), waste is divided into three (3) types, namely organic waste, inorganic waste, and B3 waste.

Figure 1. Types of waste
Source: National Coordinating Team for Marine Debris Management.

Based on the picture above, thecolor in the trash shows the designation for different types of waste. Organic waste is natural waste that can be biodegradable, such as fruit, leaves, and food scraps. Inorganic waste is waste produced from materials that are difficult to biodegrade.

The process of destroying inorganic waste requires special equipment. Plastics, Styrofoam, and cans are examples of inorganic waste. The third type of waste is B3 waste or hazardous and toxic materials. B3 in Article 1 number 21 of Law Number 32 Year 2009 concerning Environmental Protection and Management are substances, energy, and / or other components which due to their nature, concentration and / or amount, either directly or indirectly, can contaminate and / or damage the environment, and / or endanger the environment, health, and the survival of humans and other living creatures.

Glass, chemicals, and medical waste are included in this type of waste. Medical masks are one of the types of medical waste produced during the Covid-19 pandemic. The trash cans provided in the Sultan Ageng Tirtayasa University environment are in accordance with the types and colors of differentiation, namely green, yellow, and red as follows:

Figure 2. The trash can next to the basketball court on the Untirta Pakupatan campus.
Source: Personal photo of the researcher.

However, on closer inspection, the B3 trash can which has a red color does not yet have the label "B3" and still has the words "organic" written on it, even though it has been repainted with the color of the B3 trash can. This was found not only in one place, but also in other places as follows:

Figure 3. Trash cans across from Building C Postgraduate, Untirta Pakupatan Campus.
Source: Researcher's personal photo.

Waste bin facilities with special labels have not become a solution to the problem of sorting waste. There are still many academicians who throw garbage out of place. Such as disposing of plastic

bag and Styrofoam food wrappers in organic trash.

Figure 4. Disposing of trash does not comply with the trash bin label provided
Source: Personal photo of the researcher.

The pictures above shows that awareness and willingness to sort waste is still low. As a university that aspires to become a Green University, the entire academic community should also support the realization of this vision starting from small things first such as sorting out the waste produced. However, the campus should also separate the waste generated into temporary shelters which are also separated based on the type of waste.

Waste management upstream will have an impact on waste management downstream. The waste problem is one of the seventeen goals to be achieved in Sustainable Development or sustainable development. Sustainable Development is the 2030 Agenda for Sustainable Development (the 2030 Agenda for Sustainable Development or SDGs) which is a new development agreement that encourages changes to shift towards sustainable development based on human rights and equality to promote social, economic and environmental development.

The SDGs Achievement Report 2019 [10] shows that waste management in urban areas is still low in applying the principle of reducing waste. In addition, the availability of waste management sites is reduced, reuse, recycle (TPS 3R) also lacking. The report on the Achievement of the 2019 SDGs goal 12 (responsible consumption and production) targets the recycling of 61.5 million tonnes of waste generation, but what has been achieved is 8.02 million tonnes.

Sultan Ageng Tirtayasa University as one of the upstream producers of waste both organic, inorganic and B3 is expected to have an adequate waste management system. Sorting waste and limiting the use of single-use plastics are the first steps to reduce the amount of waste generation.
Sustainable development basically has 4 (four) pillars, namely the pillar of social development, the pillar of economic development, the pillar of environmental development, and the pillar of legal development and governance. Each pillar needs to be applied in making a policy that supports 17 (seventeen) sustainable development goals.

In terms of reducing plastic waste, it is related to the twelfth goal of responsible consumption and production, but that does not mean that it is not related to other goals. The thirteenth goal, addressing climate change, also needs to be considered, because the more unmanaged waste is generated, the greater the impact on climate change.

The fourteenth (oceanic ecosystem) and fifteenth (terrestrial ecosystem) goals are also goals that will be affected by the results if waste is not managed, let alone plastic waste. This is because 24-34 million metric tons or 11 percent of the total plastic waste in the

[10] Kementerian Kelautan dan Perikanan, "Pimpin Bersih Pantai Di 108 Titik Di Indonesia, Menteri Susi Ajak Masyarakat Boikot Plastik Sekali Pakai _ KKP News," 2019.

world enters the sea every year [11] and the rest, if not managed, will have an impact on terrestrial ecosystems. So that the policy of limiting the use of single-use plastics at Sultan Ageng Tirtayasa University must consider the principles of sustainable development.

Sultan Ageng Tirtayasa University has a vision for the realization of Untirta as an Integrated Smart and Green (It'S Green) University that is superior, characterized and competitive, in the ASEAN region in 2030. Quoted from the UI Green Metric Guide [12] to measure the level of sustainability at the university, it is carried out by see programs and policies that are owned.

The categories used are:

a. arrangement and infrastructure,
b. energy and climate change,
c. waste,
d. water,
e. transportation, and
f. education and research.

The waste recycling program generated by the campus is an indicator for measuring waste. In addition, efforts to reduce the use of paper and plastic in the campus environment are also an indicator.

At the University of Indonesia, there is already a policy that regulates the reduction of paper and plastic use, namely in the Decree of the Rector of the University of Indonesia Number 1308/SK/R/UI/2011 concerning Policies to Reduce the Use of Paper and Plastics on the University of Indonesia Campus. The policy was also reduced to a policy at the faculty level.

As a university that has a vision to become a green university, Sultan Ageng Tirtayasa University should have policies and programs that support the realization of this vision. Creating a policy to limit the use of single-use plastics is an initial step that can be taken. Of course, by providing adequate supporting facilities, such as the provision of dispenser machines at certain points, including lecture buildings.machine installation Reverse osmosis can also be done.

Another way that can be done is to make a water tap which is preceded by the construction of a water reservoir tower that uses solar energy so that it is environmentally friendly, as has been owned by Sebelas Maret University since 2015.

This will be useful for reducing the amount of plastic waste generated from bottles and glasses of mineral water in disposable plastic containers. Thus, efforts to reduce the use of single-use plastics as a way to create a green university will be achieved.

It is deemed necessary that the rector's policy which has been passed down to become the policy of each faculty, institution, and UPT. Regulations on limiting the use of single-use plastics can be the first step before formulating the next policy that can support the university's vision. Making programs that support the policy also needs to be made as a form of policy implementation.

The making of policies and programs must be based on the principles of sustainable development or sustainable development as previously discussed. Thus, gradually the vision to become a green university in 2030 will be achieved.

[11] Gita Laras Widyaningrum, "Studi Terbaru: Masalah Sampah Plastik Di Bumi Sudah Di Luar Kendali - National Geographic," 2020.

[12] UI GreenMetrics, "UI GreenMetric World University Rankings 2020" 10, no. 1 (2020): 1–41.

Conclusion

Plastic waste that is not removed and not managed wisely will cause problems for humans, other living things, and the environment. As the owner of the vision of Integrated Smart and Green (It'S Green) University, Sultan Ageng Tirtayasa University does not yet have a policy that focuses on limiting the use of single-use plastic products and managing plastic waste.

Based on the data obtained by researchers, in order to increase the awareness of the Sultan Ageng Tirtayasa University academic community of the importance of reducing the use of single-use plastic products on campus, Sultan Ageng Tirtayasa University needs to create a policy model that has a vision, mission, and the principles of sustainable development.

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Boosting International Humanitarian Law Active Class Participation; Lesson Learned from Blended Learning Policy (Kemendikbud Circular No.4 2020)

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ABSTRACT

University is required to adapt the teaching method, creativity, and innovation during the covid outbreak. The learning method used in Learning Management System (LMS) is mixed with online methods by utilizing both synchronous and asynchronous multimedia. This study developed into several steps; the first step is identifying the problem in class participation before applying LMS and comparing it with the class participation afterward. Problem identification is carried out with a learning survey currently being carried out at the International Humanitarian Law class in Universitas Sultan Ageng Tirtayasa while applying mobile LMS to enhance class participation. Untirta's bold LMS (SPADA Untirta) can be upgraded to a more practical level by implementing SPADA mobile LMS applications as a valuable embodiment of LMS;

Keywords: *Blended Learning Policy, International Humanitarian Law, Active Class Participation*

ABSTRAK

Perguruan tinggi dituntut untuk beradaptasi dengan metode pengajaran yang kreatif dan inovatif selama wabah covid berlangsung. Metode pembelajaran yang digunakan dalam Learning Management System (LMS) adalah pembelajaran campuran dengan metode online dengan memanfaatkan multimedia baik synchronous maupun asynchronous. Penelitian ini berkembang menjadi beberapa langkah, dimana langkah pertama adalah mengidentifikasi masalah partisipasi kelas sebelum menerapkan LMS, membandingkan dengan partisipasi kelas sesudahnya. Identifikasi masalah dilakukan dengan learning survey yang di ambil dari kelas Hukum Humaniter Internasional Universitas Sultan Ageng Tirtayasa sembari menerapkan mobile LMS untuk meningkatkan partisipasi kelas. LMS Untirta (SPADA Untirta) dapat ditingkatkan ke tingkat yang lebih praktis dengan menerapkan aplikasi LMS seluler SPADA sebagai perwujudan LMS yang bermanfaat;

Kata Kunci: Kebijakan Blended Learning, Hukum Humaniter Internasional, Partisipasi Kelas Aktif

Introduction

Although law lecturers are aware of blended learning, but their persistent dedication to the Socratic method and traditional face-to-face classroom education is uninspired.[1] Thus, left the blended learning in law school become secondary option.

This article highlights lessons learned related to technological support, pedagogical concerns, and assessment considerations as it addresses major challenges in the design, implementation, and evaluation of the "semi-flipped" or blended learning experience in educating sophomore law school students.

The Kemendikbud Circular No. 4 of 2020 concerning the Implementation of Education Policies in the Emergency Period for the Spread of Coronavirus Disease (covid-19) and various teaching resources that can be used to support online teaching and learning activities govern education policies during the COVID-19 pandemic.[2]

Blended learning is not a new policy in higher education. Prior to the outbreak, Kemendikbud for specific purposes has introduce SPADA Indonesia. SPADA are Massive Open Online Courses (MOOC) developed as part of the Indonesian government's Merdeka Belajar initiative. SPADA provide a chance for college student from one university to join courses provided by another university and the study result can be converted to the original university.

One of the best learning strategies during the Covid-19 epidemic, or the new normal time, is integrated learning. Blended learning is a kind of learning that combines in-person instruction with online study (webinars, LMS).[3]

In recent years, technology and information development have accelerated. Indonesia, a sizable nation with abundant natural resources and a sizable population, should be crucial to its development. As a result, Indonesia must modify its educational system in order for this to happen.[4]

This blended method is promoted as a technique of assisting students in exploring new concepts by increasing student participation and interaction with one another and their lecturers, so building a better link between pre-class, in-class, and post-class learning possibilities.[5]

As a result, the policy is a significant option in the online learning system, which is presently being implemented vigorously in the region of Kemendikbud and, in particular, at the Universitas Sultan Ageng Tirtayasa (Untirta).

Nowadays, it is simple to discover online meetings using conference call applications or lecturers that use the blended learning approach. During the

[1] Zainal Amin bin Ayub Et.al, "Blended Learning in Substantive and Procedural Law Modules: Malaysia's Experience," *Turkish Journal of Computer and Mathematics Education (TURCOMAT)*, 2021, https://doi.org/10.17762/turcomat.v12i3.862.

[2] Leni Marlina and Bashori Bashori, "Analisis Kebijakan Pendidikan Dalam Masa Darurat Penyebaran Covid-19," *Idarah (Jurnal Pendidikan Dan Kependidikan)* 5, no. 1 (November 8, 2021): 33–48, https://doi.org/10.47766/idarah.v5i1.1439.

[3] Rasheed Abubakar Rasheed, Amirrudin Kamsin, and Nor Aniza Abdullah, "Challenges in the Online Component of Blended Learning: A Systematic Review," *Computers and Education*, 2020, https://doi.org/10.1016/j.compedu.2019.103701.

[4] Rudi Haryadi, Robinson Situmorang, and Khaerudin Khaerudin, "Enhancing Students' High-Order Thinking Skills through STEM-Blended Learning on Kepler's Law During Covid-19 Outbreak," *Jurnal Penelitian Dan Pembelajaran IPA*, 2021, https://doi.org/10.30870/jppi.v7i2.12029.

[5] Monash University, "Monash University Annual Report 2016," 2016, https://www.monash.edu/__data/assets/pdf_file/0011/844508/monash-university-2016-annual-report.pdf.

present epidemic, every educational institution must construct a Learning Management System (LMS) that is as creative and innovative as possible. At the moment, the learning approach employed is an online mixed learning LMS incorporating multimedia, both synchronous and asynchronous.

Based on the data acquired, Moodle-based e-learning may and should be utilized successfully to organize learning activities and tasks, as well as as a medium for carrying out learning through conversations, consultations, and reading and accessing content. Moodle-based e-learning is very useful for assessing both learning processes and outcomes.

Currently, the Moodle-based apps at the Untirta implementation level have not been socialized to be used massively. This is due to several technical constraints ranging from the high level of users at the same time to the lack of interactive media used by course lecturers.

However, the use of SPADA Untirta is largely accessed through desktop browser only via the website.

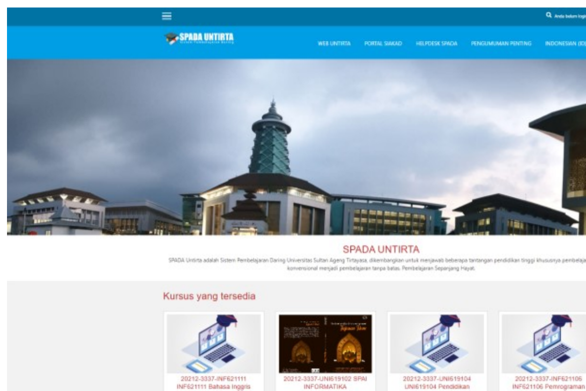


Figure 1. *The Home Page of SPADA Untirta*

The SPADA Untirta can be accessed through the address of https://spada.untirta.ac.id/ figure 1 is the front page of SPADA Untirta. The front page of SPADA Untirta consist of home menu, offered course, course category, helpdesk menu and login tab. The dilemma arose when most of the students only accessed SPADA Untirta via smartphone where the preface of the SPADA Untirta is not user friendly from the cellphone web browser.

The specific objective that will be achieved in this study is to analyze the online learning system at the Untirta level, which is more user friendly and has a much better user experience. The current state of online learning can be said to have been able to fill the gaps during the pandemic. From the level of teaching staff to alumni, academics are familiar with the learning-based apps scattered around, whether it is just a conference call application or an online learning bundle.

Methodology

This research is normative research. The paper aims to discussed the blended learning policy based on Circular No.4 2020 regarding learning policy during the covid outbreak by the Kemendikbud. In addition, this paper also applying the comparative study which adapted the development research steps of Borg and Gall (1986)[6], where once the problems being identified the author will comparing the international humanitarian class participation before the blended learning using the SPADA Untirta website base and after Moodle Based Apps SPADA being implemented. Whether the blended learning via based apps SPADA effective in enhancing international humanitarian law class participation.

[6] W Borg and M Gall, "Educational Research: An Introduction 7th Edition Longman Inc," *New York*, 2003.

This research includes research that produces recommendations for improvement of a program (policy recommendation). This research intended to provide recommendations for blended learning policy in higher education level, especially for Untirta stakeholders. As per the covid outbreak, The Ministry of Education, Culture, Research, and Technology (Kemendikbud) enacted Circular No.2020 regarding Learning Policy in the time of covid outbreak.

This research is expected to explain the implementation of blended learning systems in the Untirta situation. Data were collected using interviews, observations, and questionnaires. The data were analyzed descriptively. Descriptive analysis was carried out to obtain an overview of the learning process that occurred in the trial and the impact of learning on students.

Discussion

Circular Letter No. 4 of 2020 concerning the Implementation of Educational Policies in the Emergency Period for the Spread of Coronavirus Disease (covid-19) includes:

a. Learning from home through online or distance learning is carried out to provide a meaningful learning experience for students without being burdened with the demands of completing all curriculum achievements for grade promotion and graduation;
b. b. Learning from home can be focused on life skills education, including regarding the Covid-19 pandemic;
c. Learning from Home learning activities and tasks may vary among students, according to their interests and conditions, including considering access gaps or learning facilities at home;
d. The evidence or product of the learning from home activity provides qualitative and valuable feedback from the teacher without being required to give a score or quantitative value.

Mobile learning promotes equitable opportunities for all by offering accessible learning across time zones, bringing location and distance closer to learners. Mobile learning is defined as a dynamic and systematic learning environment enabled by cellular technology, particularly in the sphere of education.[7]

Moodle is a web-based LMS (Learning Management System) tool that is commonly used to create e-learning applications. Anything that may be utilized to communicate messages from sender to recipient in order to stimulate ideas, feelings, attention, and student interests in order for the learning process to occur is referred to as media.

Currently, the Moodle-based apps at the Untirta implementation level have not been socialized to be used massively. This is due to several technical constraints ranging from the high level of users at the same time to the lack of interactive media used by course lecturers.

Untirta can realize Integrated Smart and Green (*Its Green*) University by developing more interactive mood-based apps to use. Given that the number of users is currently relatively high, this will affect an excellent online learning system's perception.

A Learning Management System (LMS) is software that is used to offer web-based learning materials and multimedia resources online, to manage

[7] Jared Keengwe and Malini Bhargava, "Mobile Learning and Integration of Mobile Technologies in Education," *Education and Information Technologies* 19, no. 4 (December 26, 2014): 737–46, https://doi.org/10.1007/s10639-013-9250-3.

learning activities and their outcomes, and to allow interaction, communication, and cooperation between lecturers and students. E-learning is a popular medium that is now being developed by a variety of educational organizations.

There are at least four advantages to embracing e-learning: personal learning experience, cost savings, ease of access, and the capacity to be accountable. One effort that may be made to overcome issues and make it simpler for students to access lecture materials is the usage of online learning platforms.

To converse and discuss online, as well as to receive instructional sharing support from instructors using online learning system media. Through discussion forums included in the media, the online learning system may improve interaction between lecturers and students.

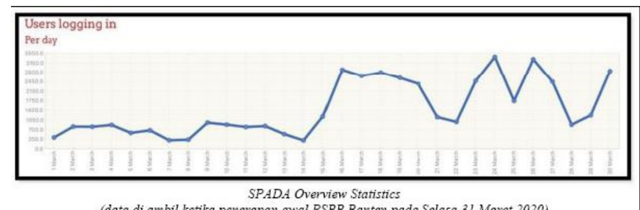
Policies governing distance education Because of the Covid-19 epidemic, all educational institutions must conduct learning via the use of internet communication technologies. During the present epidemic, every educational institution must construct a Learning Management System (LMS) that is as creative and innovative as possible.

At the moment, the learning approach employed is an online mixed learning LMS incorporating multimedia, both synchronous and asynchronous.Its efficacy for completely online learning is a combination of 40% synchronous mode and 60% asynchronous mode. During a pandemic, many instructors prefer asynchronous learning using information from lecturers in the form of text, graphics, photos, audio, and video filmed in audio-visual form with a file size that is not too huge.

The benefits of mobile learning include a faster path to information and technology that prioritizes speed, convenience, and attractiveness without sacrificing learning principles. It is possible to establish that mobile learning is employed without any pressure while learning inside the learner.[8]

Untirta has the Untirta SPADA platform as an answer to these challenges, but access options are still minimal via personal computers only. This research is intended to recommend developing the existing and available Moodle Based Apps but is still rarely used by Untirta academics.

Based on SPADA Overview Statistics data, there has been an increase in the number of SPADA Untirta users who logged insignificantly during the COVID-19 Prevention period, reaching up to 3,358 users per day, or a total of around 20,188 to 23,506 users in one week.



SPADA Overview Statistics
(data di ambil ketika penerapan awal PSBB Banten pada Selasa 31 Maret 2020)

Figure 2. *Overview Statistics March 2020*

However, until writing this research progress report, the options available to access Untirta SPADA were only available via personal computers. There is a gap that can be filled if you look at User Devices Analytic, which shows mobile phones' use is at 60.16%. Moodle-based Apps is an option for a better LMS in the Untirta environment.

[8] Ence Surahman, "Integrated Mobile Learning System (Imoles) Sebagai Upaya Mewujudkan Masyarakat Pebelajar Unggul Era Digital," *JINOTEP (Jurnal Inovasi Dan Teknologi Pembelajaran) Kajian Dan Riset Dalam Teknologi Pembelajaran* 5, no. 2 (April 30, 2019): 50–56, https://doi.org/10.17977/um031v5i22019p050.

Mastery and use of technology will be an essential key in maintaining the existence of a university. So, the development of technology in education and learning in the form of moodle-based is essential and a must to be developed in addition to being used as a medium for planning, implementing, and evaluating learning Moodle-based e-learning can also be used to monitor learning. Students can supervise lecture activities carried out anytime and from anywhere.

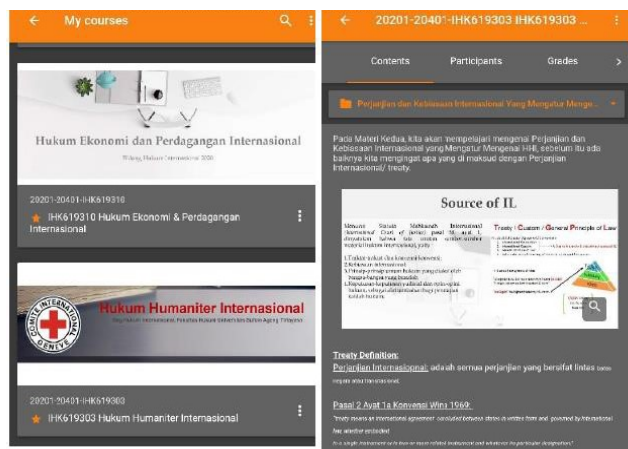


Figure 3. *Synchronize Course on Each Session of International Humanitarian Law Class 2020*

Figure 3 is a synchronized course in the current semester on moodle-based apps. With one login to this application, students will be made easy to oversee lecture activities that have been designed by the course instructor.

Lecture materials, which are generally in the form of e-books in pdf format, short videos configured with YouTube, and discussion forums can be monitored directly through one application, without changing devices. This will be of great benefit, considering that analytic user device data shows a high usage level via mobile phones.

Besides, students through e-learning can monitor the achievement and completion of assignments given by the lecturer. The supervisory function in learning management is an essential element to ensure learning runs follow the curriculum's rules. For example, attached is a display of forum conditions in moodle based apps.

The process of developing moodle-based e-learning as a medium for monitoring lecture activities is carried out based on the intended function and based on the availability of features in the Moodle application.

Figure 4. *Interface Forum Discussion International Humanitarian Law Class 2020 on Mobile Moodle*

This media breakthrough is projected to make monitoring learning activities simple and effective. The development of e-learning media as a medium for supervising lecture activities would allow students to oversee every activity of lecture activities from beginning to conclusion, ensuring that students do not miss material connected to the lectures they are taking regardless of where they are.

Course participant can supervise every lecture activity organized by the lecturer. In addition to overseeing lecture

activities at each meeting, moodle-based e-learning can also be used to oversee the completion of assigned tasks. Students and lecturers will find it easier to monitor which assignments have been completed and which assignments have not been completed.

E-learning as a medium for supervising the completion of assignments can display any assignments that have been given and have been completed by students, along with those who have and have not completed the assigned assignments. These supervisory activities can all be done online from anywhere and whenever lecturers and students want to see the completeness of the assignments that have been given.

Based on the data acquired, Moodle-based e-learning may and should be utilized successfully to organize learning activities and tasks, as well as a medium for carrying out learning through conversations, consultations, and reading and accessing content. Moodle-based e-learning is very useful for assessing both learning processes and outcomes.

Conclusion

The Untirta online learning system can be upgraded to a more practical level by implementing moodle based apps as a useful embodiment of LMS. Moodle-based apps can be integrated with Spada Untirta to realize an Integrated, Smart, and Green Campus vision. The survey respondents on International Humanitarian Class shows that the implementation of Moodle based apps in IHL class is more effective in comparison of conventional blended learning to boost class participation during the course. Effective LMS requires interactive learning; lecturer at Untirta must start to improve to learn interactive and user-friendly LMS presentations.

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We would like to acknowledge The Research and Community Services Untirta (LPPM-Untirta) for funding this research on Untirta Excellent Research Funding Scheme 2020, with Keputusan Rektor No.350/UN.43/KPT.PT.01.02/2020 proposal titled "*Pengembangan Moodle Based Apps pada Sistem Pembelajaran Daring (SPADA Untirta) dalam Mewujudkan Visi Integrated, Smart and Green campus (It's Green)*

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