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FOREWORD

Nurani Hukum: Jurnal Ilmu Hukum, also known as **Nurani Hukum**, is a peer-reviewed journal focused on legal studies. The journal aims to publish high-quality research across various areas of legal scholarship, including but not limited to law and history, legal philosophy, sociology of law, socio-legal studies, international law, environmental law, criminal law, private law, Islamic law, agrarian law, administrative law, criminal procedural law, commercial law, constitutional law, human rights law, civil procedural law, and adat law. Published by the Faculty of Law, Universitas Sultan Ageng Tirtayasa in collaboration with the Asosiasi Pengelola Jurnal Hukum Indonesia (APJHI), the journal is released biannually Issues Jan-June and Issue July-December. Each issue is made available on the website and further distributed in hardcopy format.

The current edition, Volume VI Issue 1 ***Assessing National and International Perspectives on Justice and Legal Protection***, June 2023, covers a wide range of legal and scientific fields, including civil, criminal, constitutional, and international law. The publication of this journal is a result of the collective efforts of many individuals. We extend our gratitude to all the peer reviewers and members of the editorial board who have dedicated their time and energy to ensure the successful publication of the Journal Nurani Hukum: Journal of Legal Studies. We hope that the articles presented in this journal will serve as a valuable and enlightening resource for all readers.

Sindangsari, June 2023

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From Athens to Vilnius with A Near-Fatal Detour to Minsk? The Issue of Demarcation Between Civil and State Aircraft

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ABSTRACT

On 23 May 2021, the Belarusian authorities forced a Ryanair flight from Athens to Vilnius to land in Minsk, citing a bomb threat that turned out to be a false alarm. The aircraft was carrying 123 passengers, fortunately none of them were injured in the incident, but one person - a journalist - who had been declared an extremist and persecuted by the Belarusian Government, was immediately detained by the Minsk authorities following the emergency landing. The purpose of this paper is to present the relevant regulatory environment governing the case and, as far as possible, to assess Belarusian behavior in the light of the regulation. However, during the discussion, I will not attempt to judge the case, but rather to highlight the dilemmas surrounding it and similar events like 9/11, such as the problem of the demarcation between civil and state aircraft, the use of weapons against aircraft, the self-defense of states, or the conflict between the human rights of those on board and those on the ground (mainly in the light of the Chicago Convention, the so called San Remo Manual on International Law Applicable to Armed Conflicts at Sea, and the United Nations Charter). „There are only two emotions on a plane: boredom and terror." (Orson Welles)

Keywords: Chicago Convention, Forced Landing, Civil Aircraft, Human Rights, 9/11

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INTRODUCTION

On 23 May 2021, the Belarusian authorities forced a Ryanair flight from Athens (Greece) to Vilnius (Lithuania) to land in Minsk, citing a bomb threat. The aircraft approaching its destination was informed by the Belarusian air traffic controller that there was an explosive device (bomb) on board which was believed to be detonated over Vilnius. In response to the pilots' doubtful questions, Vilnius being closer than Minsk at the time, the dispatcher confirmed that the Belarusian authorities had ordered the plane to land in Minsk. The pilots declared a state of emergency and turned back towards Minsk, where they were escorted by Belarusian Air Force fighters until landing.

Later, the Belarusian President said that the news of the bomb had come from Swiss intelligence, but the Swiss Foreign Ministry denied this, and that there had been any communication with the Belarusian, Lithuanian or Greek authorities. Shortly afterwards, it was confirmed that a person on the flight - a journalist - who had been declared an extremist and persecuted by the Belarusian Government, was on board and was immediately detained by the Minsk authorities following the emergency landing. The existence of an explosive device on board was not verified and proved to be a false alarm. The world's leading powers have expressed their clear displeasure at the Belarusian handling of the case and diplomatic controversy has been sparked, with international aviation organizations condemning the state's behavior.

The civil aircraft, originally flying between two EU capitals, was carrying 123 passengers, none of them were injured in the incident.

The purpose of this paper is to present the relevant regulatory environment governing the case and, as far as possible, to assess Belarusian behavior in the light of it. However, during the discussion, I will not attempt to judge the case, but rather to highlight the dilemmas surrounding it and similar events.

First of all, it should be noted that the Belarus is one of the 193 members of the ICAO (International Civil Aviation Organization), as are Poland and Lithuania, *i.e.* a party to the Chicago Convention signed on 7 December 1944, but not a member of the European Union (the other states listed are). Greece is an observer with consultative rights to the ICAO.

ICAO is a specialized agency of the United Nations. It was established in 1944 by the Chicago Convention, and the 44th article details its objectives, which present a rather complex picture: ICAO develops the principles and technical standards of international aviation - with emphasis on safe and regular development, promotes the science of aircraft operation, develops air routes and facilities, creates safe, regular, efficient and economical air transport for the people, meets the needs of air transport, contributes to the development of civil aviation safety - it does all this without discrimination between States, on the principle of equality. During its activities, it develops standards and recommendations (SARPS - International Standards and Recommended Practices), which publishes as appendices (so-called Annexes) to the Chicago Convention.[1]

Furthermore, one of the most important achievements of the Chicago Convention is the declaration of the so-called five freedoms of the air. (It should be noted that there are actually nine freedoms of the air, five of which are named in the Chicago Convention and four others can be derived from it.) The first and seventh freedoms seem to be the most relevant in the light of the events in Minsk. The First Freedom of the Air guarantees a state the right to fly over other states without landing (for non-commercial purposes); the states overflown are obliged to tolerate this (excluding the possibility of charging for

[1] It should be noted that ICAO is not only a quasi-legislator, but also a quasi-judicial body, as contracting states can refer their disputes to the ICAO Council. *See*: ATTILA SIPOS, AZ UNI- ÉS MULTILATERÁLIS SZABÁLYOZÓI SZEREP A LÉGI KÖZLEKEDÉSBEN. AZ EGYSÉG MEGTEREMTÉSE ÉS ILLÚZIÓJA. (2018).

the overflight).[2] The Seventh Air Freedom further states that a state may transport from another state to a third state without affecting its own.

In summary, the Chicago Convention is the founding document of international civil aviation. The objectives of the Convention are scattered throughout, but concrete conclusions can be drawn from them. In its preamble, it sets as its objective the importance of development and safe development and requires reasonableness and economy in their implementation. As a convention within the framework of the United Nations, it also states the equality of States (peoples) in air transport, in accordance with the Charter. Article 4 emphasizes the prohibition of abuse (which is linked to the objectives of the Convention: it is abuse which is incompatible with the objectives of the Convention). Lastly, in defining the objectives of the Chicago Convention, I believe that the objectives of the ICAO (described above) cannot be ignored.

The Protocol amending the Chicago Convention, signed in Montreal on 10 May 1984, introduced Article 3 bis, which introduces a general prohibition of the use of force or coercion against civil aircraft and details its rules. States are therefore entitled, in the exercise of their sovereignty, to force an aircraft flying over their territory to land if they have reasonable grounds for concluding that it is being used for a purpose incompatible with the objectives of the Chicago Convention, such as the placing of an explosive device on board as a weapon of some kind, for terrorist purposes.[3] It is important to note that even in the event of interception of such an aircraft, the safety of persons on board or the safety of aircraft property cannot be compromised and States are obliged to refrain

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[2] Article 5 of the Chicago Convention. Scheduled flights also require additional permission from the State overflown (Article 6 of the Chicago Convention). "The Chicago Convention," in *Routledge Handbook of Public Aviation Law* (New York, NY : New York, 2016.: Routledge, 2016), 21–44, https://doi.org/10.4324/9781315297774-7.

[3] Paragraph b) of Article 3 bis of the Chicago Convention. "The Chicago Convention."

from the use of weapons against civil aircraft.[4] (In relation to the inserted Article 3 bis, an extreme view may be taken that the principle of sovereignty under the UN Charter may be an exception to its application, which seems to be confirmed by the fact that Article 1 of the Chicago Convention provides that a State "has complete and exclusive sovereignty over the airspace above its territory" and that the provisions of the Chicago Convention are subject to the UN Charter. However, I agree with the view that an interpretation of the rules on such a basis would render Article 3 bis meaningless and void.)[5] Finally, Paragraph d) of Article 3 bis further strengthens the guarantees of use contrary to the objectives of the Convention by obliging States to take appropriate steps to prohibit such use of aircraft registered or operated in their State.

Reference should also be made to the issue of the status of aircraft. An aircraft is defined by law as "any structure whose stay in the atmosphere results from interaction with the air other than the action of air forces acting on the surface of the earth".[6] In the sense of a purely physical definition, aircraft is therefore a broad concept, and in addition to passenger aircraft, many other devices - even a simple kite - can be considered aircraft. The (legal) status of an aircraft can be interpreted in several dimensions, but the most important for our topic is the distinction between state ownership and civil or state[7] aircraft.

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[4] Paragraph a) of Article 3 bis of "The Chicago Convention."

[5] Robin Geiß, "Civil Aircraft as Weapons of Large-Scale Destruction: Countermeasures, Article 3bis of the Chicago Convention, and the Newly Adopted German Luftsicheirheitsgesetz," *Michigan Journal of International Law* 1 (2005): 255.

[6] Point 5 of Section 71 of "Hungarian Act XCVII on Air Transport" (1995).

[7] The Chicago Convention consistently uses the terminology 'state aircraft', but some authors use the terms 'state' and 'military' aircraft as synonyms. The San Remo Manual on International Law Applicable to Armed Conflicts at Sea, on the other hand, is known to distinguish between the terms 'state aircraft', 'military aircraft' and 'civil aircraft'. It is important to emphasize that, in my view, although both terminologies may indeed be correct, *i.e.* the adjectives 'state' and 'military' may be used synonymously behind the term 'aircraft', and, in fact, there is no confusion in the definitions generally used in international law, I wish to stick consistently in this paper to the adjective 'state' as used in the Chicago Convention, by considering military aircraft as state aircraft, unless otherwise indicated.

State affiliation is defined on the basis of the *lex bandi* principle: "aircraft have the nationality of the State in which they are registered".[8] The consequence of this regulation is that the aircraft's flight deck is the (moving) quasi-state territory of the registering state, over which it has jurisdiction. (Registration is governed by the rules of ICAO Annex 7 and by certain state laws.)[9]

There is no accepted definition of civil and state aircraft in international law, and the Chicago Convention only uses an overly general definition (requiring exceptions and footnotes) when it states that "aircraft used in military, customs and police services shall be deemed to be state aircraft".[10] The lack of definition also leads to a series of serious consequences. On the one hand, the Chicago Convention, as the highest basic document for international civil aviation, should and can only be applied to civil aircraft. On the other hand, civil aircraft are defined by the concept of state aircraft, *i.e.* all aircraft that are not state aircraft are civil. Although this rather flexible regulation has been carefully elaborated over the decades by the legal practice, it has been and still is the basis for many disputes on interpretation and application. In practice, the status of an aircraft can only be determined in the light of its intended use, the quality of the crew on board, the flight plan and the aircraft's cargo, [11] as well as other characteristics and circumstances (*e.g.*, ownership, nature of the operator, quality of the pilot and commander, registration, on-board documentation, *etc.*). This of course leads to many difficulties in examining and judging each specific event, as in the case at hand (and this is compounded by mixed situations, such as civil aircraft performing state functions or civil aircraft carrying weapons in peacetime in addition to passengers). The Articles 62 and 63 of the San Remo Manual on the International Law Applicable to Armed

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[8] Article 17 "The Chicago Convention.".

[9] "The Polish Supremacy Mark: SP" (n.d.).

[10] Paragraph b) of Article 3 of "The Chicago Convention."

[11] Attila Sipos, "A Polgári Légi Jármű Jogi Státusza," *Repüléstudományi Közlemények,* no. 3 (2017): 278.

Conflicts at Sea, of which provide a number of examples, may be helpful in assessing specific cases, especially in mixed situations, but it is often only a guide, as it is often not applicable, especially in the context of 'ordinary' scheduled air transport.

We will see its relevance in the following discussion of possible alternatives to Belarus' conduct, and I will conclude by mentioning the concepts of self-defense and the use of arms in international law in the context of the relevant regulatory framework. Under Article 51 of the UN Charter, a state has the right to self-defense in the event of an armed attack (but is obliged to bring it promptly to the attention of the Security Council).[12] The invocation of self-defense by some states has subsequently been found to be unlawful in several cases, and in practice there are also a smaller number of cases in which the legality of self-defense has been upheld. Among the conditions for its existence, reference should be made to the following. 1. Point 4 of Article 2 of the UN Charter prohibits the use of force, while Article 51 refers to armed attack as a condition of self-defense; the two concepts are not only grammatically distinct but must also be distinguished in their interpretation. Although this difference in terminology has led to many practical difficulties and disputes, international lawyers generally agree that it is not possible to respond to all armed violence in self-defense. Thus, the level of armed aggression requires a definition (even on a case-by-case basis), which must therefore be sufficiently serious to result in the lawfulness of self-defense. Moreover, the armed attack must be committed by the State. An armed attack which, although sufficiently serious, is not attributable to the State is not a legitimate self-defense. In examining the conditions of self-defense, it is not possible to have regard only to the UN Charter, but it is also necessary to take account of customary international law. The requirement of proportionality requires that

[12] Katalin Siska, *A Nemzetközi Jog Alapkérdései a Nemzetközi Kapcsolatok Elméletének És Történetének Viszonylatában: Tankönyv Közigazgatási Menedzsereknek* (Debrecen: Debreceni Egyetemi Kiadó, 2010). and Katalin Siska and Sándor Szemesi, *A Nemzetközi Jog Története* (Debrecen: Kossuth Egyetemi Kiadó, 2006).

the use of force in self-defense must be proportionate to the attack and of the same magnitude as the attack. The requirement of necessity means that the attacked State may use self-defense only to repel and repulse the attack, and only as long as it is necessary to do so. The time factor should also be mentioned here: the need to repel and repulse an attack can no longer be necessary if it is not an immediate response to the attack.

The lawfulness of self-defense is generally based on the actual attack, but in fact at least on the actual and imminent threat; action against alleged attacks is unlawful. This brings us to the concept of preventive self-defense, which has two sub-categories: preemptive self-defense against an attack which has not yet occurred but is imminent, and preventive self-defense against a more distant attack which has not yet occurred and is not imminent. Accordingly, while the practice of preemptive self-defense is considerably more permissive (particularly in view of the modern and highly destructive nature of the means of warfare), preventive self-defense, which is largely based on assumptions, is prohibited; any recognition of the latter could lead to the right of self-defense being extinguished.[13]

I have already referred to the question of the interpretation of the use of arms in the definition of self-defense. It can be seen that the concept of the use of arms is surrounded by similar difficulties as the concepts of civil and state aircraft. Just as the seriousness of the armed attack is decisive for the lawfulness of self-defense, so is the violence used against an aircraft. Again, Paragraph a) of Article 3 bis of the Chicago Convention prohibits States from using weapons against civil aircraft. In the light of the above, the concept cannot be identified with the concept of violence under the UN Charter (at most it can be only partially related to it); not all acts of violence are necessarily armed (assault),[14] in my view the use of weapons implies violence that goes beyond the level of aggression. It should also be borne in mind

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[13] Gábor Kajtár, "Az Erőszak Tilalma," accessed March 13, 2023, http://ijoten.hu/szocikk/az- eroszak-tilalma.

[14] Kajtár.

that 'apprehension' within the meaning of Paragraph a) of Article 3 bis inevitably involves at least one lesser form of violence, which of course cannot endanger the safety of persons and property. In conclusion, the prohibited conduct is the use of weapons in the most serious form of violence; when used against an aircraft, it is in fact synonymous with shooting.

The research after the literature review, the theoretical frameworks and identifying the key concepts related to the case, encompasses legal documents, and international conventions. The purpose of these steps are to gain a deep understanding of the regulatory environment, historical context, and precedents relevant to the incident.

A legal analysis is conducted to examine the regulations and international conventions governing the actions of states in situations involving civil aviation. Key legal documents to be considered include the Chicago Convention on International Civil Aviation, the San Remo Manual on International Law Applicable to Armed Conflicts at Sea, and the United Nations Charter. These sources provide the necessary legal framework to evaluate the behavior of the Belarusian authorities and the implications for international law. This analysis provides valuable insights into dilemmas arising from the incident.

To enrich the discussion and provide broader perspectives, a comparative analysis will be conducted. The research examines similar incidents, such as the events surrounding 9/11. By comparing these incidents, the paper aims to identify common themes, legal precedents, and provide a basis for potential best practices for addressing the dilemmas associated with such situations.

By employing a comprehensive research methodology, including literature review, legal analysis, case study, and the comparative analysis, this paper aims to present an analysis of the Belarusian authorities' actions in the forced landing of the Ryanair flight. The research will provide valuable insights into the regulatory

environment and the dilemmas faced in incidents involving civil aviation, shedding light on the complex interaction between international law, human rights, and state sovereignty.

EVALUATION OF EVENTS, ALTERNATIVES - DILEMMAS

The events can be evaluated according to the relevant rules listed in the previous chapter as follows.

As explained, the operation of the scheduled service concerned initially involved three States – Poland as the operator of the service, Greece as the State of departure and Lithuania as the country of arrival. It was also noted that all three, apart from Greece, are party to the Chicago Convention, as is Belarus, which became involved in the chain of events. The Convention thus applies to them and is binding on them; Greece applies the rules on international civil aviation relevant here by virtue of other international treaties and principles. (It should be noted here that the prohibition on the use of arms in Paragraph a) of Article 3 bis of the Chicago Convention is in fact a codification of customary international law, which therefore applies to all four States – and to the international community as a whole – even in the absence of the adoption of the Chicago Convention.)

Consequently, Air Freedoms (or equivalent rights) are also enforced among the States involved in the events. The First and Seventh Freedoms of the Air, as detailed above, have therefore allowed the Polish airline to operate between the Greek-Lithuanian states. (Ryanair, of course, also holds the relevant state licences for scheduled air services.)

However, it is difficult to assess the case from the very beginning of our investigation. In any case, the determination of the status of aircraft is a crucial issue (since, I repeat, the Chicago Convention applies only to civil aircraft), which requires several

questions to be addressed. A private company (such as an airline) carrying civilians on scheduled flights with privately owned aircraft can easily lead to the easy recognition that the aircraft's classification is clearly civil, but, as I have indicated earlier, determining whether the aircraft was of state or civil status requires a complex examination of the circumstances. The flight crew of the aircraft in this case, including in particular the pilots and flight attendants, were identified as civilian personnel employed by Ryanair (although it is possible that State personnel, such as those performing official or public duties, may be on board a civil aircraft, it is not a State aircraft in all the circumstances of the case; this was not the case in our case and such a factor did not complicate the assessment). I should also note here that, in other respects, the case-law does not regard the shipper or airport ground handling staff as persons performing a public task.

The flight plan and the cargo of the aircraft involved in the case also lead to the conclusion that it must have been a civil aircraft, since it was carrying passengers for the private transport of civilians. (However, in relation to the shipment, the following should be noted. On the one hand, there are no detailed data on the cargo and mail of the aircraft, and it should also be borne in mind that it is not uncommon for a civil aircraft to carry military equipment, such as weapons, if you like, along with the passengers' baggage, but, in the circumstances of the case, this fact alone, even if it had been so, would not directly and unequivocally result in the aircraft being classified as state aircraft. On the other hand, it must be established that the aircraft is a kind of cargo of the passenger himself. When classifying the transported cargo, it should be considered whether the passengers on board are military, state or civilian, which already makes the assessment more difficult.

Although in our case it is probably reasonable to say that the aircraft was civilian, the foregoing leads to a series of dilemmas: how many soldiers, in addition to civilians, must be on board the aircraft to qualify as a state aircraft; whether the ratio of civilians to soldiers

is the determining factor, or whether the number of soldiers must necessarily be greater; but perhaps even a single soldier among hundreds of passengers may raise doubts as to the civilian status of the aircraft.) But it is even more difficult to draw conclusions about the use of the aircraft. First of all, it must be established that the use is to be understood as the current use. To illustrate the importance of this, I will use the most significant event[15] in the history of the development of aviation security, the terrorist attacks of 11 September 2001, as an example. As is well known, during the incident, terrorists hijacked, diverted and flew four aircraft into iconic US buildings, including the World Trade Center's twin towers and the Pentagon,[16] killing more than six thousand people. The US government (President) has been criticized on numerous occasions for not using an armed strike against the hijacked planes, which would have taken the lives of those on board (but unfortunately, they were killed anyway), but could have saved thousands of lives on the ground and in the buildings involved.

As we have seen, the prohibition on the use of weapons applies to the United States even though it is not a party to the Chicago Convention, which is in fact a codification of customary international law. However, the use of weapons is prohibited against civil aircraft. Whether the aircraft was indeed a civil aircraft is a matter of interpretation, since the perpetrators of the foreign state were using the aircraft for state (military, terrorist) purposes at the time. This is further complicated if we also take into account the interpretation of

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[15] Many authors refer to the events of September 11, 2001 as having changed the world and brought international terrorism to a new level; it is common to distinguish between the "pre-September 11" and the "post-September 11" worlds. (See for instance: Ildikó Ernszt, "A Nemzetközi Légiközlekedés Védelme (PhD Diss)," *University of Pécs* (2007). and Katalin Siska, "Gondolatok a Török Külpolitika 21. Századi Útkereséséről," *Jura*, no. 1 (2018).

[16] The fourth aircraft was supposed to have targeted the White House or the Capitol in Washington D.C., but the passengers managed to regain control of the aircraft, saving the target and possibly hundreds, perhaps thousands, of other lives. The aircraft eventually crashed into a field in Pennsylvania less than a quarter of an hour from the presumed target.

the German Constitutional Court[17] that the aircraft used for the terrorist attack were used as weapons against the US state and the civilian population (or to intimidate the population and disrupt the social and economic order of the state); although the aircraft used for the terrorist attack were (for the moment) used for military (war) purposes.

The question of use is therefore a complex one, and it must be remembered that at the time the threat was detected, the sequence of events was not yet known, *i.e.* the decision-maker could not have known the nature and type of the hijacking, the purpose or method of the hijacking, or that it would fly into a building and kill thousands of people. Obviously, this is also the reason why the US has not taken any action in self-defense. If this had not been the case, and the US had launched an armed attack on the aircraft, classified as a state (military) aircraft – or on any other legal basis, such as self-defense – it could have saved thousands of lives, but the purpose and manner of the attack would probably never have been known, which would have certainly made the US action illegal by the international community. The responsibility that led to all these painful findings is not diminished by the fact that the US decision-maker did not have sufficient opportunity for due reflection in the time between the detection and knowledge of the consequences and the time they occurred.

Moreover, while mentioning the very short time available for decision-making, it should not be forgotten that the United States 'needed' an actual attack – or at least the immediacy of an attack – to invoke self-defense, as follows. As events progressed from the stage of a not-yet-occurring but not direct attack to the stage of a still not-yet-occurring but already direct attack, perhaps only minutes elapsed, meaning that the US conduct could easily have been stuck at the level of prohibited preventive self-defense. Finally, it should also be pointed out that self-defense should have been immediately reported

[17] See: BVerfG, Urteil des Ersten Senats vom 15. February 2006, 1 BvR 357/05.

to the Security Council and the use of weapons against civil aircraft to the ICAO Council, a time-consuming task which, in the context of the moment-by-moment change of events, would have only complicated the situation and would have led to a waste of valuable time, which could have made it appear that the US was the cause of the events that were taking place. These observations must, of course, be based on an assessment of the events as an attack. However, a further condition for the invocation of self-defense is that the attack must be attributable to another state; the question is whether, in the short time available, anyone could have established beyond doubt that the aircraft was being piloted by terrorists (Taliban) whose activities were attributable to another state.

The parallel with the events in Minsk is that, while the fact of the explosive device on board has not been proven, the Ryanair flight approached its destination as a similar – quite literally – ticking time bomb, potentially endangering the lives of those on board and on the ground. (Consider, for example, that until it was revealed that the incident was a false alarm, it would have taken a legal basis, or rather, reckless courage, for anyone to treat the news of the explosive device lightly.)

In the light of the events of 11 September, it can be concluded that the Belarusian state should have refrained from using weapons against the flight, as this would have gone beyond the bounds of legality (a statement that is also true of other states, such as Lithuania, which did not have the right to take armed action.) It should be noted that the legality of self-defense would also have been fundamentally questionable in the case of Belarus, since the target of the attack would not have been Belarus but Lithuania anyway.

Another dilemma of extreme importance should be mentioned in connection with the previous problem. No one can be deprived of the right to life and the right to human dignity as interrelated

fundamental rights,[18] which can be considered the most fundamental human right.[19] The state has a duty to respect and protect fundamental rights, and it can therefore lay down obligations to enforce them. Ensuring the right to life requires, on the one hand, active intervention and protection on the part of the State (the 'positive side') and, on the other hand, passivity and refraining from taking life (the 'negative side'). In view of the tragic outcome, I will again use the events of 11 September 2001 as an illustration. In order to guarantee the right to life, the state has a duty to protect its citizens[20] and those on the ground and in the buildings affected by the attacks against the attack of a hijacked aircraft approaching them and posing a potentially fatal threat: it would therefore be necessary to intervene, ultimately by armed force, against the 'weaponized' aircraft.

At the same time, the state has a duty to refrain from taking human life, and therefore cannot violate the right to life of those on board the aircraft. Some have argued that it is right to take the lives of those on board, given that, on the one hand, the terrorist act would claim their lives anyway, and it is not the 'shooting' that takes their

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[18] Cf. Decision No 23/1990 (X. 31.) of the Hungarian Constitutional Court, with the concurrent opinion of Dr. László Sólyom, Constitutional Judge.

[19] The emergence of human rights is mainly linked to the development of the English, French and American constitutions. Human rights were first enshrined in the UN Charter, and later in 1948 the General Assembly adopted the now binding Universal Declaration of Human Rights. Although some argue that the Turkish peace treaty of independence signed in Lausanne, Switzerland in 1923 was already a human rights treaty (see: Katalin Siska, "A Kisebbségi Jogok Alakulása Törökországban, Különös Tekintettel a Lausanne-i Szerződés Rendelkezéseire," *Iustum Aequum Salutare*, no. 3 (2016): 177.

[20] Citizenship is a fundamental and strategic concept of public law that defines the relationship between the state and the individual (Katalin Siska, "Mustafa Kemal Atatürk hatása a török identitás és állampolgárság koncepciójára, különös tekintettel az alkotmányjogi szabályozásra" *Jog-Állam-Politika*, no. 1. (2016): 61.), the essential content of which – status, rights and obligations on both sides – is enshrined in the state's constitution. Citizenship is a modern concept, the first general definition of which certainly appeared in the first edition of the Dictionnaire de l'Académie Française of 1835 (see: Katalin Siska, "Fear Not...! Turkish Nationalism and the Six Arrows System – A State in Search of a Nation", *Hunarian Journal of Legal Studies* (2016): 277. and Katalin Siska, "A női jogok alakulásának áttekintése a Török Köztársaság megalakulásától napjainkig" *Jog-Állam-Politika*, no 2. (2017)).

lives, but the terrorists themselves, and on the other hand, because, the loss of a few hundred lives at the most and the saving of thousands of others on the ground, and thirdly, because the passengers are in fact part of the aircraft and, in choosing this method of travel, the risk of such rare events was tacitly agreed and accepted. However, the German Constitutional Court decision cited above has shown that this approach is wrong on several points. Sacrificing the lives of innocent people would be a violation of the right to life and dignity even if it could save the lives of a significant number of people. In addition, it should be borne in mind that the wreckage and remains of the downed aircraft also endanger the lives of innocent people on the ground, which could lead to further violations of fundamental rights.

The part of the argument that the passengers are part of the aircraft as a weapon is also wrong, as this objectifies those on board, depriving them of their humanity and ultimately of their human dignity, which is also a violation of fundamental rights. Finally, the passengers are also objectified by the view that their death would have occurred with or without the shooting; they are victims of a desperate situation from which they have no means of escape, they have no control over events or their fate, and therefore, by shooting them, they become victims not only of the terrorists but also of the state.

In my opinion, it should also be borne in mind that until the fatal outcome of the events occurred, no one (or at most only the perpetrator on board) could have been sure of exactly what was going to happen, i.e. that the passengers would lose their lives. Consider the following. Imagine the 'final' moment in time – like a freeze-frame – when the plane has not yet crashed into the World Trade Centre tower, but an arbitrarily small unit of time later the disaster occurs.

If we can see this frame in front of us, then we can say with certainty that the danger is imminent and inevitable. What can we do then? Even if we were able (technically, for example) to stand by and wait for this 'last moment', and then use only an armed attack on the

aircraft (assuming that the wreckage scattered after the shot does not cause any damage or injury), we could say with absolute certainty that the passengers on board would have died even if no weapons had been used. However, if we now move backwards in time from that frame, and as we move further away from it, that certainty diminishes exponentially – which is probably influenced by human nature, by hope. Even if we were able to determine in advance the moment at which the probability of survival of the passengers is at least extremely low, it is doubtful that the use of a weapon would still be physically possible.

To summarize, human life cannot be measured in numbers: less cannot be sacrificed for more life; the protection of life and the right to life of each individual cannot be distinguished on qualitative or quantitative grounds. There is no doubt, therefore, that Belarus would have exceeded the limits of the law if it had used weapons.

It can be concluded that in the case of the Ryanair flight (as in the case of the planes involved in the 11 September attacks), the detection of the alleged threat without the consequences did not provide sufficient grounds for choosing the appropriate method of response, and the immediate threat required acute and immediate intervention. It is therefore reasonable to ask what other means Belarus could have had at its disposal at the time of the recognition of the threat (which, even if real, proved to be a blind alley only after the fact) other than forcing the country to land, if the use of force and arms was not, as explained above, a reassuring solution. What else could the state have done in the event of a bomb threat, which would not have wasted valuable time and would have been not only swift but effective and, at the same time, legitimate intervention?

I refer you back to the beginning and remind you of another prohibition in Article 3 bis: “in case of interception, the lives of persons on board and the safety of aircraft must not be endangered". Belarus's conduct undoubtedly constituted an 'interception', but there was no threat to the safety of persons or aircraft, nor any harm to

them, and therefore, in the absence of such consequences, Belarus is not responsible for the interception. It must therefore be determined whether Belarus could legitimately have forced the Polish aircraft to land in the light of Article 3 bis, that is to say, whether the conditions in Paragraph b) of Article 3 bis were satisfied.

Paragraph b) of Article 3. bis:

> „The contracting States recognize that every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention; it may also give such aircraft any other instructions to put an end to such violations. For this purpose, the contracting States may resort to any appropriate means consistent with relevant rules of international law, including the relevant provisions of this Convention, specifically paragraph a) of this Article. Each contracting State agrees to publish its regulations in force regarding the interception of civil aircraft."

In relation to Paragraph a) of Article 3 bis, it is worth mentioning that, although the opinion among international jurists is not entirely unanimous, the view I have taken is that it does not apply only in the national airspace concerned, and that its territorial scope is not limited. In addition to the grammatical interpretation (the wording is a general prohibition and includes the phrase 'every State must refrain'), this is supported by judicial practice and some historical examples.

Unlike in Paragraph b), where there is a reason to consider that the territorial scope is limited to national airspace. The wording of the provision opens up the possibility of applying the rules in Paragraph b) as "in the exercise of its sovereignty", and the wording also includes the phrase "above its territory". Both the grammatical and the teleological interpretation thus reflect the right of a state to require a civil aircraft in flight to land or to give other instructions in the

airspace above its territory. (It should be noted that international legal opinion on this point is not entirely unanimous, but there is greater agreement than in the case of Paragraph a).)
Whether or not the above position is accepted, none of the above cases will lead to a finding of an infringement in relation to Belarus' conduct. The Ryanair aircraft was in Belarusian airspace when the landing order was issued (or when it was intercepted), and Belarusian jurisdiction therefore extended.

De iure legal consequences under Paragraph b) of Article 3 bis: requiring landing at the designated airport, giving other instructions to the state to end the infringement, arrest, initiating prosecution (e.g. before the ICAO Council); and de facto: subsequent protest or other diplomatic pressure. For legal consequences to apply, one of two conditions must be met: (1) the aircraft flies over the territory of the state without authorization, or (2) the aircraft is used for a purpose inconsistent with the objectives of the Chicago Convention.

Ryanair had the necessary authorization to operate its flight (it had the right to fly over Belarus under the Air Freedoms and the necessary permission to operate scheduled flights), so the Belarusian state's options were limited: to force it to land, it had to conclude on reasonable grounds that the aircraft was operating for a purpose incompatible with the objectives of the Chicago Convention.

The objectives of the Chicago Convention were reviewed in the first chapter, and it was concluded that, although they are not explicitly listed in the Convention as a whole, a comparison of the principles in some articles and the ICAO objectives allows us to draw concrete conclusions. In particular, it can be concluded that an aircraft is incompatible with the objectives of the Convention if it α) is used as a weapon of destruction,[21] β) is used for activities prejudicial to the national security of a State, γ) is used in violation of the public order of the state concerned, δ) its activities constitute a criminal offence,[22]

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[21] "ICAO Doc 9958," n.d.

[22] There seems to be a consensus in the jurisprudence and practice of states that the commission of certain (mainly serious) offences is incompatible with the objectives of the

such as illicit drug trafficking, arms smuggling, trafficking in human beings or other serious and frequent offences,[23] and certainly ε) it endangers the safety of flight, (ζ) it violates the sovereignty of the state concerned, or (η) its use is not for peaceful purposes.

The potential danger posed by the explosive device in our case is undoubtedly incompatible with the objectives of the Convention. According to Belarus, the State forced the aircraft to land because of the above.

It can be concluded that the Belarusian conduct met all the above conditions, and no illegality can be established in view of the foregoing. However, in order to qualify the conduct as lawful, we must note that the conclusion must also be 'reasonable cause', i.e., read in conjunction with the second phrase of the first sentence – “reasonable grounds to conclude” – it must also be reasonable on the basis of the grammatical interpretation.

CONCLUSION

In addition to the test of reasonableness set out above, in my view, it cannot be ignored whether the Belarusian authorities – or the authorities concerned – could have had other legitimate, more appropriate and more effective alternatives to the intervention. (Of course, the text of the relevant legislation does not provide for necessity-proportionality requirements, so the consideration of these aspects may be less relevant in determining legality than in the assessment or justification.) I think that the case has highlighted a number of shortcomings and difficulties in addition to the dilemmas that have been discussed. There are issues relating to the legal status of the aircraft, the use of weapons or self-defense, or the vulnerability

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Chicago Convention, but it is not clear, and opinions are divided, exactly which offences are meant. Several authors referring to the Tokyo Convention includes virtually any offence.

[23] Based on specific references made at the 25th (extraordinary) Session of the ICAO Assembly. See also: Michael Milde, “Interception of Civil Aircraft vs. Misuse of Civil Aviation (Background of Amendment 27 to Annex 2),” *Annals of Air and Space Law*, 1986, 125.

of fundamental human rights, but there are also shortcomings in the system of sanctions for breaches of Article 3 bis, or, for example, the abuse of rights. It is also unclear whether it is unreasonable, or even dangerous, for a state, in the exercise of its sovereignty, to force an aircraft to land at its own airport when applying Article 3 bis, even if the airport of a neighboring state is physically closer or even more easily accessible. Or can the requirement of safety periodically override the general principles of sovereignty?

The case before ICAO, which is the subject of this paper, is likely to present the aviation organization with questions and challenges for careful consideration on both fronts – as a quasi-legislator and as a quasi-judge. The decisions in the Belarus conduct case are likely to be precedent-setting; they will also need to be of a nature to shape the practice of law enforcement, to facilitate difficulties of interpretation and to fill gaps. These events have placed a new and serious responsibility on ICAO, but I believe that it is not possible to avoid answering these questions at this time.

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Emerging Legal Response to Gender-Based Domestic Violence in Bangladesh: Analyzing the Scope and Limitations of Indigenous Legal Regime in light of International Treaties

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ABSTRACT

Gender-based domestic violence is a concerning global issue, causing significant physical and psychological harm to individuals. Family violence is increasingly recognized not only as a human rights concern but also as a matter of public welfare. Unfortunately, Bangladesh, being one of the world's poorest countries, experiences a high prevalence of domestic violence cases. While Bangladesh has been acknowledged by international frameworks like the UDHR, ICCPR, ICESCR, CEDAW, and DEVAW for protecting individuals, particularly women, from gender-based domestic violence, the implementation of these protections remains questionable. Although Bangladesh has enacted specific legislation to address domestic violence, there is a need to assess its effectiveness in safeguarding the rights of all victims, regardless of gender. This article aims to analyze the scope and limitations of the law in protecting individuals from domestic violence and ensuring their rights. Bangladesh faces challenges in ensuring gender-based rights, as domestic violence incidents involving men, children, and transgender individuals often go unreported. Through this research paper, the author focuses on the objectives of regulations, the enforcement of legal requirements, and the existing limitations within the law to prevent domestic violence and ensure justice for all affected individuals.

Keywords: *Gender Neutrality, Gender-Based Equal Rights, Domestic Violence, And Gender Equality*

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INTRODUCTION

Human rights are inherent rights that come from birth. No one ever controls it naturally. It is a unique right that is present in every human being. There are three basic obligations: These are respected, protected, and fulfilled and it is a state's general Obligation. So, human rights are violated only when a person's human dignity is divided. We have seen that discrimination started in human civilization. Discrimination has not stopped in the modern generation but is going away. In Bangladesh, gender-based violence comes in numerous shapes: physical mishandling; spouses tossing spouses out of the domestic in residential debate; spouses requesting that their spouses get more share cash from their families, and child marriage, among others. Moreover, violence and badgering, counting "gender-based violence" and badgering (which incorporates sensual badgering), can constitute a genuine infringement of human rights.

Within the world of work, different shapes of savagery and badgering cause treacherous hurt to people, working environments, and society at expansive. They obstruct improvement extremely, especially by bringing down the aggregation of social and human capital and posturing a colossal boundary for ladies and men in getting to not-too-bad and profitable work. On the other hand, In Bangladesh, gender-based viciousness and harassment, especially sensual badgering, isn't a modern wonder for sexual orientations. Be that as it may, it has progressively been talked about in the open as a major challenge both in their private lives and within the open circle. With more ladies venturing out of the domestic and taking up openings for instruction and work, gender-based viciousness and badgering linger ever bigger.[1] This research paper is based on

[1] "UNFPA Supplement, Gender Based Violence and Its Impact on Bangladesh's Development," *The Daily Stars,* 2016, https://www.thedailystar.net/round-tables/gender-based-violence-and-its-impact-bangladeshs-development-1331872.

quantitative and qualitative research, in which the legal protection against gender-based domestic violence in Bangladesh has been critically analyzed. This study is focused on primary and secondary sources regarding the gender's equal rights and applicability of the implemented Acts and established a new Act for gender neutrality rights. So, the primary sources such as observation, case study, interview session and discussion and interpretation of their rights in current situations in Bangladesh.

Domestic violence is the deliberateness utilized of physical drive or control, debilitated or legitimate to goodness, against oneself, another individual, or against a bunch or community, which either comes nearly in or highlights a tall probability of coming nearly in hurt, passing, mental hurt, mal-development, or hardship. Household savagery happens when one person tries to coerce or control another person in a family-like or private relationship. Residential viciousness incorporates misuse of control and can take the outline of physical misuse, sexual mistreatment, enthusiastic or mental abuse, verbal misuse, stalking and terrorizing, social and geographic separation, budgetary mishandling, brutality to pets, or harm to property or dangers to be savage in these ways. These all contribute to the abuse, hardship, and persecution of ladies in Bangladesh, and are infringements of essential Human Rights.[2]

Different types of domestic violence, first is physical violence. Physical violence happens when someone businesses a parcel of their body or an address to control a person's exercises. Furthermore, Physical viciousness implies any undesirable or antagonistic contact such as hitting, battling, pushing, pushing, slapping or tossing objects. Racial or ethnic slurs, irritating comments, dangers of savagery, and any other provocative comments, dialect, or activities moreover abuse this approach and will not be endured. A danger of viciousness implies a verbal or another expression of a deliberate to cause physical hurt. People who debilitate savagery or something else

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[2] UNFPA *nd*

lock-in in provocative conduct towards associates, clients, sellers, or other people customarily are held at slightest similarly at blame for following a physical quarrel, indeed on the off chance that they don't strike the primary blow or something else start a physical encounter[3]

Second types of domestic violence are sexual violence. Sexual violence when an individual is obliged to unwillingly take a divide in sexual action. So, Sexual savagery suggests any sexual act or endeavors initiate a sexual act, or undesirable sexual comments or acts to activity, that are encouraged against a person's sexuality utilizing basic by anybody, in any case of their relationship to the casualty, in any setting, checking at private and work. Assault is the term that's commonly utilized for the basic sort of sexual violence said over (forced/coerced interdepartmental).

Assault can be characterized as non-consensual sexual infiltration, in any case slight, of any divide of the body of the casualty with a sexual organ, or the butt-centric or genital opening of the casualty with any contradiction or any other allocation of the body. The attack is committed by oblige, or by the risk of drive or actuating, such as that caused by fear of savagery, prompting, detainment, mental abuse or abuse of control, against such person or another person, or by taking advantage of a coercive environment or committed against a person incapable of giving veritable consent. In the case of a matrimonial attack, sexual interdenominational obliged on a woman by her life partner, intentioned against her will.[4]

Third types of domestic violence are emotional violence. It has included confining a child's developments, denigration, mocking, dangers and terrorizing, separation, dismissal, and other non-physical shapes of antagonistic treatment. Seeing viciousness can

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[3] Noor Mohammad Sarker and Sultana Yesmin, "Domestic Violence in Bangladesh Analyzing from the Contemporary Peace & Conflict Perspectives Peace and Security," *Peace and Security Review* 5, no. 10 (n.d.): 77.

[4] *Ibid*

include constraining a child to watch an act of savagery or the accidental seeing of viciousness between two or more other people [5]

Last types of domestic violence are physiological violence. Physiological violence alludes to any act or exclusion that harms the self-esteem, character, or improvement of the person. It incorporates but isn't restricted to, mortification, debilitating misfortune of care of children, constrained separation from family or companions, undermining to hurt the person or somebody they care around, rehashed shouting or debasement, actuating fear through threatening words or signals, controlling behaviors, and the pulverization of belonging[6]

LEGAL PROTECTION AGAINST GENDER-BASED DOMESTIC VIOLENCE UNDER THE DOMESTIC LAW OF BANGLADESH

The presence of Bangladeshi laws against gender-based violence and spurring in working circumstances stems from the Structure itself. 'Article 28"[7] cherishes the run the appeal of correspondence and non-segregation, with "Article 28(2)"[8] particularly communicating that & ladies might have risen to rights with men in all circles of the State and open life. In so doing, the drafter's structure was cautious that an immaterial affirmation of consistency isn't satisfactory. Hence, the Structure stipulates positive separation toward ladies. "Article 28(4) [9]"states that: Nothing in this

[5] *Ibid*

[6] *Ibid*

[7] "The Constitution of the People's Republic of Bangladesh,Article 28," 1972, https://www.bing.com/ck/a?!&&p=e93d063d3d26c7f7JmltdHM9MTY4NzgyNDAwMCZpZ3VpZD0wOWNiYWYwMS0wYTJiLTY1MGYtM2E5Mi1hMDAyMGIxMzY0MGEmaW5zaWQ9NTI2NQ&ptn=3&hsh=3&fclid=09cbaf01-0a2b-650f-3a92-a0020b13640a&psq=bangladesh+constitution&u=a1aHR0cDovL2JkbGF3cy5taW5sYX.

[8] *Ibid* Article 28(2)

[9] *Ibid* Article 28(4)

article got to anticipate the State from making extraordinary course of activity in favor of ladies or children or for the advance of any in switch locale of citizens "Article 19(3)"[10] as well gives that: The State might endeavor to guarantee correspondence of opportunity and support of ladies in all circles of national life, as an imperative run the show of state approach.

The Domestic Violence (Protection and Prevention) Act, 2010" is Bangladesh's primary law to address residential violence. Sometime recently "2010, residential viciousness" offenses as they came inside the domain of the Ladies and Children Suppression Avoidance Act on the off chance that they were associated with endowment requests. Under "Section 3" [11]of the 'Domestic Violence Protection and Prevention Act, of 2010' [12]characterizes residential violence as any Act of physical manhandling, mental manhandling, sexual manhandling, or financial hurt by an individual against a lady or child with whom he encompasses a family Relationship. But in this Act, there is no mention of male and transgender.

When acid assaults topped about 500 detailed cases in '2002' the endless lion's share of which focused on ladies and associate endeavors and concerted activism by women's rights organizations and survivors impelled the government to order two laws: 'The Acid Offense Control Act, 2002' and 'The Acid Control Act, 2002.'[13]

Though Bangladesh has gotten to be a party to the Joined Together Countries "Convention on the Rights of the Child" and While it is convenient and fundamental to supply a modern law to

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[10] *Ibid* Article 19(3)

[11] "Section 3,The Domestic Violence Protection and Prevention Act," 2010, https://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc_7c82_4aa0_98a6_8672334b235c/Domestic Violence Act English.pdf.

[12] *Ibid*

[13] "Acid Control Act, 2002.," 2002, https://www.bing.com/ck/a?!&&p=3d4780584c280ff7JmltdHM9MTY4NzgyNDAwMCZpZ3VpZD0wOWNiYWYwMS0wYTJiLTY1MGYtM2E5Mi1hMDAyMGIxMzY0MGEmaW5zaWQ9NTI0NA&ptn=3&hsh=3&fclid=09cbaf01-0a2b-650f-3a92-a0020b13640a&psq=bangladesh+constitution&u=a1aHR0cHM6Ly9lbi53aWtpcGVkaW.

solidify and reenact the existing Children Act, by revoking it, for the reason of executing the arrangements of the said convention.[14]

Dowry Prohibition Act, 2017' joins the prior Share 'Dowry Prohibition Act, 1980' and consequent alterations. The Act lays down '14 years' thorough detainment alongside fines for any person or people who incite any young lady to commit suicide over dowry. It includes an arrangement moreover for a life term of '12 years' for hurting a lady over dowry. That the government has taken cognizance of the truth that share could be a genuine social illness that must be handled.[15]

The present law in Bangladesh that addresses child marriage is 'The Child Marriage Restriction Act, 2017 (CMRA)' canceling the prior 'British law of 1929'. The Act sets the least age of marriage for a male as '21' a long time and for a female as '18' a long time. Segment 7 of this Act, 2017gives penalties for children [16]

The Penal Code of 1860" is Bangladesh's key correctional statute, acquired from the colonial period - contains an arrangement on ensuring ladies from different shapes of physical and sexual viciousness. In any case, the utilization of the term sexual badgering may be a generally later wonder, which began showing up in scholarly and arrangement talks as examined below. The definition of assault in 'segment 375' of the Correctional Code remains in the drive. It is characterized as a sexual intercut committed by a man with a lady against her will or without her assent. The Penal Code moreover indicates disciplines for offenses related to capturing, snatching or

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[14] "The Children Act," 2013, https://www.bing.com/ck/a?!&&p=8291af76b3d8e971JmltdHM9MTY4NzgyNDAwMCZpZ3VpZD0wOWNiYWYwMS0wYTJiLTY1MGYtM2E5Mi1hMDAyMGIxMzY0MGEmaW5zaWQ9NTE5Mw&ptn=3&hsh=3&fclid=09cbaf01-0a2b-650f-3a92-a0020b13640a&psq=children+act+2013+in+bangladesh&u=a1aHR0cHM6Ly93d3cuaW.

[15] Biplob chakrabarty, "The Dowry Provision Act," *The Daily Star*, February 1, 2017, https://www.thedailystar.net/editorial/the-dowry-prohibition-act-2017-1353904.

[16] "Section 7,The Child Marriage Restraint Act," 2017, https://www.bing.com/ck/a?!&&p=e81de5653c6e9dc8JmltdHM9MTY4NzgyNDAwMCZpZ3VpZD0wOWNiYWYwMS0wYTJiLTY1MGYtM2E5Mi1hMDAyMGIxMzY0MGEmaW5zaWQ9NTE4Nw&ptn=3&hsh=3&fclid=09cbaf01-0a2b-650f-3a92-a0020b13640a&psq=Section+7%2CThe+Child+Marriage+Restraint+Act%2C+2017&u.

compelling a lady into marriage, 15, subjugation or constrained labor '(sections 359-374)[17]'. Be that as it may, these are at times, on the off chance that ever, conjured as they cover with ensuing Acts that criminalize these off offenses.

"The Rights and Protection of Persons with Disabilities Act, 2013 (RPPD)" asserts the rights of people with incapacities. 'Article16'[18]of the Act reveres their right to break even with lawful acknowledgment and get to equity, as well as the proper to be utilized in open and private foundations. Essentially, the Act notices their right to a secure, sound environment, and security from torment. It denies any shape of separation by any person, institution, specialist or organization against any individual with an inability to boundary to their rights pronounced within the 'Act.189 Segment 35' indicates that, cannot be any segregation or restriction against any individual with inabilities in terms of work for which they are qualified to apply[19]

INTERNATIONAL INSTRUMENTS FOR DOMESTIC VIOLENCE PREVENTION

'The Declaration of Human Rights' changed the worldwide viewpoint on 'human rights. What I am doing to the citizens of my nation, whether I am doing it to them or not, is changing the state of mind of the states. Human rights have ended up being the guard dog of each country in the world. The decree proposes that each human being has nobility, and breaks even with unavoidable rights, this acknowledgment will be the establishment of justice, peace, and freedom within the world. There were no official obligations within

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[17] "The Penal Code," bdlaws, 1860, http://bdlaws.minlaw.gov.bd/act-11.html?lang=bn.

[18] Article 16,The Rights and Protection of Persons with Disabilities Act, 2013

[19] "The Rights and Protection of Persons with Disabilities Act," Human rights watch, 2013, https://www.hrw.org/news/2022/07/18/bangladesh-submission-un-committee-rights-persons-disabilities.

the corner of this agreement. However, it has since made critical commitments to the definition of worldwide settlements, the acknowledgment of human rights in constitutions in different nations, and the establishment of a worldwide culture of human rights. This statement is cited within the decisions of different households and outside courts. It is seen in terms of human rights measures all over the world. There are parcels of traditions to set up human rights, which are given underneath. There are some international Convention in which is recognized by Bangladesh are given below:

The Charter of the United Nations, 1945: Concurring with the 'UN Charter', it is one of the [20]purposes of the UN is to achieve world interest inside headway and bolster considered for human rights and vital adaptabilities for all without refinement as to race, sex, tongue or religion. 'Article 8 'of the Structure especially states that The UN might put no imprisonments on the capability of men and women to require portion in any capacity and underneath conditions of correspondence in its preeminent and assistant organs. 'Articles 13,[21] 55[22] and 76[23]' of the Structure call for the realization of human rights and pivotal adaptabilities "for all without refinement as to race, sex, lingo or religion".

Universal Declaration of Human Rights, 1948: Even though certification of the characteristic respectability and the rise to and basic rights of all individuals of the human family is the establishment of versatility, esteem and peace interior the world. Agreeing with Article 1[24] provided that, all human animals are born free and rise to respectability and rights. They are contributed with reason and soul and got to act towards one another in a soul of brotherhood. Article 7

[20] "The Charter of the United Nations," 1945, https://treaties.un.org/doc/Publication/CTC/uncharter.pdf.
[21] *Ibid*, Article 13
[22] *Ibid*, Article 55
[23] *Ibid*, Article 76
[24] Article 1,,Universal Declaration of Human Rights, 1948

[25]said that all are break indeed a few times as of late the law and are entitled without any segregation to break indeed with the security of the law. All are entitled to break indeed with security against any isolation in encroachment of this Explanation and any insincerity to such separation. The All-inclusive 'Affirmation of Human Rights, 1948' to contains arrangements for the balance of men and ladies and forbids non-discrimination on the ground of race, sex, dialect or religion. Even though the UDHR did not endeavor to say any specific rights of ladies. It did not attempt to mention any particular right of women, 'Article 26' of it stated that motherhood and childhood should receive special protection from the state.[26]

Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 (CEDAW): The Government of Bangladesh 'confirmed the CEDAW on '6 November 1984'. 'Article 11'[27]commits the Portion States to slaughter isolation against women inside the field of trade, and to ensure the correspondence of women and men. As talked around over, the 'CEDAW' Committees Common Proposition No. '19 (1992)'[28] entitled Viciousness against Women affirms that gender-based viciousness, counting sexual goading, may be an outline of isolation.

Commenting on 'Article 11 of CEDAW', [29]which relates to partition against women in work, the CEDAW Committee emphasized that correspondence in commerce can be truly obstructed when ladies are subjected to gender-specific violence, such as sexual bullying inside the working environment. The Committee portrayed a couple of behaviors acts that can be categorized as sexual goading, tallying both categories of quid ace quo and an unpleasant working

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[25] *Ibid*, Article 7

[26] "Universal Declaration of Human Rights," 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights.

[27] "Committee on the Elimination of Discrimination against Women (CEDAW)" (Newyork, 1979), https://www.ohchr.org/en/instruments-listings.

[28]*Ibid* ,recommendations no 19,(19920,https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm

[29] *Ibid* 39

environment. 'Common Proposition No. 35' of the CEDAW Committee endorses state parties to ensure that all shapes of gender-based brutality against women in all circles - which entirety to the encroachment of their physical, sexual, or mental cleverness are criminalized. It slants them to display without delay or strengthen, legal sanctions commensurate with the gravity of the offense, and nearby respectful cures.[30]

The UN Declaration on the Elimination of Violence against Women, 1993: Concurring to 'Article 1' of the confirmation characterizes that, viciousness against ladies as any act of gender-based viciousness that comes almost in or is likely to result in, physical, sexual or mental harm persevering to women, tallying threats of such acts, limitation or subjective hardship of flexibility, whether happening in open or in private life. It as well joins sexual bullying and terrorizing at work, in educators teach and some place a parcel of savagery against women.[31]

International Covenant on Economic, Social and Cultural Rights, 1966: Concurring to 'Article 7'[32] the States Parties to the display Contract recognize the proper of everybody to the satisfaction of fair and favorable conditions of work. 'Article 11'[33]gives the fundamental and same rights of uniformity between men and ladies. 'Article 12'[34] said that, take suitable measures to kill segregation against ladies. 'Article 13(b) [35]'expressed that, fitting measures to dispose of separation against ladies in regions of financial, social life and specific other shapes of the monetary emergency. On the other

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[30] *Ibid*, Recommendation no -35

[31] "Declaration on the Elimination of Violence against Women," 1993, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.21_declaration elimination vaw.pdf.

[32] "International Covenant on Economic, Social and Cultural Rights," *United Nations Human Rights Office of High Commission*, 1966, https://www.ohchr.org/en/instruments-listings.

[33] *Ibid*, Article 11

[34] *Ibid*, Article 12

[35] *Ibid*, Article 13(b)

hand, 'Article 14(g)'[36] mentioned that, ensured the neutrality of equal rights between men and women.

Covenant on International Civil and Political Rights, 1966: 'Article 6'[37]communicated that each human being has the characteristic right to life. His right ought to be secured by law. No one may well be subjectively denied of his life. 'Article 7' communicated that No one may be subjected to torment or barbaric, pitiless or corrupting treatment or teaching In particular, no one may well be subjected without his free consent to remedial or coherent experimentation.[38] Other than that, 'Article 16' in addition states that everyone might have the correct to affirmation all over as an individual before the law.[39]

'Article 24' States that, each child might have, without any isolation as to race, color, sex, tongue, religion, national or social root, property or birth, the proper to such measures of confirmation as are required by his status as a minor, on the parcel of his family, society and the State.[40] On the other hand, 'Article 26[41]' stated that' all people are rising to sometime recently the law and are entitled without any separation to the rise to assurance of the law.

The Convention on the Rights of the Child, 1989: The most excellent intrigued of the child could be a key guideline within the '(The Tradition on the Rights of the Child, 1989) CRC'. So, 'CRC' does not center on the rights of the child in confinement but contains arrangements recognizing the interrelationships between the child, the family, and the State. In Article 2 [42]of the tradition, states parties acknowledge a commitment to respect and ensure the rights laid out inside the Convention without partition of any kind.

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[36] *Ibid* Article 14(g)

[37] "International Covenant on Civil and Political Rights," *United Nations Human Rights Office of High Commission*, 1966, https://www.ohchr.org/en/instruments-listings.

[38] *Ibid*, Article 7

[39] *Ibid*, Article 16

[40] *Ibid*, Article 24

[41] *Ibid*, Article 26

[42] "Convention on the Rights of the Child," *United Nations Human Rights Office of High Commission*, 1989, https://www.ohchr.org/en/instruments-listings.

This Article includes a commitment viably to recognize individual children and assemble children for whom affirmation and realization of their rights may ask exceptional measures. 'Article 4'[43] of the CRC requires that states ought to endeavor all appropriate regulatory, administrative, and other measures for the execution of the rights recognized inside the Convention". 'Common Comment No. 5' issued by the Committee on the Rights of Child states that when a State endorses the CRC, it takes a commitment underneath all-inclusive law to execute it[44]

International Convention on the Elimination of all Forms of Racial Discrimination, 1965:Here is the preeminent reason that The States Parties to this Tradition, Considering that the Structure of the Joined together Countries is based on the measures of the respect and correspondence characteristic in all human creatures which all Parcel States have sworn themselves to require joint and partitioned development, in back with the Organization, for the accomplishment of one of the purposes of the Joined together Countries which is to the advancement and empower all-inclusive regard for and affirmation of human rights and fundamental openings for all, without capability as to race, sex, lingo or religion In addition, 'International Tradition on the Disposal of all Shapes of Racial Segregation 1965' given, beneath 'Articles 2 and 5' said that everyone can appreciate their rights without segregation as respects race, color national, moral root, uniformity sometime recently the law[45]

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[43] *Ibid*, Article 4

[44] 'The Convention on the Rights of the Child, 1989 https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child'

[45] "International Convention on the Elimination of All Forms of Racial Discrimination," *United Nations Human Rights Office of High Commission*, 1965, https://www.ohchr.org/en/instruments-listings.

GENDER-BASED DOMESTIC VIOLENCE:

Domestic violence is a dynamic situation that is spreading rapidly across the country and its impact is not small in Bangladesh. In Bangladesh, we usually see that in the case of men and women who are victims of violence against transgender people and children, we can only see remedies for women and children. We have the 'Prevention of Domestic Violence Act 2010' in Bangladesh. If we observe the Acts, we will see that the extent of implementation is a big question. Not only that, we can see, for 'women and children' the 'Prevention of Domestic Violence Act, 2010' has been created. But how much of an implementation of this Act it has been questionable.

Domestic Violence Against Women

Spousal violence against women: Spousal violence, moreover alluded to as residential violence or hint of an accomplice viciousness, could be a behavioral cycle that includes enthusiastic, physical, or sexual savagery dispensed on a person in a household setting, such as cohabitation or marriage. Anybody can be a casualty, in any case of race, sex, age, sexual introduction, or financial foundation. Agreeing to the Joined Together States Division of Equity, '1.3 million' ladies and '835,000' men are casualties of physical savagery by an insinuate accomplice yearly.

The results of spousal manhandling amplify past culprits and casualties, influencing their quick families, companions, and communities. Children who witness spousal mishandling neighbors may be pulled into the violence, and the manhandled may pull back from family and companions, and so on. Spousal manhandling goes past the dividers of any one person's domestic.[46]

The impacts on domestic violence against women in Bangladesh: Bangladesh has tall rates of spousal savagery against

[46] 'Heidi Bart Johnston and Ruchira Tabassum Naved, "Spousal Violence in Bangladesh': 'A Call for a Public Health Response'',''' n.d.

ladies (SVAW). Agreeing to Naved, Azim, Bhuiya, & Person (2006), almost two-fifths of ever-married, reproductive-aged ladies detailed having ever been physically manhandled by their spouses in the country and urban regions of Bangladesh. Almost 50% of rustic ladies and 37% of urban ladies detailed lifetime inside marriage sexual viciousness '(Garcia- Moreno et al., 2005). Lifetime passionate manhandling was detailed by 31% of the ladies within the country region and 44% of urban ladies (Garcia-Moreno et al., 2005)'.

Additionally, the developing body of investigation proposes that spousal savagery is profoundly predominant in 'Bangladesh. In 2001', almost '60% (59% in an urban range and 60% in a rustic range)' of ladies detailed having ever experienced physical or sexual spousal violence.

Steady with the worldwide slant, the overpowering lion's share of physical and sexual savagery against ladies was executed by spouses, not by other people. Whereas stunning tall, the rates of spousal viciousness reported in Bangladesh isn't abnormal. A later think about from the USA detailed that about 'half (44%)' of more than '3,400' female individuals of a Seattle-based well-being agreeable detailed having experienced spousal savagery amid their grown-up lifetime.[47]

Critically analysis of domestic violence against women: We look into our society that, when a man who lived in a common zone might beat his companion on the occasion that helpful, he comes residential from work and finds that his supper isn't arranged, or she serves him warmed rice from the morning dinner rather than normally cooked rice inside the family. Particularly evening, she ignores to do something, like washing a life partner's shirt, or she does not respond quickly adequate when.

There he asks her to do something, or he considers she is stillborn and careless in caring for the children. Talking back

[47] PhD Nazneen Akhtar MS Ruchira Tabassum Naved MS, "Spousal Violence Against Women and Suicidal Ideation in Bangladesh," 18, no. 6 (n.d.): 442–52.

expectations when condemned, taking off household without authorization, and coming up brief to comply with the in-laws (concurring with the in-laws) are other common outlines of women spouses' behavior that affects their companions to overcome them. And a few ladies said that they were beaten for giving birth to girls. These cases recommend that their savagery against ladies is seen as advocated (or seen so by men) when ladies come up short to comply to have or conventional part desires.

Ladies are required to be hard-working and particular and they are assembled life partners to bear children. In rural Bangladesh (as in another country India) share has progressed into a system of institutionalized shakedown, routinely fueled by violence against young companions.

Brutality and perils of empowered viciousness in exceptional cases in fact to the point of murder) are utilized to shakedown cash or property from the energetic woman's relatives, in a few cases in a wealth of what was ensured at the time the marriage was orchestrated. In expansion to the blackmail of assets utilizing the institution of settlement, men within the think-about towns regularly appeared to feel that anything their spouses brought with them at marriage, acquired, earned, procured, or indeed borrowed was legitimately theirs.

Moreover, for visiting to collect the primary data, case studies and questionnaire sessions with domestic violence expertized also visited the renowned victim support center which belongs to Non-Governmental Organization for collecting data. [48]Those are called the Victims Support Center called Ain O Salish Kendra (ASK) There is some sod of question-answering sessions with expertized about domestic violence. He answered based on these questions particularly

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[48] 1 Rue de Germont. 76031 Rouen 'S. Thureau **, I. Le Blanc-Louvry-, S. Thureau , C. Gricourt and France B. Proust Cedex, "AConjugal Violence: A Comparison of Violence against Men by Women and Women by Men S.," *Thureau et Al. / Journal of Forensic and Legal Medicine* 31 (2015): 42–46.

(there are total 8 detail questioned were addressed for detail see footnotes)[49]

[49] *First question*, what kind of support does your organization have? Provide to those who are victims of domestic violence? Our organization supports many combines. If they think that it can be solved by arbitration then they set the case aside through mediation and if they do not think that the case is bailable then it helps to file a case and if they think that any person cannot stand up then they have been raped. In case we see them there we try to give them counselling where they can stand up and talk to us and sue their husband will not be with them. He will be in another place; we call him halfway home and we will give him the treatment he needs: *Second question*, approximately how many reports of cases come to you every year based on domestic violence? Mediation and Rapid Response Unit Period: 01-Jan-2021 to 31-Dec-2021 Type: Complaints Domestic Violence from Ain o Shalish Kendra, Dhaka, Bangladesh (https://www.askbd.org/ask/) *Third*, Do you pay the full cost in case of domestic violence, or do the victims also provide something? Our organization pays the full cost if the case goes from lower court to high court or appellate division then our organization pays the money. And don't give only in one case which is that when the victim himself goes, the witness has to appear and the money has to be given to him. But if the victim is financially weak then we also provide the money. *Fourth*, if you file a case on domestic violence, how long does it take for that case to reach a final decision? It is difficult to say how many days the case will end because if any case goes through meditation, it will be seen that one party is coming and another party is not coming. Again, if the case ever goes through court proceedings, then we can see that the case takes time. Those of us here who have sued Expert learned Lawyers understand the case and sue. Our Law and Arbitration Center wants us to give them a remedy through a speedy trial. We, the expert-learned lawyers here, try to find a way to get the case settled quickly. *Fifth,* do the victims who come to sue for domestic violence bring awareness on their own, or through someone else? Many of the domestic violence victims who come to us come through social media. Many come through third parties. She told him that I know this company can help him. Many come through his family. They come to our organization following many multi-dimensional ways. *Sixth*, what is the education rate of those who come to sue for domestic violence? Don't educate people come more and uneducated people come more to sue for being victims of domestic violence? for those who have less formal knowledge, those who have studied up to class one to five, we think the proportion is much higher and 75% comes and those who want to sue a lot of educated people, it is up to them not to go through the mediation of court processing. So, they come to approximately 15%. *Seventh*, When women are victims of domestic violence, what percentage of them are victims of spousal violence? And what percentage are victims of the financial crisis? We filed the case based on spousal violence victims being 60% and financial crisis (torture for dowry) at 55% in 2021 approximately. *Eight,* what percentage of domestic violence is perpetrated by women inside the family and outside the family? Inside the family is 90% of victims of domestic violence and outsiders of the family are victims of 10% of domestic violence. Because we see that the transport and public toilets in Bangladesh are not women and child friendly.

Categories of Violence	**Numbers of violence by the person**
A) Economical Torture	1
B) Physical and Psychological Torture By Family (Muslim)	1
C) Physical and Psychological torture by father (1)	1
D)Physical and Psychological torture by husband (76)	76
E) Physical Torture/ Assault/battery (92)	92
F) Psychological Torture (26)	26
Sub Total	**197**

Tabel 1.0 Case Report on Daily Basis During 2021[50]

Domestic Violence Against Men

The social and legal effects of preventing domestic violence: According to the 'Bangladesh Manabadhikar Bastabayan Sangstha (BMBS) database, in 2015', at slightest '500 men' purportedly quelled by their spouses reached them for lawful counsel to proceed with their family life without badgering. The database moreover appears that within the to begin with six months of that year, add up to '26 men' submitted composed affirmations of badgering against their spouses.

'In 2018, a piece distributed within The Gatekeeper expressed that one in six men encounters household viciousness, but as it were one in 20 tends to report it. In 2020', an organization named Bangladesh Men's Rights Establishment (BMRF) studied that 80%' of hitched men are casualties of mental torment by their spouses (or their family individuals) in our nation. Directly the point of this article is, when we discuss roughly household viciousness, why don't we think that men can as well be casualties of family viciousness? In our patriarchal society, it is respected as awful. For men to reveal their perseverance.

[50] Reports of cases come to you every year based on domestic violence? Mediation and Rapid Response Unit Period: 01-Jan-2021 to 31-Dec-2021 Type: Complaints Domestic Violence from *Ain o Shalish Kendra*, Dhaka, Bangladesh (https://www.askbd.org/ask/)

The fear of showing up, female or not man adequate proceeds. This harmful manliness in the long run influences a man and pushes him to begin living in trouble, incapable to reveal inward sentiments to anyone. So, we ought to receive satisfactory measures to maintain a strategic distance from such mentally sick well-being. So, what are the preventive measures to secure men against sexual orientation-based residential violence?[51] A questionnaire session was conducted with domestic violence expert Mr. Dilip Pal (Advocated at Dhaka Bar Association) see details question on footnotes.[52]

Does need any specific law for protecting domestic violence against men? A recent case was filed: A long-time ancient Majed Evena Azad works for a private company in Dhaka, the capital of Bangladesh. He told DW that his spouse had rationally tormented him for a long time, but he couldn't get any offer of assistance as the society he lives in does not accept that a lady can torment a man. Azad said that a couple of days after getting hitched, she has begun taking parts of cash from him whereas appearing not intrigued about having a conjugal life with him.

I had met her cash-related demands for one or two of a long time, Azad said. But, at some point, he found that she has associations with many other men like him. At that point, Azad's life partner recorded an unfaithful case against him under the 'Digital Security

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[51] BMBS Mohammad Jamil Khan, "Oppressed Men Have No Legal Support," *Dhaka Tribune*, December 18, 2016, https://archive.dhakatribune.com/bangladesh/law-rights/2016/12/18/oppressed-men-no-legal-support.

[52] If the Men are not victims of domestic violence then why don't they want to come and the government has no specific laws for them so far then what kind of law or awareness do you think is needed to bring them to justice? In our Bangladesh contest, the patriarchal society has a lot of empowered women in non-empowerment status. We can see that in case we do not have special laws for men in Bangladesh they can sue General Penal Code 1860 but it was made for our women because women could not be covered by the Penal Code. Women were victims of acid and rape. Although sometimes if a girl commits domestic violence to a man then we have to see that a man must have been a victim of domestic violence in some way before. She may be from her husband's house, she may be from her in-laws.

Act 2018', after he ceased fulfilling her financial demands. He had to stay in covering up for over a year to evade capture, but as of late a court ruled that the case against him was made. Mr. Azad had to go through colossal mental torment by her. No one acknowledged him when he attempted to urge back from others. Our laws are women-friendly and can effectively be utilized to aggravate a man, Azan included.

So presently we are ready to observe that directly Azad will get the cure. What can be done about his companion's domestic violence? Yes, we are ready to say that 'Penal Code 1860' can sue his life partner. But how suitable the case will be since the most prominent law of Bangladesh is to deal with women and children? So, I think on the off chance that we had a particular law for men, men would get rise to treatment equally.[53]

Domestic Violence Against the Child

The current situation of domestic violence of children in Bangladesh: Concurring to the media observing information from the 'National girl child Advocacy Forum (NGCAF)' Bangladesh, indeed even though assault laws were revised final year to permit passing punishment, a add up to of '813' young lady children were subjected to assault, of whom '110' were gang-raped within the, to begin with, eight months of 2021'.

'A add up to of 79 young ladies though assault incapacities were assaulted amid this period, whereas 127 confronted endeavored assault, the report was found'. On the opposite, data collected by The Everyday Star from,'41 upazilas of 13 areas found around 10,741 young ladies and at slightest two boys being wrongfully hitched off amid school closures' The Multiple 'Indicator Cluster Survey (MICS) 2019, arranged by the 'Bangladesh Bureau of Statistics (BBS)' and 'Unicef' through meeting 61,242 families from all 64 areas moreover

[53] Arafatul Islam, "Male Victims of Domestic Violence Demand Gender-Neutral Laws" (DHAKA,BANGLADESG, 2020). https://www.dw.com/en/bangladesh-domestic-abuse-male-victims/a-55675124'

found that nine out of 10 children experienced a few frames of rough restraining by their caregivers'[54].A questionnaire session was conducted with domestic violence expertized. He answered these questions immensely: What is the percentage of cases of Domestic Violence against girls and boys and Domestic Violence against boys and girls and from what age do they start to be victims of Domestic Violence?

Age	Child (0-12)	Adolescent (13-17)	Adult (18+)
Female	27	33	628
Male	26	1	9

Tabel 2.0 Case Report on Daily Basis Domestic Violence Against Children During 2021[55]

When a child is to be victimized by domestic violence, with whom does he come to report or file a case? When a child comes to sue with someone, he feels more comfortable with. It could be his father, maybe his brother, maybe his mother. We have seen a case here where a boy's daughter has been the victim of domestic violence, in which case her father wants to marry her to that boy but she wants to sue, so she has come to our organizations with her brother and sued.

Social and legal effects of domestic violence against children: Violence within the domestic and sexual manhandle in childhood and puberty can have deep-rooted well-being and advancement impacts, such as misery, moo self-esteem, destitute school execution and challenges in psycho-social alteration. Pre-adult young ladies and the impaired are particularly at the chance of repetitive SRH issues, such as undesirable pregnancies, hazardous premature births, sexually

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[54] 'Farzana Islam and Gulshan Ara Akhter, "Original Child Abuse in Bangladesh," *Ibrahim Medical College Journal* 9, no. 1:(18) (2016), https://doi.org/DOI:10.3329/imcj.v901.27635'.

[55] Mediation & Rapid Response Unit Period: 01-Jan-2021 to 31-Dec-2021 (Ain o Salish Kendra ASK) New Client Profile by Age and Gender

transmitted contaminations and higher dangers of HIV. Juvenile young ladies and youthful ladies are particularly at the chance of different shapes of GBV (Sexual orientation-based viciousness) counting sexual savagery and trafficking; sexual mishandling, counting inbreeding, assault and destructive hones such as 'Female genital mutilation or cutting (FGM/C)' and constrained marriage. They are a chance at domestic, in school, on the road, in their places of work (e.g., as production line, cultivate and residential laborer's) and in refugee/displaced individual camps [56]

The recent case was filed: As her mother works at a piece of clothing plant in Chittagong, Jeba lives with her day labourer father and close relatives in the inaccessible town of Patharghata upazila, beneath the Barguna area. Before this month, Jeba's maternal grandparents took. She to their domestic in 'Bamna upazila' of the area. When other family individuals were actively working within the paddy field, Jeba's 15 a long time ancient step-uncle assaulted her. The following day, when death did not halt, the grandma called Jeba's father and inquired him to come and take the child to a specialist. When Jeba's father took her to the clinic, the specialist affirmed assault and recommended quick treatment. Jeba's father recorded a case against the culprit with the Bamna Police Station right away. We are presently attempting to capture the charged, indeed although the family individuals are departing suddenly, said the officer-in-charge of Bamna Police Station[57]

Domestic violence against Transgender (Hijra)

The current situation of transgender in Bangladesh: According to Blast, Europe Union and Christian Aid 2021 mentioned that "Sexual and Gender-Based Violence (SGBV)" is more acute in these

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[56] *Ibid*44

[57] Nilima Jahan, "Rise in Child Abuse: Long Way to Achieve SDG Goals," *The Daily Star*, December 28, 2021, https://www.thedailystar.net/news/bangladesh/rights/news/rise-child-abuse-long-way-achieve-sdg-goals-2927416.

communities compared to the rest of the country due to that social. And economic vulnerability. 76% of Transgender (Hijra) pointed out that they have faced (SGBV) because of their identity. 99% of Transgender and Hijra people responded that they never get invitations to these development activities and 47% transgender group reported not having access to education at all. On the other hand, they are excluded from society and at some point, in society they live in a place of neglect. Not only are they harassed by the police but they are also generally harassed by the people. Most of the hijras are seen as part of their traditional cultural part of the marriage and dance at the time of childbirth so that they can earn money they beg at the bus stand.

Many times, it has been seen that they get involved with sex workers. After all, they do not have any opportunity for income because they have no employment in job sectors, they have no treatment, and no education system. Not only that, the change in his/her physical condition seems to have taken a big storm in his/her life. No one likes them. The family members, relatives and the whole society push them away and no one wants them in their territorial zone.

Even if they live in the country as citizens, they cannot infringe on the rights of any citizen. They are treated as if they were an alien or a zoo animal and also, they are perceived as a burden to society. Hijras are being neglected by the society and they are being ridiculed and alienated from the society. In this case, there is no discrimination. Yes, of course. Because it is destroying their human dignity which directly violates their human rights.[58]

Comparative analysis with other countries (India and the United States of America) Even before, the condition of transgender was very miserable. Now the situation is improving because before the Hijras, there was no right to Hindu Succession Act 1956. No rights

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[58] Rupal Sharma, "Inheritance Rights of Transgender A Cry of Humanity," *IJLMH* 1, no. 3 (n.d.), issn: 2581-5369.

were mentioned about their rights but recently it was known that those in Uttar Pradesh transgender are getting their rights. For whom has been ensured which is called transgender persons (protection of Rights) Act 2019 [59]for transgender people in India. Their rights have been guaranteed here and also this specific law has been created for them through violence.[60]In fact, in the case law, **"**National Legal Services Authority Versus Union of India and Others Writ Petition (Civil) NO.604 OF 2013 [61]It was held that Middle and State Governments ought to truly address the issues being confronted by Hijras/Transgender such as residential violence fear, disgrace, sex dysphoria, social weight, misery, self-destructive propensities, social shame, etc.

"The United States of America (USA)"**:** In "The United States of America" we usually see that they developed the rights for transgender people. Where they have established education, and healthcare rights and said that where they will not only be treated based on gender but will be treated with dignity and no gender identity will prevail here. 'Civil Rights Act of 1961' provided that there are places where sex discrimination based on sexual orientation and gender identity is prohibited. Not only that, surveys in America have shown that when people are asked that, whether Hijras should be given equal rights, and should prohibit discrimination against them. The maximum number of people have shown public awareness, which is a very good thing. Not only that, but transgender people will also get employment opportunities under the Equal Employment Opportunity Commission in 2012.

The famous case "Bostock v. Clayton& County, 590 U.S (15 June 2020)"[62] established that prohibited transgender discrimination in employment sectors. At the same time, they will be able to participate

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[59] "The Transgender Persons (Protection of Rights) Act," 2019, n.d., https://www.indiacode.nic.in/handle/123456789/13091?sam_handle=123456789/1362.

[60] *Ibid* 34

[61] A Sikri, National Legal Ser.Auth vs Union Of India & Ors (2013).

[62] Bostock v. Clayton County (2020).

in political parties or leadership. For example: In the 2020 election, Sarah McBride is becoming the first openly transgender state senator. She is to be elected in the United States of America. So, it has been observed here that, developing countries have gradually raised awareness of the discrimination against transgender people and they have taken adequate steps.

CONCLUSION

Bangladesh has tried to achieve momentous advance Women's activists in making strides in the conditions of ladies and children, activities, especially on the ground of instruction, well-being, official nourishment, human rights, and other areas of fundamental must needs. They more likely appreciate rights and mentality openings which are playing exceptionally imperative parts in improving their socio-financial status. Although the condition of Bangladesh is still delicate, the government has been still attempting to make strides in the living standard of its citizens by killing destitution and starvation through comprehensive programs, especially diminishing the feminization of destitution. The government took programs to diminish disparities in living benchmarks between men and ladies and diminish the extending sexual orientation crevice in destitution but existing information claimed that ladies and young ladies have been enduring savagery, badgering, and separation made by the sexual orientation crevice and socio-economic delicate condition within the society.

In addition, the conditions of ladies and children of Bangladesh are not very favorable and agreeable since numerous damaging and destructive exercises still exist within the shapes of savagery, badgering, and hardship of human rights. These investigations found that the predominance of assault and sexual ambush has existed that took numerous lives of ladies and young ladies as well as they take to endeavor to commit suicide. Especially, it is seen that spouse has been overwhelmed and persecuted by spouse or spouses' family individuals due to sharing or claiming their rights to dissent against household viciousness counting early

marriage child, residential has been oppressed and annoyed within the shapes of assault, torment, mental weight, work burden, and sexually attacked. In reality, these powerless circumstances of ladies' young ladies, and children have been focused on savagery and sexual ambush indoors and open air of the domestic.

But tragically, there's no law for males and transgender to guarantee their rights[63]So, the government ought to be taken activities for executing the existing laws and the official handle of laws and defensive measures must be straightforward and responsible as well as the attitude of mass individuals must be a positive alter towards women children, males and transgender for ensuring equality and neutrality. When we implement these existing laws very well and establish new laws as well for male and transgender people, then there will be no more violence.

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[63] *Ibid* 37

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"The Secrets of the Boys" Analyzing Homosexuality: Perceptions and Regulatory Frameworks in the Ottoman Empire and Turkey (The Past, Present and Future)

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ABSTRACT

The Ottoman Empire has not been seen as a taboo on homosexuality for centuries. My work uses historical methods the history of Ottoman Empire's and Turkey's legal and cultural background of homosexuality. According to public opinion, homosexuality was forbidden in the Ottoman Empire, although this was far from the case. The purpose of the research is to highlight the fact that the phenomenon existed even under Islamic law. The Islamic empires (Ottoman, Safavid / Qajar, Mughal) shared a common culture and showed many similarities with the ancient Greeks. It was very common for older men to have sex with younger, still bearded men, these young men were called "amrad". It is well known that the sultans kept not only women but also young boys in the harem. Since 1858, the new Penal Code has not regulated it. Ironically, during the "Tanzimat period" (1839-76), an era when the Empire opened up to Western Europe, conservative values led to stigmatization of homosexuality. After World War II, Turkey joined the new world order and signed the United Nations Universal Declaration of Human Rights in 1945. Less than a decade later, Ankara signed the European Convention for the Protection of Human Rights and Fundamental Freedoms. In 2017, the new prime minister, since then President of the Republic Recep Tayyip Erdogan, has stated that supporting gay people against national interests. In my study, I intend to present the past, present and future of homosexuality in the Ottoman Empire and then in the Turkish state.

Keywords: *Homosexuality, Ottoman Empire, Hungary, Harems*

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INTRODUCTION

The Ottoman Empire (the seat of world Muslim power) did not regard homosexuality as a taboo for centuries. The Islamic empires (Ottoman, Safavid/Qajar, Mughal) shared a common culture and had many similarities with the ancient Greeks. It was very common for older men to have sex with younger, beardless men, these young men were called "amrad". It is known that sultans kept not only women but also young boys in their harems. II attacking Hungary. Mehmed and II. Sultan Murad also preferred boys in harems. In the Hungarian language, the so-called "Turkishness" began to denote the relationship between the two men.[1] Since 1858, the new Penal Code did not contain any regulations regarding it.

Ironically, during the "Tanzimat period" (1839-76), an era when the Empire opened up to Western Europe, conservative values led to the stigmatization of homosexuality.[2] This elicits neo-orientalist conclusions such as the Ottomans' decriminalization of homosexuality in 1858 via the introduction of the 1810 French Penal Code, without an accompanying examination of how the Ottomans had criminalized homosexuality before 1858. This assessment method not only facilitates neo-orientalism, but also casts a significant doubt on this method's validity.[3]

The German term *Homosexualität* was coined only around 1868 by the Austro-Hungarian author and journalist Károly Mária Kertbeny (formerly Karl-Maria Benkert). This fact raises the question

[1] Available on website: https://mult-kor.hu/cikk.php?id=39176&pIdx=2, Accessed: 5th January, 2023. 5th January.

[2]Hanioglu, Şükrü M. *A Brief History of Late Ottoman Empire*, Princeton: Princeton University Press, 2008, 105.

[3] Elif Ceylan Ozsoy (School of Law, University of Exeter, Exeter, UK): *Decolonizing Decriminalization Analyses: Did the Ottomans Decriminalize Homosexuality in 1858?*, JOURNAL OF HOMOSEXUALITY Available on website: https://doi.org/10.1080/00918369.2020.1715142, Accessed: 6th January, 2023.

of how people might have conceptualised what we now think of as homosexuality before the word existed.[4]

After World War II, Turkey joined the New World Order and signed the United Nations Universal Declaration of Human Rights in 1945. Less than a decade later, Ankara signed the European Convention on Human Rights and Fundamental Freedoms.[5]

In 2017, the new prime minister and since then president of the republic, Recep Tayyip Erdogan, declared that supporting gay people is against national interests. This was not the first time he made this statement: he justified the banning of Pride in Istanbul in 2014. In 2017, in Ankara, the capital of Turkey, the authorities banned all LGBTQ-related cultural events, citing that they threaten order and that they fear provocative activity from the direction of some segments of society.

According to ILGA (International Lesbian, Gay, Bisexual and Insersex Association), Turkey is currently the second worst country in Europe in terms of LGBTQ rights. In my study, I want to present the past, present and future of homosexuality in the Ottoman Empire and then in the Turkish state. My work uses historical methods the history of Ottoman Empire's and Turkey's legal and cultural background of homosexuality.

THE CULTURAL BACKGROUND OF OTTOMAN MALE LOVE UNTIL THE 20TH CENTURY

The Ottoman Empire was one of the longest lasting empires in history. During the 16th century, the Ottoman Empire was at its peak

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[4] *What Ottoman erotica teaches us about sexual pluralism,* Available on website https://aeon.co/ideas/what-ottoman-erotica-teaches-us-about-sexual-pluralism, Accessed: 5th January, 2023.

[5] Zehra F. Kabasakal Arat. 2007, *Collisions and Crossroads, Introducing Human Rights in Turkey. Human Rights in Turkey.* Philadelphia: University of Pennsylvania Press, 2007, 1.

as a world super power, but by the mid-18th Century it had considerably weakened.

Many sources confirm that Ottoman and Islamic culture itself, poetry and, in a broader sense, literature, were by no means as dismissive of male love as we might think today. The sources mention "mukhannas". These were men (some researchers believe they were transsexuals or third genders) who shaved off their beards as adults as a sign that they wanted to remain servants of male desires. They even had their own place in society. They were often used as servants by the prophets.

Historians often rely on literary representations to prove history. Many poems in ancient Muslim culture celebrate the mutual love between the two men. There are also factual writings that say it was illegal to force someone else's will on a young man. It is not known to many, but Islam has also used homosexual relationships excellently as a source of humor. The subject of humor could be anything from religion to personal morals, including homosexuality, which is forbidden in Islam.[6]

For example, a 11th-century Persian ruler advised his son to change his partners according to the seasons, to have relationships with young men in the summer and women in the winter. The VIII. Many of the poems of Abu Nuwasz of Baghdad and other Persian and Urdu poets of the 19th century were written for boys. Medieval mystical works, especially Sufi texts, do not make it clear whether the object of love is a teenage boy or God, which can also be interpreted as a church blessing on the relationship between men and boys. Homoerotic poems were one of the most widespread literary products of the Arabic language for more than a thousand years. This spread from professional poets such as Abu Tammam and Abu Nuwas in the VIII. and IX. century, up to highly respected religious scholars, who also wrote several poems on this theme.

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[6]Szombathy Zoltán, 2005, ***Humor és szabadosság a középkori arab kultúrában A szólásszabadság antropológiája.*** Documenta et monographiæ IV.

Khaled El-Rouayheb has pointed out that some homoerotic texts were still printed in the early 20th century but this soon stopped, in fact, texts such as *The Arabian Nights* had homosexual activity censored in the editions printed following the fall of the Ottoman Empire.[7]

Many translations of poems can be read in my country, Hungary, which was ruled by the Turks for centuries, translated by the excellent Hungarian poet György Faludy.

Love between men was known in Turkish culture, we know of several sultans who kept male harems. Hungarian historian Miklós Eszenyi remembers that the famous II. The Turkish Sultan Muhammad (1451-1481) was also bisexual. From 1442, Vlad Drakul's younger brother Szép Radu, voivode of Havasalföld, stayed in his court, and the sultan liked him very much. After a while, he stayed with the sultan's close entourage.[8] In the state that had grown into an empire, the soldiers turned to each other, and the seduction of young boys was common. Janissary chief officers often collected children for the Sultan's seraj school, from whom they built their later apparatus. The boys continued such relationships with each other as well, with the ruler's permission they could marry later.[9]

We also know that in the course of history, prostitution was not only characteristic of women, but, for example, in the Turkish baths of the Ottoman Empire, men could also be prostitutes. In the golden age of baths in the 15th century, young boys (tellaks) helped male clients to clean themselves, massaged them, and, if needed, were also available for sexual intercourse. Although homosexuality was illegal at the time, tellaks naturally found ways to satisfy guests legally.

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[7]Green, Cai, The decline of Homosexuality in the late Ottoman Empire, Available on website: https://thehistorianjournal.wordpress.com/2019/05/27/which-factors-caused-the-decline-of-homosexuality-in-the-late-ottoman-empire/ , Accessed: 13th January, 2023., 2019.

[8]Eszenyi Miklós: *Adalékok a homoszexualitás középkori történetéhez*, Available on website: http://www.otkenyer.hu/kozepkor.php#lj24, Accessed: 08th August, 2022.

[9]Eszenyi Miklós: *Adalékok a homoszexualitás középkori történetéhez*. Available on website: http://www.otkenyer.hu/kozepkor.php#lj24, Accessed: 08th August, 2022.

Often, almost a partnership developed between them and the clients. The tellaks were even allowed to keep all the money they received for their services, they were not charged a commission, even though they worked for a pittance.[10]

During the research, we can also find the remains of a rich culture. An illustration of a 19th-century Turkish manual, for example, ten intertwined men surrender to the pleasure of anal intercourse, which is the number one sensation from a gay point of view in the exhibition on the history of eroticism that opened in the Barbican cultural center in London. It is a unique cultural memory, because there is no known image in the history of homosexuality that glorifies sodomy in such an exaggerated way, especially not in a Middle Eastern culture. Wearing the traditional Muslim headdress, the red fez, naked men from the waist down form a closed chain by placing their penises in each other's asses. The manuscript titled "Tuhfet Ul-Mulk", which is decorated with this lavish painting, was created in 1773 in Turkish, but in Arabic script. The name of its author, Sajkh Muhammad Ibn Mustafa Al-Misri, indicates an Egyptian connection. This sensational cultural-historical curiosity - the existence of which was widely unknown until now - is part of a private collection in Paris, owned by a certain Alain Kahn-Sriber.[11]

THE LEGAL BACKGROUND OF OTTOMAN MALE LOVE UNTIL THE 20TH CENTURY

The Qur'an also mentions the "*ghilmans*". They are immortal young men who wait and serve people in paradise. "Immortal (male) youths surround them, waiting for them," says the Qur'an. "When

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[10] A régi Konstantinápoly erkölcséről bővebben: B. Horváth Miklós: *Konstantinápoly, Törökország fővárosa*. Lauffer Vilmos Kiadója. Budapest, 1877.

[11] Available on website: https://hatter.hu/hirszolgalat/tiz-kicsi-szodomita, Accessed: 08th August, 2021.

you see them, you think they are scattered pearls." Like the Bible, the Qur'an tells the story of Allah punishing the ancient inhabitants of the city of Sodom. Two angels arrive in Sodom, meet many locals, and end up spending the night in the house of one of them, who insists on entertaining them. Later, others learn about the strangers and decide to rape them. Although the destruction of the cities is interpreted by many as hatred against gays, it is not really about that, but about Allah punishing rape, violence and lack of hospitality.

Examining the legal aspects, classical Islamic criminal law recognized homosexuality as a criminal category. Fatih Sultan Mehmet (Mehmet the Conqueror) drafted the first secular criminal code of the Ottoman Empire in 1488. After Beyazid II, Yavuz Sultan Selim also codified a criminal law in which no penalties were incurred for sodomy and/or same-sex intimacy (16th century).[12]

The three layers of classical Islamic criminal law:

1. *Ginaya*: punishment customs developed in the pre-Islamic era, primarily based on blood revenge, the talio principle and compensation;
2. *Let*: the crimes laid down in the Qur'an and their punishments;
3. *Tasir*: penalties to be imposed by the prosecuting authority They reflect three different concepts of criminal law, and they arose in different ways over time. As Muslim jurists made no attempt to unify these rules, the three criminal law systems continued to remain relatively separate. The common feature of crimes falling within the scope of hudud is that their commission is a violation of religious rules. This does not mean neglecting or transgressing ritual rules, but committing acts specifically defined in the Qur'an.[13]

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[12] Acar, I. *Islamic criminal law and Ottoman criminal codes.* XIII–XIV D.E.Ü.İlahiyat Fakültesi Dergisi, XIII–XIV, 2001, 53–68.

[13]Germanus Gyula, *Das islamische Recht (Acta Juridica Academiae Scientiarum Hungaricae* 1974, 16. 1-2. 237.-240.

These include:

1. Apostasy (*ridda*) - i.e. denial of Allah, defamation of Muhammad, denial of God's existence and eternity;
2. Fornication (*zina*) - although it is mentioned in the Qur'an, its precise definition is given by the jurisprudential interpretation: adultery, incest, homosexuality, forced sexual intercourse, sexual contact during Ramadan, which is punishable by 100 lashes;
3. False accusation of fornication (*qadhf*) - anyone who brings an honest married woman into disrepute and cannot produce 4 witnesses who saw the act itself, is punished with 80 lashes and loses his honor.

In an aim to test the validity and reliability of this decriminalization framework, this article critically examines the assessments that conclude that the Ottomans decriminalized homosexuality through transplanting the 1810 French Penal Code.[14] They adopted the 1810 French Penal Code, which had been influential throughout Europe at that time. The contentious article of the 1858 Ottoman Penal Code is as follows: „*Art. 202 – The person who dares to commit the abominable act publicly contrary to modesty and sense of shame is to be imprisoned for from three months to one year and a fine of from one Mejidieh gold piece to ten Mejidieh gold pieces is to be levied"* (Penal Code of the Ottoman Empire, 1858). This is a translated version of Article 330 of the French Penal Code, which decriminalized homosexuality in France.[15]

[14] Elif Ceylan Ozsoy (School of Law, University of Exeter, Exeter, UK, *Decolonizing Decriminalization Analyses: Did the Ottomans Decriminalize Homosexuality in 1858?*, JOURNAL OF HOMOSEXUALITY, Available on website: https://doi.org/10.1080/00918369.2020.1715142, Accessed: 6th January, 2023, 3.

[15] Elif Ceylan Ozsoy (School of Law, University of Exeter, Exeter, UK): *Decolonizing Decriminalization Analyses: Did the Ottomans Decriminalize Homosexuality in 1858?*, JOURNAL OF HOMOSEXUALITY Available on website:https://doi.org/10.1080/00918369.2020.1715142, Accessed: 6th January, 2023, p. 5-6.

THE 20TH CENTURY AND CURRENT SITUATION

While the Ottoman Empire initially resisted European culture, so homosexuality was allowed until 1858, nationalization soon triumphed over it. After the First World War, after the fall of the Ottoman Empire and the creation of the modern Turkish state, European intervention did not stop and Turkey had to ensure the protection of its non-Muslim communities, as enshrined in the 1923 Treaty of Lausanne.[16] During the time of Mustafa Kemal Atatürk, important changes took place in the Ottoman world of thought, which had been thought to be unbreakable until then, and women, for example, were given more rights.[17] Mustafa Kemal was the fundamental of the modern Turkey, the maker of the new identity of turkish people, the famous words "How happy is the one who says I am a Turk." (Ne mutlu Türküm diyene).[18]

He was the head of the young Turkish Republic has defined Turkey's legal system, domestic and foreign policy orientations and judgments in the world.[19] Atatürk's policy is a legacy, as well as a language that can be constantly renegotiated.[20] The republicanism

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[16]Donelly Jack. *"Human Rights, A New Standard of Civilization?."* International Affairs, Vol.74, No.1), 1998, 9.

[17]Szűcs Lászlóné Dr. Siska Katalin, *A török nők emancipációja*. Lélektan és hadviselés – interdiszciplináris folyóirat, I. évf. 2019/1. szám. 73-83., Available on website: http://real.mtak.hu/103718/1/LH_2019_1_073_Szucs.pdf.

[18] Siska Katalin, Mustafa Kemal Atatürk's Effect on the New Concept of the Turkish Identity and Citizenship in Particular the Constitutional Regulation of the Young Turkish Republic, Available on website: http://acta.bibl.u-szeged.hu/54047/1/juridpol_forum_006_001_139-149.pdf.

[19] Siska Katalin, The Press Coverage of the Turkish–Hungarian Economic and Trade Relations of the Atatürk Era in Hungary, JOG- ÉS POLITIKATUDOMÁNYI FOLYÓIRAT 2020 XII. ÉVFOLYAM, (2020), Number 3.

[20] Szűcs Lászlóné Siska Katalin. MUSZTAFA KEMAL ATATÜRK, TE ÖRÖK! MITŐL LEHET ATATÜRK POLITIKÁJA A MAI NAPIG HIVATKOZÁSI ALAP A LEGKÜLÖNBÖZŐBB POLITIKAI IRÁNYZATOKNAK? „INTERDISZCIPLINARITÁS A RÉGIÓKUTATÁSBAN IX." NEMZETKÖZI TUDOMÁNYOS KONFERENCIA ÉS „A JOG TUDOMÁNYA, A MINDENNAPOK JOGA III." TUDOMÁNYOS KONFERENCIA, Debrecen, 2019, 45.

was included among its six directives of Atatürk[21], but for homosexuals, Atatürk's era did not bring changes, just like the XX. century not even the beginning of the century.

The content of the six principles, the "six arrows" (Altı Ok) is summarized as an ideology, Kemalism (Turkish: Kemalizm, Atatürkçülük, Atatürkçü Düşünce), or Atatürkism, which was named after Mustafa Kemal Atatürk, and when it was created practically it was synonymous with the political program of Atatürk's party, the Republic of the People's Party (CHP).[22]

Under the presidency of Mustafa Kemal Atatürk, homosexuality still went unnoticed. The members of the LGBTQ+ community kept on fighting for their rights and, to protect themselves, attempted to create their own political identity. With the military coup d'état on September 12, 1980, their effort came to an end.

Female relationships were more nuanced, so lesbian relationships did not appear either. Atatürk is known as an advocate of women's rights anyway. Gazi Mustafa Kemal Atatürk, the founder of the Republic of Turkey, supported the advancement of women in all areas, including election and also in terms of electability. Atatürk's dictatorial or autocratic methods almost forced the country to modernize society and give women equal rights.[23]

Atatürk also announced religious reforms, which also favored the perception of the homosexual community.[24]

The real LGBT community organization started in the 1990s, when countless NGOs were founded. In 1993, the Pride organizers were denied permission to organize the parade, and in 1995 and 1996,

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[21]Szűcs Lászlóné Dr. Siska Katalin. Az atatürkizmus „hat nyila", Iustum Aequum Salutare XIII. (2017) Number 2. 201.

[22] Szűcs Lászlóné Dr. Siska Katalin. Az atatürkizmus „hat nyila", Iustum Aequum Salutare XIII. (2017) Number 2. 203.

[23] Szűcs Lászlóné Dr. Siska Katalin, *A török nők emancipációja*. Lélektan és hadviselés – interdiszciplináris folyóirat, I. évf. 2019/1. szám. p. 73-83., Available on website:http://real.mtak.hu/103718/1/LH_2019_1_073_Szucs.pdf.

[24]Szűcs Lászlóné Dr. Siska Katalin, *Folytonosság és változás. Iszlám és szekularizmus a késő Ottomán birodalomban és a fiatal Török Köztársaságban*, Nomor 23. Volume 1, (2017) 131-139.

the LGBT film festival and scientific conference were also denied.[25] In 1996, Turkish courts also discriminated against LGBT people. The Supreme Court, for example, took her child away from a lesbian mother on the grounds that homosexuality was "immoral".

The situation has changed somewhat since the 2000s, however, trans people can be fined under the Penal Code, and homosexuals have to deal with additional disadvantages. Some courts have sometimes applied the principle of "undue provocation" in favor of the perpetrator of a crime against a trans person.[26] In 2003, Turkey became the first Muslim-majority country to hold a gay pride march in Istanbul and then in Ankara (2008). Since then, these have been held annually, but the legal inequality has not stopped. In 2008, a homosexual Kurdish-Turkish student, Ahmed Yildiz, was shot by his father in front of a cafe and later died in the hospital. His father killed his son because of his homosexuality, sociologists consider this to be the first openly gay honor killing in Turkey since then.[27]

Turkish President Recep Tayyip Erdogan is waging an ongoing legal and political battle against the LGBTQI community in Turkey. The fight began to escalate in 2014, when more than 100,000 people marched at the opening of Pride and the police decided not to allow marches anymore. Since then, there has been a constant struggle between organizations protecting the rights of gays and sexual minority groups and the authorities.[28]

In 2017, the Istanbul governor's office banned the LGBT pride parade, citing security and public order concerns, even though thousands of people participated in it every year. The same thing

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[25] Available on website: https://hu.abcdef.wiki/wiki/LGBT_rights_in_Turkey , Accessed: 5th October, 2022.

[26] See: Európai Bizottság, *Commission Staff Working Document: Turkey 2009 Progress Report*. Brüsszel, 2009. október 14. SEC (2009) 133426. and 72.

[27] Available on website: https://www.independent.co.uk/news/world/europe/was-ahmet-yildiz-the-victim-of-turkey-s-first-gay-honour-killing-871822.html, Accessed: 5th October, 2022.

[28] Available on website: https://www.dehir.hu/vilag/konnygazzal-es-gumilovedekekkel-oszlatta-fel-a-rendorseg-a-torok-pride-ot/2021/06/27/, Accessed: 5th October, 2022.

happened in 2018 and 2019. According to DPA, the police came out with large forces to break up the unauthorized march, which was banned by the authorities shortly before it started. The armed forces also used tear gas and, according to some reports, they also shot the marchers with plastic bullets. Several participants were detained.

Although same-sex marriage is possible under civil law, in light of the current situation, it is not known how long this will last. In 2015, the first "gay wedding" was held in Turkey. Ekin Keser and Emrullah Tuzun held a "wedding" in Istanbul in September, namely on a yacht sailing on the Bosphorus.[29]

In connection with the topic, it is unavoidable to mention that although the government is trying to make impossible the rights of LGBT people, which they have fought for for decades, and to ban their events, many entertainment venues have been created for them, especially in Istanbul. Homosexual culture is also constantly present in the field of arts, just think of the excellent director Ferzan Özpetek. Özpetek shot his first own film in 1997, the international success Turkish Bath.

Through the crisis-ridden relationship of the two protagonists, Francesco (Alessandro Gassman) and Marta (Francesca d'Aloja), Özpetek in fact contrasts the overly practical Western world, which has become a grindstone of everyday existence, with the airy world of the East based on moods, scents, tastes, and delicate sensuality. where the passing of time takes on a completely different meaning. The Last Harem (1999) or The Unknown Fairy (2001) also evoke the dramatic meeting of two worlds, the dying Ottoman Empire and European culture. Since then, Özpetek has directed several films and also directed video clips, for example for the song "Hüp" by the also gay singer Tarkan.

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[29] Available on website: https://turkinfo.hu/parbeszed/szot-kerek/az-elso-melegeskuvo-torokorszagban/ ,Accessed: 5th October, 2022.

CONCLUSION

The historical overview shows that Turkey is a contradictory, two-faced country. Throughout the centuries, homosexuality was always present in Turkey, in the Ottoman Empire, with a rich culture. In the world of the janissaries, in the harems, homosexuality was natural, and in Constantinople, male love was in its heyday. Turkey was the XX. In the 20th century, it was the only Muslim country where gay parades were allowed and the state also protected the rights of the LGBT minority. At the same time, this does not mean that the social acceptance of homosexuals is high, since often even the closest family members do not support them. As you can see, the current leadership has started a fight against LGBT people, homosexuals, transvestites and transgenders can receive state protection, unless the contrary can be established in individual cases" - this information, however, contradicts the Dutch country report on Turkey.[30]

Turkish law and Turkish authorities do not provide adequate protection for LGBT people. LGBT people usually do not dare to ask for protection. Many LGBT people do not trust the police because of their prejudice. Even when LGBT people report discriminatory acts and/or threats to the Turkish authorities, the reports are usually ignored.[31] The situation is legally highly objectionable, and the future will decide in which direction LGBT people's rights will turn in Turkey.

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[30] See holland külügyminisztérium: Törökország országjelentés, 2010. szeptember 1., 3.4.6. bek., Available on website: http://www.rijksoverheid.nl/ministeries/bz/ documenten-en-publicaties/ambtsberichten/2010/09/14/turkije-2010-09-14. html, and so:Jansen , Sabine-Spijkerboer, Thomas, 2011: *A „M e n e k ü l é s a h o m o f ó b i a e l ő l "- A szexuális orientációval és a nemi identitással kapcsolatos menedékkérelmek Európában*, Vrije Universiteit Amsterdam. 30.

[31] Jansen, Sabine-Spijkerboer, Thomas, 2011: *A „M e n e k ü l é s a h o m o f ó b i a e l ő l "- A szexuális orientációval és a nemi identitással kapcsolatos menedékkérelmek Európában*, Vrije Universiteit Amsterdam, 74., 280. footline.

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Indonesian Quantitative Easing 2020-2021: Regulation and Comparation with The USA and Japan

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ABSTRACT

This article is intended to find out how the Quantitative Easing model is implemented in Japan and the United States, how the Quantitative Easing model is applied by Bank Indonesia in 2020 to 2021, and how the Quantitative Easing arrangement is implemented by Bank Indonesia within the framework of Indonesian laws and regulations. This research was conducted using the juridical-normative method by reviewing the literature and the laws and regulations relating to Quantitative Easing in Indonesia. This article is written from research process that conducted by the method of normative-judicial approach. The results showed that Japan implemented Quantitative Easing more broadly by involving the Central Bank's monetary actions in the realm of interest rates and the purchase of securities in the public and private spheres. The United States has a narrower scope by only relying on the purchase of securities or bonds. In Indonesia, Bank Indonesia in 2020-2021 will implement Quantitative Easing to increase liquidity in the banking sector based on the authority given in Law No. 2 of 2020 which is more similar to the Japanese model. This model is known only to be regulated in Law No. 2 of 2020 specifically for handling the economic crisis due to the COVID-19 Pandemic.

Keywords: *Quantitative Easing, Monetary Policy, State Finances*

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INTRODUCTION

Quantitative Easing is an unusual Central Bank action that is only carried out under certain circumstances and Indonesian laws and regulations do not formally recognize this term. One of the reasons for the urgency of the Quantitative Easing regulation in Indonesia is due to the outbreak of the Coronavirus Disease-2019 (COVID-19) pandemic that has taken place in Indonesia, which until May 14th 2022 has infected 6,050,519 people and caused 156,453 deaths.[1] This disaster not only resulted in a health crisis, but also an economic recession that Indonesia is facing for the first time since the 1998 financial crisis after two consecutive quarters recorded a minus GDP growth in the second and third quarters of 2020 as confirmed by the Head of the Indonesian Central Statistics Agency Suhariyanto.[2]

To overcome the negative effects of the Pandemic on state finances, the Government issued Government Regulation in Lieu of Law/Perppu No. 1 of 2020 concerning State Financial Policies and Financial System Stability for Handling the 2019 Corona Virus Disease (COVID-19) Pandemic and/or in the Context of Dealing with Threats that Endanger the National Economy and/or Financial System Stability on 31st of March 2020, which was later stipulated as a law or an *undang-undang*.[3] The Perppu contains regulations that are quite crucial in the field of state finance, namely the loosening of the limit on the budget deficit which was originally set not to exceed 3% of the value of the Gross Domestic Product (GDP) by Law no. 17 of

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[1] "Committee for Handling COVID-19 and National Economic Recovery, 15th Mei 2022 "Indonesia", available on website: https://covid19.go.id. (Acessed on 15th May 2022)

[2] "Hendra Kusuma, Detikfinance, "Indonesia Resmi Resesi! Ekonomi Kuartal II-2020 Minus 3,49%", 05th November 2020, https://finance.detik.com/berita-ekonomi-bisnis/d-5242305/indonesia-resmi-resesi-ekonomi-kuartal-iii-2020-minus-349, (Accessed on 15th May 2022)

[3] "Article 1 of Law No. 2 Year 2020 of Law on Stipulation of Government Regulation in lieu of Law Number 1 of 2020 concerning State Finance Policies and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in the Context of Dealing with Threats that Endanger the National Economy and/or System Stability Finance Becomes Law."

2003 concerning State Finance.[4] [5] The impact of the easing of the deficit can be directly felt in the realization of the 2020 State Revenue and Expenditure Budget (APBN), where the relaxation of the deficit also has a direct positive correlation with the increase in the state debt position which reached IDR 6,418.15 trillion at the end of May 2021 with a ratio with a GDP of 40.49%.[6]

One of the parties that bought Government Securities in large quantities is Bank Indonesia. As the Central Bank, Bank Indonesia is tasked with establishing and implementing monetary policy.[7] This was realized in the effort to overcome the COVID-19 Pandemic, which is based on a report by Bank Indonesia that Bank Indonesia purchased Government Securities in the primary market for a total of Rp.473.42 trillion for the 2020 State Budget funding.[8] March 16, 2021, Bank Indonesia has purchased Government Securities worth a total of Rp. 65.03 trillion with details of Rp. 22.90 trillion obtained through the main auction mechanism and the remaining Rp. 42.13 trillion is carried out through the Greenshoe Option mechanism.[9] [10]

Bank Indonesia then implemented a Quantitative Easing policy. This policy was carried out by Bank Indonesia with a total disbursed fund reaching IDR 776.87 trillion, with details of IDR 726.57 trillion distributed in 2020 and the remaining IDR 50.29 trillion distributed in 2021 at least until March 16 2021.[11] The Quantitative Easing Policy itself is a policy monetary transaction that are less commonly carried out by the Central Bank. As explained by Alan S. Blinder, that generally this policy is only carried out when a country experiences

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[4] "*Ibid*., Article 2 paragraph (1) subsection a number 1."

[5] "Article 12 chapter (2) of Law No. 17 Tahun 2003 of State Financial Law."

[6] "Indonesian Ministry of Finance, *APBN Kita: Kinerja dan Fakta Edisi Juni 2021*, Kementerian Keuangan Republik Indonesia, Jakarta, 2021, P. 86."

[7] "Article 8 of Law No. 23 Tahun 1999 regarding Bank Indonesia."

[8] "Bank Indonesia, *Tinjauan Kebijakan Moneter: Maret 2021*, Bank Indonesia, Jakarta, 2021, P. 2."

[9] "*Ibid*."

[10] "The Greenshoe Option is a mechanism for implementing price stabilization or the realization of purchases of Government Securities which are carried out by purchasing additional Government Securities."

[11] "*Ibid*."

what he calls a liquidity trap.[12] This occurs when the Central Bank has already lowered its benchmark interest rate to or close to 0% but these efforts have not been able to move the economy or increase the inflation rate.[13] When this happens, the Central Bank, which is no longer able to lower its benchmark interest rate, switches to the Quantitative Easing method.

Basically, "Quantitative Easing is a monetary policy that is not carried by Central Banks under normal conditions. Alan S. Blinder explained that Quantitative Easing is only carried out by the Central Bank when a country experiences a liquidity trap,[14] which occurs when the Central Bank has lowered its benchmark interest rate to or close to 0% as much as possible,[15] but this has not been able to increase the inflation rate according to target or not to increase economic growth, the country implements Quantitative Easing as a last resort because the benchmark interest rate cannot be lowered again.[16]"

Bhattarai, et al argue that "Quantitative Easing is a situation when the Central Bank buys long-term government bonds.[17] Meanwhile, Alekseievska and Mumladze view that Quantitative Easing is the purchase of bonds or other debt instruments by the Central Bank.[18] The main objective of implementing Quantitative Easing is to lower the basic interest rate for long-term debt instruments when the benchmark interest rate for short-term debt

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[12] "Alan S. Blinder, "Quantitative Easing: Entrance and Exit Strategies", *Federal Reserve Bank of St. Louis Review*, Vol. 92, No. 6, (November/Desember 2010), P. 465-466."

[13] "*Ibid.*"

[14] "*Ibid.*

[15] "Conventional efforts made by the Central Bank to control interest rates are through setting the basic interest rate, or the BI 7 days repo rate in Indonesia. In addition to this, other things that can be done to indirectly control interest rates are open market operations, setting discount rates, and setting minimum reserves/reserves."

[16] "*Ibid.*"

[17] "Saroj Bhattarai, et al, "Time Constitency and the Duration of Government Debt: a Signalling Theory of Quantitative Easing", *National Bureau of Economic Research Working Paper Series* 21336, (July 2015), P. 2."

[18] "Halyna Alekseivska dan Anzor Mumladze, "Quantitative Easing as the Main Instrument of Unconventional Monetary Policy", *Three Seas Economic Journal*, Vol. 1, No. 1, (2020), P. 41."

securities cannot be lowered any longer.[19] Through Quantitative Easing, the Central Bank also stimulates the country's economic growth by purchasing various assets owned by financial institutions such as government and corporate bonds.[20] Practically, through Quantitative Easing, the Government actually injects money into the economy using money borrowed from the Central Bank with the aim of increasing the value of inflation to achieve the inflation target and economic growth."

A much broader concept is elaborated by "Michael Joyce, et al. Whereas he argued that Quantitative Easing is a series of actions taken by the Central Bank which indicated a change in focus targeting quantitative variables. This action is generally carried out by purchasing government securities from the banking sector with the aim of increasing the cash reserves owned by the Bank in the hope that the Bank can increase credit extended to the public, thereby increasing asset prices and eliminating the contributing factors that causes deflation.[21]"

Thus, from these concepts it can be understood that the scope of Quantitative Easing includes the purchase of bonds or other debt instruments by the Central Bank, which are generally government bonds, but can include debt instruments issued by other parties, which are carried out with the aim of increasing inflation by increasing the amount of money in circulation through the purchase of these debt securities.

Bearing in mind that Quantitative Easing is an unusual action that is only carried out under certain circumstances, Quantitative Easing is an action that has minimal study,[22] especially from a legal

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[19] "Bhattarai, et al, "Time Consistency and ..." ., P. 3."

[20] "Alekseivska dan Mumladze, "Quantitative Easing as ...", P. 42."

[21] "Michael Joyce, *et al*, "Quantitative Easing and Unconventional Monetary Policy – An Introduction", *The Economic Journal*, Vol 122, (November 2017), P. 274."

[22] "Based on the results of the author's search on 15th March 2023 on the website https://garuda.kemdikbud.go.id/documents?q=quantitative+easing, it is known that research on Quantitative Easing only amounts to 9 studies, and there has been no recorded legal research conducted on such action."

perspective, particularly from a public finance law perspective. At least this has been confirmed, because formally the laws and regulations that apply in Indonesia do not recognize the term Quantitative Easing or Quantitative Easing. Also considering that a very large amount of funds has been or will be disbursed by Bank Indonesia through this mechanism, it is necessary to have an in-depth legal study of Quantitative Easing from the perspective of Indonesian public finance law.

Based on these backgrounds, this research will be aimed to find out: 1) how is the Quantitative Easing model implemented in Japan and the United States; 2) how is the Quantitative Easing model implemented by Bank Indonesia in 2020 to 2021; and 3) how is the Quantitative Easing policy implemented by Bank Indonesia within the framework of Indonesian laws and regulations?

This research was carried out with a normative-juridical research approach because it used the basis or data based on laws and regulations and literature review.[23] In this research, the author examines how the Quantitative Easing model is implemented in Japan and the United States, how is the Quantitative Easing model implemented by Bank Indonesia in 2020 to 2021, and how is the Quantitative Easing arrangement implemented by Bank Indonesia within the framework of laws and regulations in Indonesia. In this legal research, the author started the research by point out the current deficit of the state budget which directly caused by the massive state spending and borrowing in the COVID-19 public policy of 2020-2021.

This budget deficits directly correlated with the Bank Indonesia's decision to buying massive amount of government bond to provide liquidity and to replace the state fund that lost due to the swelling of state income. In this regard, the author explains the Quantitative Easing that have been done by Bank Indonesia using the literature written by Alan S. Blinder, Bhattarai, *et al*, Michael Joyce, *et al* and

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[23] "Sri Mamudji, *et al*, *Metode Penelitian dan Penulisan Hukum*, cet. 1 Badan Penerbit FH UI, Jakarta, 2015, P. 9-10."

Alekseievska and Mumladze, while also conclude the general understanding of Quantitative Easing based on these literature.

The research the continued by the explaining the Quantitative Easing in Japan, based on the understanding of Bhattarai, *et al,* and also based on its authority in the Bank of Japan Act, the general history of Bank of Japan and the background of its activity.

Next, the author also examined how the Quantitative Easing is carried out in the United States by points out the history of such action which carried out by the Federal Reserve based on its authority in The Federal Reserve Act and its background from the 2007-2008 housing crisis that causing the Federal Reserve to maintain its Quantitative Easing strategy up until the next decade until the COVID-19 breakout that prompted the Federal Reserve to carry out even more Quantitative Easing actions.

The paper then examines how the practice of Quantitative Easing in Indonesia. Firstly, it points out how the Bank Indonesia's scope of Quantitative Easing that has been carried out in the 2020-2021 to tackle the COVID-19 budget deficit based on the interview with its Executive Director – Head of the Law Department of Bank Indonesia. Then, the paper presented how Bank Indonesia could conduct such activity based on its authority in the Law of Bank Indonesia (Law No. 23/1999) along with its ammendments and the comparation.

Then the paper analyzes the weaknesses of current Quantitative Easing model in Indonesia based on Law No. 4/2023 and correlates it with previous laws' weaknesses along with the legal need of new set of authority of Bank Indonesia to carried out Quantitative Easing in emergency times."

JAPAN'S QUANTITATIVE EASING

The Bank of Japan is the "Central Bank of Japan which was established through the Bank of Japan Act 1882 and began operating on October 10, 1882.[24] The Bank of Japan was established to issue banknotes or currency and to implement currency and monetary control policies and to ensure smooth settlement of payments between banks and other financial institutions.[25] In the monetary field, the Bank of Japan is authorized to: [26] 1) determine the basic discount amount; 2) determine the basic banking interest rate; and 3) determine the amount of minimum statutory reserves."

Practically in the "modern era,[27] [28]Quantitative Easing was first implemented and experimented with by the Bank of Japan, to dispel severe deflation that hit the Japanese national economy and increased inflation again in the period 2001 to 2006.[29] It is known that Quantitative Easing has just been adopted *en masse* in various other parts of the world starting in 2008, right at the time of the housing crisis, on a regular basis with the aim of stimulating the economy, increasing bank credit flows, and to increase spending/consumption in the economy which was adopted from Japanese practice.[30]

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[24] "Bank of Japan, 2nd October 2019, "Outline of the Bank",: https://www.boj.or.jp/en/about/outline/index.htm/, (Accessed on 14 November 2022).

[25] "Article 1 Paragraph (1) and (2) Bank of Japan Act of 1882"

[26] "*Ibid*., Article 15 Paragraph (1)."

[27] "The modern era refers to the 21st century, where the history of Quantitative Easing itself can be traced back to 1932 where The Federal Reserve bought United States Government securities up to $ 1 billion until 1936 to overcome deflation that occurred due to the economic crisis The Great Depression.

[28] Ali Ashraf, Walter Lane, dan M. Kabir Hassan, "Monetary Policy Responses to the 2008 Financial Crisis: Quantitative Easing Evidence in the United Kingdom", *SSRN Electronic Journal*, Vol. 1, No. 1, (2017), P. 3."

[29] "Brett W. Fawley and Christopher J. Neely, "Four Stories of Quantitative Easing", *Federal Reserve Bank of St. Louis Review*, Vol 95, No. 1, (January/February 2013), P. 52."

[30] "Kjell Hausken and Mthuli Ncube, *Quantitative Easing and Its Impact in the US, Japan, the UK, and Europe*, Springer, New York: Springe, 2015, P. 1."

Meanwhile, Hiroshi Ugai in his book describes the 3 main pillars of Quantitative Easing implemented by the Bank of Japan as follows:[31]"

1. Changing the "main operating target in money market operations from unsecured overnight call tenor rates to current account balances held by financial institutions at the Bank of Japan, and to provide sufficient liquidity to realize the current account balance target threshold above the required reserves;"
2. Make a "commitment that the provision of liquidity will continue to apply until the Japanese consumer price index is stable at 0% or increases from year to year;" and
3. Increase "the purchase of long-term government bonds to reach the upper limit of the maximum balance of banknotes issued if the Bank of Japan considers that the increase in purchases is necessary to provide liquidity."

In addition to this, if we look at a series of actions of the "Bank of Japan, the following things are also included in Quantitative Easing in Japan, which is the purchase of shares in the capital market owned by Japanese financial institutions which was carried out on February 3, 2009 and the purchase of Exchange Traded Funds[32] and Real Estate Investment Trusts on November 5, 2010.[33]"

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[31] "Hiroshi Ugai, "Effects of the Quantitative Easing Policy: A Survey of Empirical Analyses", Bank of Japan, Tokyo, 2013, P. 2."

[32] "Exchange Traded Fund is a mutual fund in the form of a Collective Investment Contract, in which the participation units are traded on the Stock Exchange like stocks. So basically this is a mutual fund that is treated like a stock."

[33] "Hausken and Nkube, *Quantitative Easing and…*, P. 20-22."

THE UNITED STATES QUANTITATIVE EASING

The "United States has a central bank known as The Federal Reserve. The Federal Reserve was founded in 1913 through The Federal Reserve Act of 1913. Basically, its function is to:[34] 1) carry out monetary policy to seek absorption of the labor force, stable prices, and moderate long-term interest rates; 2) strive for financial system stability and to minimize and overcome systemic risk by monitoring and implementing its functions at home and abroad; 3) work on the security and compliance of financial institutions and monitor their impact on the financial system as a whole; 4) implement a secure and efficient payment and settlement system for the banking industry and the United States government that facilitates transactions in United States Dollars; and 5) implementing consumer protection and community development in the financial sector.

Meanwhile, in the monetary sector, the Federal Reserve's powers include setting deposit reserves (equivalent to minimum statutory reserves in Indonesia), setting discount rates and other credit facilities, and carrying out open market operations.[35]"

Apart from "Japan, another country that has implemented Quantitative Easing is the United States, which started doing it on a large scale starting from the economic crisis in 2008 due to the domino effect of the bankruptcy of Lehman Brothers Bank. On November 25, 2008, the Federal Reserve began executing the initial phase of Quantitative Easing by purchasing housing bonds related to projects supported by the Federal Government of up to $100 billion such as Direct Bonds from Fannie Mae and Freddie Mac.[36] The aim of these measures was to lower the cost of credit and to immediately cool

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[34] "The Federal Reserve, "About The Fed", 20th November 2018, https://www.federalreserve.gov/aboutthefed.htm, (Accessed on 15th March 2023.)

[35] "Article 11 The Federal Reserve Act of 1913."

[36] "*Ibid.*, p 29."

credit conditions in the recently collapsed housing market. Not only in the private sector, bond purchases also occurred in the public sector where The Federal Reserve purchased long-term US Treasury Bonds of $300 billion on March 18, 2009.[37]"

Since 2008, "The Federal Reserve has also started buying mortgage-backed securities[38] in large quantities after the housing crisis occured.[39] In order to save the housing market from falling further, The Federal Reserve purchased $1.7 Trillion of these types of securities through 2018, further bloating its assets by $4.1 Trillion.[40]

Reseinbichler explained that in carrying out Quantitative Easing in the housing market, The Federal Reserve and the European Central Bank also buy other assets in the secondary market such as asset-backed securities[41] or covered bonds,[42] with the aim of increasing the price of these assets while simultaneously lowering interest rates.[43]

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[37] "*Ibid.*, p. 33."

[38] "Mortgage-based securities are the packaging of illiquid assets (in this case housing mortgages) so that they become more liquid or easier to trade, especially on the Exchange. In Indonesia, this term can also be known as the Home Ownership Credit Backed Securities, which was first recognized in 2009, for example, the EBA Danareksa SMF I KPR BTN Class A Collective Investment Contract."

[39] "Alexander Reisenbichler, "The Politics of Quantitative Easing and Housing Stimulus by The Federal Reserve and European Central Bank, 2008-2018", *West European Politics*, Vol. 43, No. 1, (2019), P. 2."

[40] "*Ibid.*, P. 4."

[41] "Asset-backed securities or asset-backed securities are securities or securities consisting of a collection of loans packaged into tradable securities."

[42] Covered bonds are securities secured by public sector debt or mortgages.

[43] "*Ibid.*, P. 3."

INDONESIA'S QUANTITATIVE EASING

1. Bank Indonesia's Quantitative Easing Model of 2020-2021

No.	Post	Sub-Post	Amount
1.	Government Obligation	Domestic Government Obligation	IDR 4.822,87 Trillion
		Government Obligation in Foreign Currency	IDR 1.267,44 Trillion
2.	Government Loan	Domestic Loan	IDR 13,25 Trillion
		Foreign Loan	IDR 805,31 Trillion

Table 1.0 The Details of Indonesian Government Debt per 2021[44]

When the COVID-19 Pandemic hit Indonesia and after the Government passed Perppu No. 1 of 2020, it is known that the quantity of Indonesia's debt has increased significantly. Based on Bank Indonesia's report that Bank Indonesia purchased Government Securities on the primary market for a total of IDR 473.42 trillion to fund the 2020 State Budget.[45]

This will continue in 2021 where Bank Indonesia has purchased Government Securities worth a total of IDR 358.32 trillion with the main auction mechanism and the Greenshoe Option mechanism.[46] Meanwhile, Bank Indonesia plans to purchase more State Securities in the 2021 fiscal year to support the National Economic Recovery program and the handling of the COVID-19 Pandemic as agreed in the Joint Decree signed between the Minister of Finance and the

[44] Direktorat Jenderal Pengelolaan Pembiayaan dan Risiko Kementerian Keuangan RI, Laporan Kinerja Direktorat Jenderal Pengelolaan Pembiayaan dan Risiko, (Jakarta: Direktorat Jenderal Pengelolaan Pembiayaan dan Risiko Kementerian Keuangan RI, 2021), 18."

[45] "Bank Indonesia, 2021, Tinjauan Kebijakan Moneter: Maret 2021, Jakarta: Bank Indonesia, P. 2."

[46] "*Ibid.*"

Governor of Bank Indonesia on 16 April 2020 and which was extended on December 11, 2020.[47]

Bank Indonesia also carried out Quantitative Easing. This policy was carried out by Bank Indonesia with a total disbursed fund reaching IDR 867.76 trillion, with details of IDR 726.57 trillion distributed in 2020 and the remaining IDR 141.19 trillion distributed in 2021 at least until 14 December 2021.[48] If you review the updated data from Bank Indonesia, throughout 2021 Bank Indonesia has carried out Quantitative Easing of Rp. 147.83 trillion, with a total Quantitative Easing carried out from 2020 to 2021 amounting to Rp. 874.4 trillion, around 5.3% of Indonesia's GDP.[49]

In addition to this, it is known that within the scope of Quantitative Easing, Bank Indonesia in April 2020 decided to adjust the Minimum Statutory Reserves by reducing the Rupiah currency for Conventional Commercial Banks by 200 bps and for Sharia Commercial Banks and Sharia Business Units of 50 bps, which was reported by Bank Indonesia as part of Bank Indonesia's Quantitative Easing policy as an effort to support national economic recovery from the impact of the COVID-19 Pandemic.[50]

It is very interesting to examine further the scope of Quantitative Easing conducted by Bank Indonesia. The first is that Bank Indonesia states that Quantitative Easing is its action to increase liquidity in the banking sector. In its own terminology list, Bank Indonesia defines Quantitative Easing as an addition of liquidity by the central bank to the economy.[51] Regarding Quantitative Easing in 2021, Bank Indonesia stated that Quantitative Easing or liquidity injection into the banking sector is to strengthen banking capabilities

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[47] "*Ibid.*"

[48] "*Ibid.*"

[49] "Bank Indonesia, 2021, *Laporan Tahunan 2021*, Jakarta: Bank Indonesia, P. 53."

[50] "Departemen Komunikasi Bank Indonesia, 30th April 2020, "BI Terbitkan Ketentuan Tindak Lanjut Kebijakan Hadapi Pandemi COVID-19", available on website: https://www.bi.go.id/id/publikasi/ruang-media/news-release/Pages/BI-Terbitkan-Ketentuan-Tindak-Lanjut-Kebijakan-Hadapi-Pandemi-COVID-19.aspx, (Accessed on 4th Oktober 2022.)

[51] "Bank Indonesia, Laporan Tahunan 2021, P. 168."

in increasing credit/financing to the business world.[52] This is quite a contrast from the scope of Quantitative Easing based on the opinions of several experts and in practice as previously reviewed, where Quantitative Easing is generally understood to cover the purchase of assets or securities owned by the public or private, not specifically aiming to increase liquidity in the banking sector.

The second is that Bank Indonesia specifically excludes its action of buying Government Securities on the primary market from Quantitative Easing activities as can be seen in the picture. Again, this is very different from the conception of Quantitative Easing, because precisely this action is generally known as an attempt by the Central Bank to buy securities such as Government Securities.

The third is that Bank Indonesia stated that setting the Statutory Reserves is one of its efforts to implement Quantitative Easing. If you pay attention to Ugai's previous research, the Bank of Japan uses 3 main instruments as the pillars of Quantitative Easing. One of them is to focus on managing current account balances owned by banking institutions at the Bank of Japan, and providing sufficient liquidity to realize the target threshold for current account balances above the required reserves.[53] What Ugai means by "the balance of a current account at the Bank of Japan" is basically the same as the Minimum Statutory Reserves or *Giro Wajib Minimum* known in Indonesia. Whereas Banking institutions are required to have a Minimum Statutory Reserve as determined by Bank Indonesia.

In addition to this, the author tried to contact Bank Indonesia to obtain information regarding the scope of Quantitative Easing which will be carried out from 2020 to 2021. For this reason, the author was able to obtain information from Ms. Rosalia Suci. Executive Director – Head of the Legal Department of Bank Indonesia.[54] Basically, she explained that basically Quantitative Easing does not only mean

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[52] "*Ibid.*, P. 9."

[53] "Ugai, "Effects of the Quantitative..., P. 2."

[54] Rosalia Suci H Executive Director – Head of the Legal Department of Bank Indonesia

buying Government Securities, but more broadly, it is a policy to inject liquidity into the market, which Bank Indonesia means as a banking institution itself considering that the subject of Bank Indonesia regulation is banking sector.[55] According to her, Quantitative Easing was carried out by Bank Indonesia during the COVID -19 Pandemic with the aim of continuing to increase the Indonesian economy so that it grows. According to her, at that time the inflation rate was already very low, while Bank Indonesia's target reference value for inflation was 3% + 1.[56]

Furthermore, according to the source, Quantitative Easing implemented by Bank Indonesia is part of the authority of the Bank Indonesia Law and its amendments.[57] Some include:[58] 1) the policy of reducing the Minimum Statutory Reserves; 2) provision of Statutory Reserves incentives for a number of banks extending credit to priority sectors during the COVID-19 Pandemic and Micro, Small and Medium Enterprises; 3) purchase of Government Securities in the secondary market in monetary operations; and 4) more frequent holding of repo auctions in monetary operations.

The source explained that what was not categorized by Bank Indonesia as part of Quantitative Easing was the purchase of Government Securities in the primary market which was carried out based on Perppu No. 1 of 2020 which was ratified by Law no. 2 of 2020. Furthermore, the source explained this because the main purpose of purchasing Government Securities on the primary market is not to inject liquidity into the market/banking, but to bear the burden of financing the State Revenue and Expenditure Budget in the framework of tackling the COVID-19 Pandemic, although the source doesn't deny the fact that this action also had an impact on liquidity in the market and banking.[59]

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[55] "Interview with Executive Director – Head of the Law Department of Bank Indonesia, 5-6 Oktober 2022."
[56] "*Ibid.*"
[57] "*Ibid.*"
[58] "*Ibid.*"
[59] "*Ibid.*"

Thus, Bank Indonesia is known to have a Quantitative Easing model that is different from the generally accepted model as previously discussed. Bank Indonesia interprets the Quantitative Easing action as an action to increase liquidation in the banking sector, by focusing on a number of Bank Indonesia's authorities in the monetary sector based on the Bank Indonesia Law and its amendments.

2. Bank Indonesia's Authority on Quantitative Easing and the Buying of State Obligation

Bank Indonesia is the Central Bank of Indonesia, which from the beginning of its formation was burdened with the goal of achieving and maintaining stability in the value of the rupiah.[60] In order to achieve this goal, Bank Indonesia is given the task of establishing and implementing monetary policies under its authority, to regulate and maintain the smooth operation of the payment system in Indonesia, and to regulate and supervise banks.[61] [62] Bank Indonesia carries out its duties with several authorities, such as:[63] 1) setting monetary targets by taking into account the inflation rate target; and 2) carry out monetary control by using methods that include but are not limited to: a) open market operations on the money market, both in rupiah and foreign exchange; b) determination of the discount rate; c) determination of minimum mandatory reserves; and d) credit or financing arrangements.

Currently, Bank of Indonesia's goal is to achieve the value stability of rupiah, to maintain payment system stability, and to participate in maintaining Financial System Stability in order support

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[60] "Article 7 Chapter (1), Law No. 3 Year 2004 concerning Law Amendment to Law of the Republic of Indonesia Number 23 of 1999 concerning Bank Indonesia.

[61] "*Ibid.*, Article. 8."

[62] "The task of regulating and supervising the Bank has shifted to the Financial Services Authority since 2011."

[63] "Article 10 Chapter (1) Law No. 23 Year 1999 concerning Bank Indonesia."

sustainable economic growth.[64] To achieve these goals, Bank Indonesia is tasked to:[65] 1) establish and implement monetary policy in a sustainable, consistent, and transparent manner; 2) manage and maintain the smooth running of the payment system; and 3) establish and implement macroprudential policies.

Another authority possessed by Bank Indonesia in the monetary sector is to purchase Government Bonds. This authority is attached to Bank Indonesia in the Bank Indonesia Law. In principle, Bank Indonesia is prohibited by the Act from buying Government Bonds in the primary market with two exceptions. The first is that, in principle, Bank Indonesia is allowed to buy Government Securities on the primary market for itself, but this is limited only to the category of short-term Government Securities which it deems necessary to purchase in order to carry out monetary control operations.[66] The second is for the provision of emergency financing facilities to banks if a bank experiences financial difficulties which have a systemic impact and have the potential to cause a crisis that endangers the Indonesian financial system.[67]

In this regard, it is known that Bank Indonesia is authorized to provide short-term liquidity loans and sharia-based short-term liquidity financing to Systemic Banks or banks other than Systemic Banks.[68] Bank Indonesia can also provide Special Liquidity Loans to Systemic Banks that experience liquidity difficulties and do not meet the requirements for providing short-term liquidity loans or short-term liquidity financing based on sharia principles guaranteed by the

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[64] Article 7, Law No. 4 Year 2023 Concerning Development andStrengthening of the Financial System.

[65] *Ibid*., Article 8.

[66] "Article 55 chapter (4) of Law No. 3 Year 2004 concerning *Act of Amendment to Law of the Republic of Indonesia Number 23 of 1999 concerning Bank Indonesia..*"

[67] "*Ibid*., Article. 11 Chapter (4) *jo*. Article. 55 Chapter (5)."

[68] "Article 16 Chapter (1) Law No. 2 Year 2020 concerning *Law on Stipulation of Government Regulation in lieu of Law Number 1 of 2020 concerning State Finance Policies and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in the Context of Dealing with Threats that Endanger the National Economy and/or System Stability Finance Becomes Law.*"

Government and provided based on KSSK Decrees.[69] These two authorities can actually be equated with the provision/addition of liquidity to banking institutions as claimed by Bank Indonesia.

When reviewing history, it appears from the previous description that the country's legal politics and regulations regarding this matter have changed. In Law No. 23 of 1999 concerning Bank Indonesia, it is strictly regulated that Bank Indonesia is basically prohibited from buying Government Securities for itself in the primary market.[70] In fact, the law emphasizes that if Bank Indonesia buys it on the primary market, then the purchase is declared null and void.[71]

Easing began to occur with the next amendment to the law, namely that Bank Indonesia could buy government bonds for itself on the primary market specifically for short-term government bonds to carry out monetary control operations and Bank Indonesia could also buy government bonds on the special primary market. for providing banking emergency financing facilities.[72]

The emergence of the COVID-19 Pandemic gave greater and stronger authority to Bank Indonesia to carry out its duties in the monetary sector while at the same time strengthened the relationship between Bank Indonesia and the Government. Through Law Number 2 of 2020, Bank Indonesia is given further leeway to buy long-term Government Bonds and State Sharia Securities in the primary market specifically for dealing with financial system problems that endanger the national economy, which also includes Government Bonds and/ or State Sharia Securities issued with a specific purpose, especially in the context of handling the COVID-19 pandemic. [73]This authority is

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[69] "*Ibid.*"

[70] "Article 55 Chapter (4) Law No. 23 Year 1999 regarding Bank Indonesia."

[71] "*Ibid.*, Article. 55 Chapter (5)."

[72] "Article. 55 Chapter (4) dan ayat (5) Law No. 3 Year 2004 concerning Law Amendment to Law of the Republic of Indonesia Number 23 of 1999 concerning Bank Indonesia."

[73] Article 16 Chapter (1) Law No. 2 Year 2020 concerning Law on Stipulation of Government Regulation in lieu of Law Number 1 of 2020 concerning State Finance Policies and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19)

held in the position of the Governor of Bank Indonesia himself as a member of the Financial System Stability Committee.

Under the new Law No. 4 Year 2023 concerning the Development and Strengthening of Financial System, Bank Indonesia is granted the permanent authority to buy long-term government bond in the primary market to handle the problems of financial system that endangers the national economy.

Law	Regulations for Purchase of Securities in the Primary Market
Law "No. 23 of 1999 concerning Bank Indonesia"	Bank "Indonesia is **prohibited** from purchasing all types of government securities in the primary market."
Law "No. 3 of 2004 concering The First Amendment of Law No. 23 of 1999 concerning Bank Indonesia"	Bank "Indonesia is **allowed** to buy short term government bonds on the primary market to carry out monetary control operations and for providing banking emergency financing facilities."
Law "No. 2 of 2020 concerning Stipulation of Perppu No. 1 of 2020 concerning State Financial Policies and Financial System Stability for Handling COVID-19 Pandemic and/or in the Context of Dealing with Threats that Endanger the National Economy and/or Financial System Stability"	Bank "Indonesia is **allowed** to buy long-term Government Bonds and State Sharia Securities in the primary market specifically for dealing with financial system problems that endanger the national economy (COVID-19 Recovery Program)
Law No. 4 Year 2023 concerning Development and Strengthening Financial System	Bank "Indonesia is **allowed** to buy long-term Government Bonds and State Sharia Securities in the primary market specifically for dealing with financial system problems that endanger the national economy.

Table 2.0 The Evolution of Regulations for Purchase of Securities in the Primary Market by Bank Indonesia[74]

Pandemic and/or in the Context of Dealing with Threats that Endanger the National Economy and/or System Stability Finance Becomes Law."

[74] Secondary Data, processed, 1999-2020.

The emergence of the "COVID-19 Pandemic not only increased Bank Indonesia's authority in the field of purchasing Government Securities, but also in other monetary fields which included the following:[75] 1) to provide conventional or sharia short-term liquidity loans to Systemic Banks or non-systemic Banks; 2) to provide special liquidity loans for Systemic Banks which are in principle trapped in liquidity difficulties and do not fully meet the requirements to obtain conventional short-term liquidity loans or those with sharia principles whose existence is guaranteed by the Government and granted based on a decision from the KSSK; 3) conduct repo or purchase of state securities owned by the Deposit Insurance Corporation to finance efforts to deal with solvency problems of Systemic Banks or non-systemic banks; 4) make arrangements regarding the obligation to receive and use foreign exchange for Indonesian residents, which also includes arrangements related to the transfer, repatriation and conversion of foreign exchange in order to maintain macroeconomic stability and the financial system; and 5) to provide financing opportunities for private parties and corporations through repo of State Debt Instruments or State Sharia Securities owned by private parties and corporations through banking. This authority would later be permanent through Law No. 4 Year 2023.

However, "even though this authority is specifically attributed to tackling the financial crisis during the COVID-19 Pandemic, Bank Indonesia does not categorize the Quantitative Easing measures it carried out in 2020-2021 covering the 5 powers granted in Law No. 2 of 2020 as been discussed in the previous paragraph. Instead, Bank Indonesia categorizes its conventional authority in the monetary sector as regulated in Article 10 of the Bank Indonesia Law as the realm of Quantitative Easing. This authority includes: 1) setting

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[75] "Article 16 Chapter (1) Law No. 2 Year 2020 concerning Law on Stipulation of Government Regulation in lieu of Law Number 1 of 2020 concerning State Finance Policies and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in the Context of Dealing with Threats that Endanger the National Economy and/or System Stability Finance Becomes Law."

monetary targets by taking into account the inflation rate target; and 2) carry out monetary control by using methods that include but are not limited to: a) open market operations on the money market, both in rupiah and foreign exchange; b) determination of the discount rate; c) determination of minimum mandatory reserves; and d) credit or financing arrangements. In addition to this, what is included in Quantitative Easing is the purchase of Government Securities in the secondary market as stipulated in Article 55 paragraph (4) of the Bank Indonesia Law."

On this basis, even though it acknowledges that it has implemented Quantitative Easing, theoretically Bank Indonesia has not implemented Quantitative Easing because what is being implemented is conventional authority in the monetary realm. When considering the general theoretical concept of Quantitative Easing that this is implemented as a last resort when conventional monetary policy can no longer be implemented, it is clear that what Bank Indonesia implemented within the context of authority in the Bank Indonesia Law does not qualify as a Quantitative Easing.

Meanwhile, "looking back at the theoretical concept of Quantitative Easing, then the act of purchasing Government Securities in the primary market should be based on Law No. 2 of 2020 is an act of Quantitative Easing. However, Bank Indonesia does not consider this to be Quantitative Easing. According to Bank Indonesia, the purchase of these Government Securities was not intended to increase banking liquidity during the COVID-19 Pandemic, but to help finance the burden on the State Budget.

CONCLUSION

The Bank of Japan has a diverse scope of Quantitative Easing to achieve its quantitative goals. This starts from setting the level of bank statutory reserves, setting monetary commitments to purchasing government and private debt securities, even entering purchasing capital market assets. The Federal Reserve has a narrower model of buying public and private debt. At a certain level, the Feds even bought several securities in the form of asset-backed securities and mortgage-backed securities from the market.

Bank Indonesia implements Quantitative Easing with the following characteristics: 1) it is Bank Indonesia's monetary authority in the Bank Indonesia Law; and 2) intended to increase liquidity in the banking and market sectors. So that the Quantitative Easing model for Bank Indonesia in 2020-2021 is to carry out a policy of reducing the mandatory minimum as well as providing this policy incentive for Banks that extend credit to priority sectors, purchase Government Securities in the secondary market in their monetary operations and hold repo auctions more frequently.

The Quantitative Easing have been regulated within the framework of Indonesian laws and regulations, in the Bank Indonesia Law and its amendments. This is regulated in Article 10 paragraph (1) of Law No. 23 of 1999 concerning Bank Indonesia, that Bank Indonesia exercises monetary control using methods including but not limited to open market operations in the money market, setting discount rates and setting minimum statutory reserves.

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An Analysis of Presidential Regulation 105/2021: The National Strategy for Accelerating the Development of Disadvantaged Regions 2020-2024 and Its Implications for Provincial Government

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ABSTRACT

In the context of implementing the Government's policy towards reducing regional disparities, Presidential Regulation Number 105 of 2021 concerning National Strategic of the Acceleration of Development of Disadvantaged Regions 2020-2024 (STRANAS-PPDT 2020-2024) has been issued as an elaboration of Presidential Regulation Number 18 of 2020 concerning National Medium-Term Development Plan 2020-2024 (RPJMN 2020-2024). In accordance with the provisions of Article 8 paragraph (3) of Government Regulation Number 78 of 2014 concerning the Acceleration of Development of Disadvantaged Regions (PP PPDT) juncto Article 4 paragraph (2) of STRANAS-PPDT 2020-2024, has implications to 11 (eleven) provincial governments to immediately formulate and determine the Regional Strategy for the Acceleration of Development of Disadvantaged Regions 2020-2024 (Provincial STRADA-PPDT 2020-2024). To support the preparation of the Provincial STRADA-PPDT 2020-2024, the Government through the Minister of Village, Development of Disadvantaged Regions, and Transmigration coordinates with the minister of national development planning and the minister of home affairs to facilitate the implementation of the preparation of the Provincial STRADA-PPDT 2020-2024. The research concluded that, to provide guidance to the provincial government in the preparation of the provincial STRADA-PPDT 2020-2024 and as a legal basis for the implementation of facilitation for the preparation of the Provincial STRADA-PPDT 2020-2024, the Ministry of Village,

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Development of Disadvantaged Regions, and Transmigration needs to establish guidelines of the preparation of the Provincial STRADA-PPDT 2020-2024.

Keywords: *Acceleration of Development of Disadvantaged Regions; STRANAS PPDT 2020-2024; Provincial STRADA-PPDT 2020-2024.*

INTRODUCTION

The President Joko Widodo (Jokowi) on 10 December 2021 was signed Presidential Regulation Number 105 of 2021 on National Strategy of the Acceleration of Development of Disadvantaged Regions 2020-2024 (Perpres STRANAS-PPDT 2020-2024).[1] As an integral part of national development, thus the STRANAS-PPDT must refer to the national development policy for 2020-2024 as stated in the National Medium-Term Development Plan 2020-2024 (RPJMN 2020-2024) which is stipulated by Presidential Regulation Number 18 of 2020 (Perpres RPJMN 2020-2024). In principle, the substance of the RPJMN 2020-2024 refers to the National Long-Term Development Plan 2005-2025 (RPJPN 2020-2025), Indonesia's Vision 2045, and the President's Vision and Mission 2020-2024. The Vision of the President of 2020-2024 is "The Realization of an Advanced Indonesia that is Sovereign, Independent, and Based on Mutual Cooperation (Gotong Royong)" which is realized through 9 (nine) Missions known as the Second Nawacita, are:

[1] "Gov't Issues Regulation to Speed Up Development in Underdeveloped Regions," Cabinet Secretariat of The Republic of Indonesia, n.d.

1. Improving National Human Quality.
2. Productive, Independent, and Competitive Economic Structure.
3. A Just and Equal Development.
4. Achieving a Sustainable Environment.
5. Improving National Human Quality.
6. Enforcement of a Corruption-Free, Dignified, and Reliable Legal System.
7. Protection for the whole nation and provide a sense of security for all citizens.
8. Clean, Effective, and Reliable Government Management.
9. Regional Government Synergy within the Framework of the Unitary State.

And the 7 (seven) Development Agendas 2020-2024, are:

1. Economic Resilience.
2. Regional Development.
3. Quality and Competitive Human Resources.
4. Mentality Revolution and Culture Development.
5. Infrastructure Strengthening.
6. Environment Development.
7. Legal Political Stability and Public Transparency.

Referring to the third mission and the second development agenda, regional development is directed to overcome the problem of regional inequality. With the aim of, among others:

1. Increasing equity between the eastern and western regions of Indonesia, and between Java and other islands.
2. Increasing the competitive advantage of regional growth centers.
3. Improving the quality of governance of basic services, competitiveness, and regional independence.
4. Increasing the synergy of regional spatial use.

In practice, the implementation of regional development is then implemented with several priority regional development programs, one of which is the national program for the acceleration of development of disadvantaged regions (PPDT). It is determined that the National Program of PPDT in the 2020-2024 RPJMN has the following objectives:

1. Reducing number of disadvantaged area (regencies) in 2024 (improved 25 regencies).
2. Reducing percentage of poor people in disadvantaged areas (PPM).
3. Increasing Average HDI in disadvantaged areas Human Development Index (IPM).

As an effort to achieve the PPDT targets as referred to in the RPJMN 2020-2024, the STRANAS-PPDT 2020-2024 is the roadmap which is described from the 2020-2024 RPJMN and then used as a guideline by relevant ministries/agencies and local governments (regional of the provincial government and regional of the regency government) in the implementation of PPDT.[2] With regard to the implementation of PPDT by local governments, it refers to the provisions of Article 262 paragraph (2) of Law Number 23 of 2014 concerning Regional Government as has been amended several times, most recently by Law Number 11 of 2020 concerning Job Creation (UU Pemda), it is stated that the Regional development plan pays attention to PPDT, then in the elucidation to UU Pemda it is further stated that the regional government is obliged to guide the national program PPDT.

Based on this, the issuance of the Perpres STRANAS-PPDT 2020-2024 as a manifestation of the implementation of the national program PPDT, has legal implications for regional governments, especially for

[2] Dennis Shoesmith, Nathan Franklin, and Rachmat Hidayat, "Decentralised Governance in Indonesia's Disadvantaged Regions: A Critique of the Underperforming Model of Local Governance in Eastern Indonesia," *Journal of Current Southeast Asian Affairs* 39, no. 3 (2020): 359–80, https://doi.org/10.1177/1868103420963140. p. 366.

provincial governments to pay attention to the PPDT national program in their regional development plans in accordance with the provisions of Article 262 paragraph (2) UU Pemda. Based on this background description, this article will conduct a legal analysis regarding the implications of the stipulation of the Presidential Regulation Number 105 of 2021 on National Strategic of the Acceleration of Development of Disadvantaged Regions 2020-2024 for the provincial government and the role of the Government in facilitating the preparation of PPDT planning by the provincial government.

This research uses normative legal research method. This method aims to find principles or doctrines of positive law (ius constitutum). This type of research is generally known as dogmatic study or commonly known as doctrinal research or normative legal research. Types and sources of law materials, such as primary legal materials, and secondary legal materials. While the method collecting legal material is identifying and/or explore relevant laws and regulations, and then analyze the data using by statute approach and the result is presented in analytical form descriptive or prescriptive analysis.[3]

The primary legal materials in this study include:

a. The Constitution of the Republic Indonesia 1945;
b. Law Number 25 of 2004 concerning National Development Planning System;
c. Law Number 17 of 2007 concerning the National Long-Term Development Plan for 2005-2025;
d. Law Number 12 of 2011 concerning the Regulation Making;

[3] Ervina Dwi Indriati, Sary ana, and Nunung Nugroho, "Philosophy Of Law And The Development Of Law As A Normative Legal Science," *International Journal of Educational Research & Social Sciences* 3, no. 1 (February 2022): 314–21, https://doi.org/10.51601/IJERSC.V3I1.293. p. 316.

e. Law Number 23 of 2014 concerning Regional Government as has been amended several times, most recently by Law Number 11 of 2020 concerning Job Creation;
f. Government Regulation Number 78 of 2014 concerning Acceleration of Development of Disadvantaged Regions;
g. Government Regulation Number 19 of 2022 concerning Deconcentration and Assistance;
h. Presidential Regulation Number 18 of 2020 concerning the 2020-2024 National Mid-Term Development Plan;
i. Presidential Regulation Number 85 of 2020 concerning the Ministry of Village, Development of Disadvantaged Regions, and Transmigration;
j. Presidential Regulation Number 105 of 2021 concerning the National Strategy of the Acceleration of Development of Disadvantaged Regions 2020-2024; and
k. Regulation of the Minister of Home Affairs Number 86 of 2017 concerning Procedures for Planning, Controlling and Evaluation of Regional Development, Procedures for Evaluation of Draft Regional Regulations concerning Draft Regional Regulations concerning Regional Long-Term Development Plans and Regional Medium-Term Development Plans, as well as Procedures for Amendment to Long-Term Development Plans Regions, Regional Medium-Term Development Plans, and Regional Government Work Plans.

Meanwhile, secondary legal materials are documents other than legal products that provide additional information on primary legal materials. Secondary legal materials in this research include book literature as well as research results and scientific articles related to PPDT.

REGULATION OF THE ACCELERATION OF DEVELOPMENT OF DISADVANTAGED REGIONS

As a state based on law, in essence the rule of law is the mainstream in the administration of the state in Indonesia. The embodiment of state administration that puts its main principles on the law is what is referred to as the principle of legality (*wetmatigheid*).[4]Where in essence it is determined that every state administrator or government equipment (*bestuursorgan*) must be guided by legal provisions in every government action (*bestuurshandeling*).[5] One of the government instruments used by every bestuursorgan is a plan (*het plan*) which aims to carry out the duties and responsibilities of the Government in the field of public welfare through the implementation of national development.[6] Meanwhile, national development is a manifestation of the state's efforts through the Government in realizing one of the state's goals, namely realizing public welfare as stated in the fourth paragraph of the opening of the Constitution of the Republic of Indonesia 1945.

Currently, national development is implemented through a national development planning system (SPPN), as regulated by Law Number 25 of 2004 concerning the National Development Planning System (UU SPPN). The context of national development planning contained therein covers the implementation of macro planning for all government functions covering all areas of life in an integrated manner and applies nationally. Substantively, the regulation of the SPPN is basically to encourage the existence of a national development planning synergy, both the planning prepared by the

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[4] W. Riawan Tjandra, *Hukum Administrasi Negara* (Jakarta: Sinar Grafika, 2018). p. 101.

[5] W. Riawan Tjandra. p. 145.

[6] Enny Agustina, "The Existence of Legal Protection of Citizens to Government Action in Making Decision of State Administrative," *SHS Web of Conferences* 54 (2018): 03001, https://doi.org/10.1051/SHSCONF/20185403001. p. 4.

central government and by the regional government. So that national development programs that are designated as national priorities are in principle required to be relevant to regional development in order to synergize programs/activities to achieve national development targets and goals.[7] This shows a consequence of the adoption of the concept of a unitary state, so that whatever is the target and target of national development must be supported and must be implemented consistently and consistently by local governments. Although in the perspective of regional autonomy regulation, regional development affairs are the authority of the regional government, however, regional governments in preparing their regional development plans must pay attention to the national programs set out in national development.

National programs prepared by the Government are then incorporated into national development planning documents based on strategic development issues covering aspects of globality, nationality, and locality and then outlined through long-term, medium-term, and short-term/annual planning schemes. Based on the stipulations in the UU SPPN, the long-term development plan (RPJPN) is stipulated by law, the medium-term development plan (RPJMN) is stipulated by a Presidential Regulation (Perpres), and the short-term/annual plan or called the government work plan (RKP) determined by Presidential Regulation.[8] Currently, the regulation of the RPJPN refers to Law Number 17 of 2007 concerning the National Long-Term Development Plan for 2005-2025 (UU RPJPN 2005-2025). It is determined that the RPJPN 2005-2025 is a national development planning document which is a description of the objectives of the establishment of the Indonesian State Government as stated in the

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[7] Yesi Anggraini, Armen Yasir, and Zulkarnain Ridlwan, "Perbandingan Perencanaan Pembangunan Nasional Sebelum Dan Sesudah Amandemen Undang-Undang Dasar 1945," *Fiat Justisia: Jurnal Ilmu Hukum* 9, no. 1 (April 2015): 74–88, https://doi.org/10.25041/FIATJUSTISIA.V9NO1.589. p. 83-84.

[8] Imam Mahdi, "Reformulasi Sistem Perencanaan Pembangunan Nasional Model Garis-Garis Besar Haluan Negara," *Al Imarah : Jurnal Pemerintahan Dan Politik Islam* 2, no. 1 (July 2018): 1–14, https://doi.org/10.29300/IMR.V2I1.1025. p. 9-10.

Preamble to the 1945 Constitution of the Republic of Indonesia and then derived into the form of a vision, mission, and direction of national development for a period of 20 years starting from from 2005 to 2025. Judging from its legal status, the existence of the UU RPJPN 2005-2025 is then a guide in the formation of the RPJMN every 5 years by the President.[9]

The regulatory material of the UU RPJPN 2005-2025 contains a national development program to be implemented by the Government over a span of 20 years, from 2005 to 2025. The national development program to be implemented is then described in the Attachment of the UU RPJPN 2005-2025. In the context of realizing a more equitable and just development, one of the national development programs that will be implemented is a national program that encourages an increase in the government's alignment with developing disadvantaged and remote areas, especially those outside Java. This is intended so that these areas can grow and develop more quickly and can reduce the lagging behind in their development from other more developed areas. socio-economic, and political services and isolated from the surrounding area. Where empirically it can be seen that underdeveloped areas still have limited access to transportation that connects to relatively more developed areas, population density is still relatively small and scattered, limited resources (both natural and human resources), have not prioritized development in this area. underdeveloped areas by local governments because they do not have the potential to directly increase local revenue (PAD), and have not optimized the support of the relevant Ministries/Institutions (K/L) in providing programs or activities that can develop the region. In addition, the implementation of development in several border areas is still very far behind compared to development in neighboring countries because the development of outward-looking border areas has not been prioritized. Meanwhile, conditions in the outermost small islands are

[9] Mahdi.

still difficult to develop because of their isolated location and difficult to reach due to limited access to transportation, besides that there are no residents or only a few inhabitants of these islands and have not been touched by services. foundation of the Government. Based on this, to encourage the realization of the welfare of the people in these underdeveloped areas, great attention and support for development is needed from the government, especially by local governments.[10]

To implement national programs in the context of development in underdeveloped areas and to encourage the realization of community welfare in underdeveloped areas as referred to in the Attachment of the UU RPJPN 2005-2025, according to the attribution authority possessed by the President based on Article 5 paragraph (2) of the Constitution of Republic Indonesia 1945 as well as Article 12 of Law Number 12 of 2011 concerning the Regulation Making as has been amended several times, most recently by Law Number 13 of 2022 concerning the Second Amendment of Law Number 12 of 2011 concerning the Regulation Making (UU PPP), then the President issued Government Regulation Number 78 of 2014 concerning Acceleration of Development of Disadvantaged Regions (PP PPDT). In Article 1 Number 1 PP PPDT explains that Development of Disadvantaged Regions (PDT), is a planned process, effort, and action to improve the quality of the community and region which is an integral part of national development. Furthermore, the PDT is implemented by National Program namely the Acceleration of Development of Disadvantaged Regions (PPDT). As for the meaning of PPDT is an affirmative and sharpetening action in planning, funding and implementing of the PDT. Related to PPDT planning, thus the STRANAS-PPDT 2020-2024 was enacted as an effort by the

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[10] Saptono Jenar, "The Acceleration Development of Disadvantaged Region: On Government Affairs Perspective," *Nurani Hukum* 4, no. 2 (December 2021): 1–15, https://doi.org/10.51825/NHK.V4I2.12214. p. 2-3.

government to realize the implementation of PDT in the planning sector.[11]

Normatively, STRANAS-PPDT 2020-2024 as the delegated regulation of the provisions of Article 10 paragraph (1) of PP PPDT. In practice, Perpres STRANAS-PPDT 2020-2024 is to regulate the provisions of the 5-year plan of the implementation for development of disadvantaged regions and spell out of RPJMN. Thus, substantively, STRANAS-PPDT 2020-2024 is an elaboration of the substance of the Presidential Regulation RPJMN 2020-2024. As an elaboration of the RPJMN 2020-2024 in the development of disadvantaged regions, in essence the STRANAS-PPDT 2020-2024 provides PPDT policy in national scheme directions for various programs and activities that will be implemented by the central government in the framework of PPDT as listed in the Attachment of STRANAS-PPDT 2020-2024. The attachment of the STRANAS-PPDT 2020-2024 is the commitment of the central government, which in this case is the related K/L in giving sides to the development of disadvantaged regions, which is carried out in an integrated and synergic manner. Where the K/L commitment is then concreted into the Strategy Plan (RENSTRA) document and also becomes part of the government's annual development plan as stipulated in the RKP.[12]

Referring to Presidential Regulation Number 63 of 2020 concerning the Determination of Disadvantaged Regions 2020-2024, it is stated that in the RPJMN 2020-2024 period there are 62 regencies designated as disadvantaged regions in the national scale. The determination of the 62 regencies was based on the macro indicators of the Human Development Index (IPM) and Percentage of the Poor

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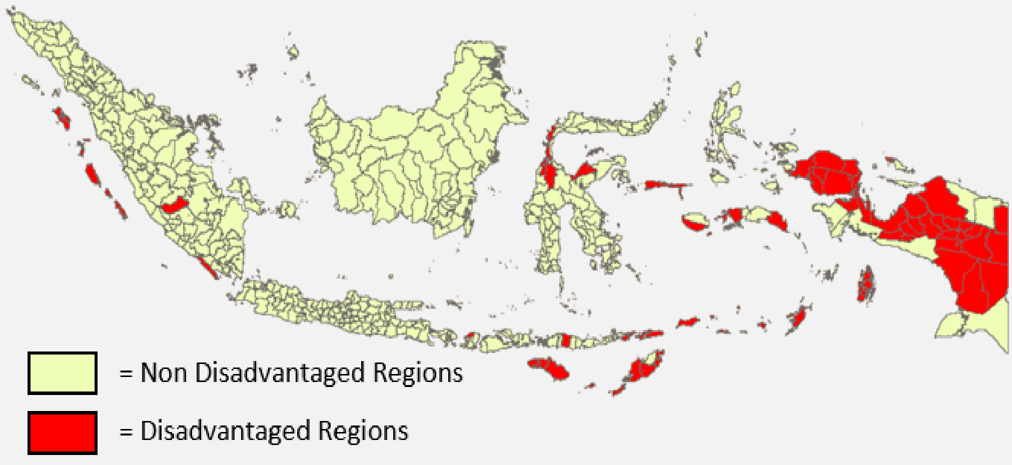
[11] Saptono Jenar and Agnes Harvelian, "Landasan Yuridis Peraturan Pemerintah Nomor 78 Tahun 2014 Tentang Percepatan Pembangunan Daerah Tertinggal Di Tinjau Dari Teori Daya Laku Hukum (Geltung)," *Iblam Law Review* 1, no. 2 (2021): 1–29, https://doi.org/10.52249/ilr.v1i2.21. p. 7.

[12] Saptono Jenar, "Analisis Penetapan Daerah Tertinggal Tahun 2020-2024 Dan Rencana Aksi Nasional Percepatan Pembangunan Daerah Tertinggal Tahun 2020," *Indonesia Law Reform Journal* 2, no. 1 (March 2022): 1–17, https://doi.org/10.22219/ILREJ.V2I1.19528. p. 3.

(PPM) in 2019. The average HDI in underdeveloped areas was 58.91 (fifty eight point ninety one), while nationally the HDI is at 71.92 (seventy one point ninety two). Meanwhile, PPM in underdeveloped areas is 25.85% (twenty five point eighty five percent), much higher than at the national level which is at 9.22% (nine point twenty two percent). Meanwhile, the number of provinces covering 62 regencies as disadvantaged regions is 11 provinces. The maps and details of disadvantaged regions as referred may be seen in Figure 1 and Table 1 below:



NO	PROVINSI	TOTAL KABUPATEN
1	NORTH SUMATERA	4
2	WEST SUMATERA	1
3	SOUTH SUMATERA	1
4	LAMPUNG	1
5	WEST NUSA TENGGARA	1
6	EAST NUSA TENGGARA	13
7	CENTRAL SULAWESI	3
8	MALUKU	6
9	NORTH MALUKU	2
10	WEST PAPUA	8
11	PAPUA	22

Figure 1
Disadvantaged Regions Map 2020-2024 Source: MVDDRT (2021)

NO.	REGION	PROVINCE
1	Nias	North Sumatera
2	South Nias	North Sumatera
3	North Nias	North Sumatera
4	West Nias	North Sumatera
5	Mentawai Islands	West Sumatera
6	North Musi Rawas	South Sumatera
7	West Pesisir	Lampung
8	North Lombok	West Nusa Tenggara
9	West Sumba	East Nusa Tenggara
10	East Sumba	East Nusa Tenggara
11	Kupang	East Nusa Tenggara
12	South Central Timor	East Nusa Tenggara
13	Belu	East Nusa Tenggara
14	Alor	East Nusa Tenggara
15	Lembata	East Nusa Tenggara
16	Rote Ndao	East Nusa Tenggara
17	Central Sumba	East Nusa Tenggara
18	Soutwest Sumba	East Nusa Tenggara
19	East Manggarai	East Nusa Tenggara
20	Sabu Raijua	East Nusa Tenggara
21	Malaka	East Nusa Tenggara
22	Donggala	Central Sulawesi
23	Tojo Una-una	Central Sulawesi
24	Sigi	Central Sulawesi
25	Tanimbar Islands	Maluku
26	Aru Islands	Maluku
27	West Seram	Maluku
28	East Seram	Maluku
29	Soutwest Maluku	Maluku
30	South Buru	Maluku
31	Sula Islands	North Maluku
32	Taliabu Island	North Maluku
33	Teluk Wondama	West Papua
34	Teluk Bintuni	West Papua
35	South Sorong	West Papua
36	Sorong	West Papua
37	Tambrauw	West Papua
38	Maybrat	West Papua
39	South Manokwari	West Papua
40	Arfak Mountains	West Papua
41	Jayawijaya	Papua
42	Nabire	Papua
43	Paniai	Papua
44	Puncak Jaya	Papua
45	Boven Digoel	Papua
46	Mappi	Papua
47	Asmat	Papua
48	Yahukimo	Papua
49	Bintang Mountains	Papua
50	Tolikara	Papua
51	Keerom	Papua
52	Waropen	Papua
53	Supiori	Papua
54	Mamberamo Raya	Papua
55	Nduga	Papua
56	Lanny Jaya	Papua
57	Central Mamberamo	Papua
58	Yalimo	Papua
59	Puncak	Papua
60	Dogiyai	Papua
61	Intan Jaya	Papua
62	Deiyai	Papua

Table 1
List of 62 Disadvantaged Regions Based on Each Province[13]

[13] Source: Presidential Regulation Number 63 of 2020 concerning the Determination of Disadvantaged Regions 2020-2024

IMPLICATION OF THE STRANAS-PPDT 2020-2024 FOR THE PROVINCIAL GOVERNMENT

To find out the essence of this research, the first focus is to find the implications of the STRANAS-PPDT 2020-2024 for the provincial government (especially the provincial government which has disadvantaged regions in its territory). In the context of this research, the meaning of the legal implications intended is how the involvement of the provincial government after the issuance of the STRANAS-PPDT 2020-2024. As for the implementation of the national program to accelerate development of disadvantaged regions at the regional level, there are 11 provincial governments that have underdeveloped regencies in their territory. In accordance with the mandate of Article 262 paragraph (2) of the UU Pemda, it is determined that regional development plans (in this context, namely provincial and regency regions) pay attention to PPDT, where local governments are required to guide the national program of PPDT.

In line with the provisions referred to in the UU Pemda, it can be understood that 11 provincial government that have disadvantaged regions in their territory are in principle obliged to guide the national program of PPDT as regulated in the RPJMN. To implement these provisions, based on RPJMN 2020-2024 jo Article 8 paragraph (1) PP PPDT it is determined that PPDT planning at the regional level is part of the Regional Medium-Term Development Plan (RPJMD) and Provincial Government Work Plan (RKPD). Referring to the provisions of Article 8 paragraph (2) PP PPDT it is stated that the PPDT Planning at the provincial level is prepared by the Provincial Government through a consultation process with the Government. Then it is determined in Article 12 that the PPDT planning at the provincial level consists of the Regional Strategy for the Acceleration of Development of Disadvantaged Regions (Provincial STRADA-PPDT) and the Regional Action Plan for the Acceleration of Development of Disadvantaged Regions (Provincial

RAD-PPDT). It is explained in Article 13 PP PPDT that substantively the Provincial STRADA-PPDT is an elaboration of the Provincial RPJMD and takes into account the STRANAS-PPDT which is stipulated every 5 (five) years by the Governor (See In Figure 2). Understanding the provisions as referred to in Article 13 of the PP PPDT, in order to integrate PPDT planning into the provincial RPJMD, the provincial government is obliged to prepare STRADA-PPDT. In addition, to provide legal certainty to the Provincial STRADA-PPDT, the Governor stipulates the Provincial STRADA-PPDT with a legal instrument in the form of Regulation of Governor. As for the content of the Regulation of Governor, in principle it must pay attention to or guide the material content of STRANAS-PPDT.

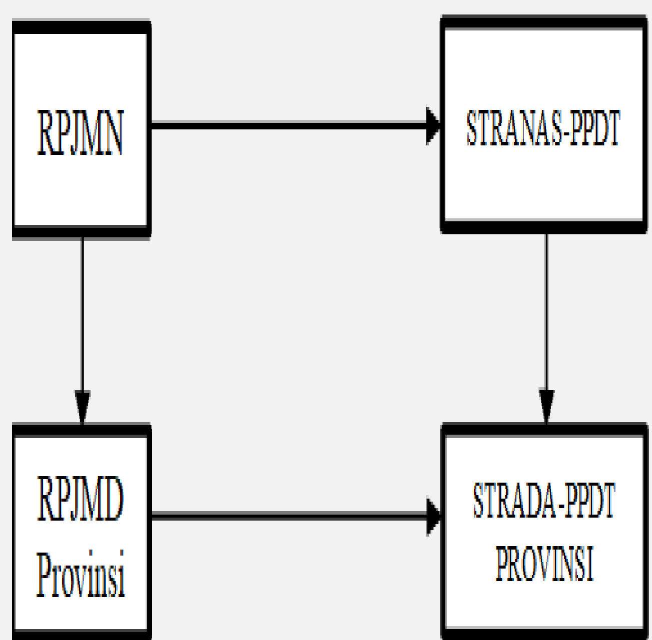


Figure 2
The linkage STRANAS-PPDT and Provincial STRADA-PPDT
Source: Ditjen PPDT (2021)

NO.	PROVINCE	DETERMINATION OF RPJMD
1.	North Sumatera	Regional Regulation of the Province of North Sumatera Number 5 of 2019 on the Regional Medium-Term Development Plan of the Province of North Sumatera 2019-2023
2.	West Sumatera	Regional Regulation of the Province of West Sumatera Number 6 of 2021 on the Regional Medium-Term Development Plan of the Province of West Sumatera 2021-2026
3.	South Sumatera	Regional Regulation of the Province of South Sumatera Number 1 of 2019 on the Regional Medium-Term Development Plan of the Province of South Sumatera 2019-2023
4.	Lampung	Regional Regulation of the Province of Lampung Number 13 of 2019 on the Regional Medium-Term Development Plan of the Province of Lampung 2019-2024
5.	West Nusa Tenggara	Regional Regulation of the Province of West Nusa Tenggara Number 2 of 2021 on the Amendment to Regional Regulation of the Province of West Nusa Tenggara Number 1 of 2019 on the Regional Medium-Term Development Plan of the Province of West Nusa Tenggara 2019-2023
6.	East Nusa Tenggara	Regional Regulation of the Province of East Nusa Tenggara Number 4 of 2019 on the Regional Medium-Term Development Plan of the Province of East Nusa Tenggara 2018-2023
7.	Central Sulawesi	Regional Regulation of the Province of Central Sulawesi Number 13 of 2021 on the Regional Medium-Term Development Plan of the Province of Central Sulawesi 2021-2026
8.	Maluku	Regional Regulation of the Province of Maluku Number 1 of 2020 on the Regional Medium-Term Development Plan of the Province of Maluku 2019-2024
9.	North Maluku	Regional Regulation of the Province of North Maluku Number 7 of 2020 on the Regional Medium-Term Development Plan of the Province of North Maluku 2020-2024
10.	Papua	Regional Regulation of the Province of Papua Number 3 of 2019 on the Regional Medium-Term Development Plan of the Province of Papua 2019-2023
11.	West Papua	Regional Regulation of the Province of West Papua Number 3 of 2017 on the Regional Medium-Term Development Plan of the Province of Papua 2017-2022

Tabel 2.0 List of Determination of Provincial RPJMD
Source: Processed Data

In accordance with the provisions of Article 19 paragraph (3) of the UU SPPN jo Article 264 paragraph (1) of the UU Pemda, it is determined that the RPJMD is stipulated by a Regional Regulation. Table 2 above is a list of 11 provincial RPJMDs as well as regional regulations that stipulate the provincial RPJM documents. In fact, the Provincial RPJMD documents in the 11 provinces mentioned above have been determined before the issuance of the STRANAS-PPDT. In addition, due to differences in the timing of regional head elections from one another, the period of the Provincial RPJMD differs from one another. This has resulted in the need for government efforts to identify and analyze the contents of the 11 Provincial RPJMDs.

The consequence of the existence of a norm in the PP PPDT which states that the Provincial STRADA-PPDT is an elaboration of the Provincial RPJMD and paying attention to the STRANAS-PPDT has implications for the need for adjustments to the content material that will be set forth in the Provincial STRADA-PPDT 2020-2024 against the Provincial RPJMD and adjusts it to the material content on STRANAS-PPDT 2020-2024 to provide legal certainty. Because, the importance of legal certainty in compiling the content material of the Provincial STRADA-PPDT 2020-2024, it is mandatory to guide the content of the Perpres STRANAS-PPDT 2020-2024 which was formed after the publication of the respective Provincial RPJMD. So that in providing legal certainty, the process of preparing the Provincial STRADA-PPDT document must be consulted with the government.

Technically, the preparation of the Provincial STRADA-PPDT is also regulated more operationally into the Regulation of the Minister of Home Affairs Number 86 of 2017 concerning Procedures for Planning, Controlling and Evaluation of Regional Development, Procedures for Evaluation of Draft Regional Regulations concerning Draft Regional Regulations concerning Regional Long-Term Development Plans and Plans Regional Medium-Term Development, and Procedures for Amendment to Regional Long-Term Development Plans, Regional Medium-Term Development Plans,

and Regional Government Work Plans (Permendagri). The Permendagri is an implementing regulation (*verordnung*) of Article 277 of the UU Pemda. In Form E.3 Attachment of the Permendagri, it is determined that the action program for disadvantaged, frontier, outermost, and post-conflict regions is defined as one of the components in Policy Control and Evaluation of the Medium Term Development Planning of the Provinces. So that the Provincial STRADA-PPDT as a form of action program for disadvantaged regions is one of the important things that must be prepared by provinces that have disadvantaged regencies in their territory.

The existence of the Provincial STRADA-PPDT document is a PPDT planning document at the provincial level which becomes a guideline in the implementation of PPDT by the provincial government. As the implementation of general government affairs, the Governor monitors and evaluates the level of achievement of the Provincial STRADA-PPDT, and Regency STRADA-PPDT in his area and the results of the monitoring and evaluation of the level of achievement of the Provincial STRADA-PPDT, and Regency STRADA-PPDT in his area then reported to the Minister who administers government affairs in the development of disadvantaged regions.

Cumulatively, the Minister who carries out government affairs in the development of disadvantaged regions then reports on the achievements of the entire implementation of STRANAS-PPDT, Provincial STRADA-PPDT, and Regency STRADA-PPDT. The mechanism refers to the provisions of Article 31 PP PPDT and is in accordance with the mechanism for implementing general government affairs as regulated in Article 25 paragraph (1) letter g of the UU Pemda.

THE GOVERNMENT'S ROLE IN FACILITATING THE PREPARATION OF PROVINCIAL STRADA-PPDT

To support the formation of the preparation of the Provincial STRADA-PPDT in 11 provinces that have disadvantaged regions in their area, certain treatments are needed in their preparation. Referring to the provisions of Article 9 of the Perpres STRANAS-PPDT 2020-2024 which stipulates that the Minister who carries out government affairs in the development of disadvantaged regions facilitates the preparation of the Provincial STRADA-PPDT and Regency STRADA-PPDT. The form of facilitation is carried out in coordination with the minister who organizes government affairs in the field of national development planning and the minister who organizes domestic government affairs.

With regard to the implementation of the facilitation, referring to the provisions regulated in Article 22 of PP PPDT which states that the Minister who carries out government affairs in the development of disadvantaged regions coordinates the management of PPDT at the national level with ministers/heads of institutions, Provincial Governments, and Regency Governments. In the context of coordinating the management of PPDT at the provincial level in terms of facilitating the preparation of the Provincial STRADA-PPDT, then based on the provisions of Article 24 letter a PP PPDT it is determined that the Minister who carries out government affairs in the development of disadvantaged regions shall stipulate guidelines for PPDT Planning for provinces and regencies.[14]

Referring to the provisions of Article 4 of Presidential Regulation Number 85 of 2020 concerning the Ministry of Village,

[14] Saptono Jenar, "Politik Hukum Pembentukan Urusan Pemerintahan Pembangunan Daerah Tertinggal Dalam Penyelenggaraan Pembangunan Nasional," *Justitia et Pax* 38, no. 1 (June 2022), https://doi.org/10.24002/JEP.V38I1.5066. p. 196.

Development of Disadvantaged Regions, and Transmigration (Perpres Kemendesa PDTT) states that the Ministry of Village, Development of Disadvantaged Regions, and Transmigration has the task of carrying out government affairs in the field of village and rural development, empowerment rural communities, acceleration of development of disadvantaged regions, and transmigration to assist the President in administering state government. It was further determined that in carrying out these tasks, the Ministry of Village, Development of Disadvantaged Regions, and Transmigration carried out the following functions:

a. formulation, determination, and implementation of policies in the field of rural and rural development, economic development and investment in village, disadvantaged regions, and transmigration, development of transmigration areas, as well as harmonizing the acceleration of development of disadvantaged regions;
b. coordinating the implementation of tasks, fostering, and providing administrative support to all organizational elements within the Ministry of Village, Development of Disadvantaged Regions, and Transmigration;
c. management of state property/wealth which is their responsibility;
d. supervision of the implementation of tasks within the Ministry of Village, Development of Disadvantaged Regions, and Transmigration;
e. implementation of technical guidance and supervision of the implementation of the affairs of the Ministry of Village, Development of Disadvantaged Regions, and Transmigration in the regions;
f. implementation of policy development and competitiveness, preparation of integrated development plans, and management of data and information in the field of rural and rural development, disadvantaged regions, and transmigration;
g. implementation of human resource development and empowerment of rural communities, disadvantaged regions, and transmigration; and

h. implementation of substantive support to all organizational elements within the Ministry of Village, Development of Disadvantaged Regions, and Transmigration.

Referring the provisions in the Perpres Kemendesa PDTT, in principle the Minister who carries out government affairs in the development of disadvantaged regions is the Minister of Village, Development of Disadvantaged Regions, and Transmigration. Furthermore, to provide legal certainty in the implementation of facilitation in the preparation of the Provincial STRADA-PPDT, the Minister of Village, Development of Disadvantaged Regions, and Transmigration needs to stipulate guidelines of PPDT Planning for the province. This is certainly highly needed by the 11 provinces as reference material in the formation of the Governor Regulation that regulates the Provincial STRADA-PPDT. The problem that arises at this time is the Regulation of the Minister of Village, Development of Disadvantaged Regions, and Transmigration has not yet been established regarding guidelines for the preparation of PPDT planning at the provincial level. So that this can be a problem in the preparation of the Provincial STRADA-PPDT both in terms of adjusting the content material of the Provincial STRADA-PPDT with the Provincial RPJMD and with the STRANAS-PPDT 2020-2024.

The implication of *rechtsvacuum* the Regulation of the Minister of Village, Development of Disadvantaged Regions, and Transmigration regarding guidelines for the preparation of PPDT planning at the provincial level, it is potentially impossible to facilitate the preparation of the Provincial STRADA-PPDT in accordance with the provisions of Article 24 letter a PP PPDT jo provisions of Article 9 of the Perpres STRANAS-PPDT 2020-2024. Thus, there is an urgency to immediately form the Minister of Village, Development of Disadvantaged Regions, and Transmigration concerning guidelines for the preparation of PPDT planning at the provincial level as a legal basis in the implementation of facilitation for the preparation of the Provincial STRADA-PPDT 2020-2024.

CONCLUSION

Based on the discussion above, it is concluded that the issuance of Presidential Regulation Number 105 of 2021 concerning National Strategic of the Acceleration of Development of Disadvantaged Regions 2020-2024 has implications for 11 provincial governments that have disadvantaged regions to formulate and stipulate Governor Regulation concerning Regional Strategy of the Acceleration of Development of Disadvantaged Regions (Provincial STRADA-PPDT) in accordance with the provisions of Article 8 paragraph (3) of Government Regulation Number 78 of 2014 concerning Acceleration of Development of Disadvantaged Regions jo Article 4 paragraph (2) Presidential Regulation Number 105 of 2021 concerning National Strategic of the Acceleration of Development of Disadvantaged Regions 2020-2024.

In the preparation of the Governor Regulation concerning Provincial STRADA-PPDT 2020-2024, the material content of the Provincial STRADA-PPDT is the elaboration of each Provincial Medium-Term Development Plan (Provincial RPJMD) and guides the STRANAS-PPDT 2020-2024 as regulated in the provisions of Article 262 paragraph (2) of Law Number 23 of 2014 concerning Regional Government as amended several times, most recently by Law Number 11 of 2020 concerning Job Creation jo the Regulation of the Minister of Home Affairs Number 86 of 2017 concerning Procedures for Planning, Control and Evaluation of Regional Development, Procedures for Evaluation of Draft Regional Regulations concerning Draft Regional Regulations Regarding Regional Long-Term Development Plans and Regional Medium-Term Development Plans, as well as Procedures for Amendment to Regional Long-Term Development Plans, Regional Medium-Term Development Plans, and Regional Government Work Plans. In order to prepare the Provincial STRADA-PPDT 2020-2024, the Government through the Minister of Village, Development of Disadvantaged Regions, and

Transmigration coordinates with the minister of the national development planning and the minister of the home affairs in order to facilitate the implementation of the preparation of the Provincial STRADA-PPDT 2020-2024. In addition, to provide guidance to the provincial government in the preparation of the provincial STRADA-PPDT 2020-2024, the Minister of Village, Development of Disadvantaged Regions, and Transmigration needs to establish guidelines of PPDT Planning for the provincial governments.

Through the results of the research, the authors suggest that the Ministry of Village, Development of Disadvantaged Regions, and Transmigration immediately issue a Regulation of the Minister of Village, Development of Disadvantaged Regions, and Transmigration concerning guidelines for preparing PPDT planning at the provincial level as a guide for provincial local governments in the preparation of the Provincial STRADA-PPDT as well as the legal basis for the implementation of facilitation for the preparation of Provincial STRADA-PPDT 2020-2024. The material content in the Regulation of the Minister of Village, Development of Disadvantaged Regions, and Transmigration concerning guidelines for the preparation of PPDT planning at the provincial level is to be coordinated with the minister of the national development planning and the minister of the home affairs.

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An Analysis of Presidential Regulation 105/2021: The National Strategy for Accelerating the Development of Disadvantaged Regions 2020-2024 and Its Implications for Provincial Government

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ABSTRACT

In the context of implementing the Government's policy towards reducing regional disparities, Presidential Regulation Number 105 of 2021 concerning National Strategic of the Acceleration of Development of Disadvantaged Regions 2020-2024 (STRANAS-PPDT 2020-2024) has been issued as an elaboration of Presidential Regulation Number 18 of 2020 concerning National Medium-Term Development Plan 2020-2024 (RPJMN 2020-2024). In accordance with the provisions of Article 8 paragraph (3) of Government Regulation Number 78 of 2014 concerning the Acceleration of Development of Disadvantaged Regions (PP PPDT) juncto Article 4 paragraph (2) of STRANAS-PPDT 2020-2024, has implications to 11 (eleven) provincial governments to immediately formulate and determine the Regional Strategy for the Acceleration of Development of Disadvantaged Regions 2020-2024 (Provincial STRADA-PPDT 2020-2024). To support the preparation of the Provincial STRADA-PPDT 2020-2024, the Government through the Minister of Village, Development of Disadvantaged Regions, and Transmigration coordinates with the minister of national development planning and the minister of home affairs to facilitate the implementation of the preparation of the Provincial STRADA-PPDT 2020-2024. The research concluded that, to provide guidance to the provincial government in the preparation of the provincial STRADA-PPDT 2020-2024 and as a legal basis for the implementation of facilitation for the preparation of the Provincial STRADA-PPDT 2020-2024, the Ministry of Village,

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Development of Disadvantaged Regions, and Transmigration needs to establish guidelines of the preparation of the Provincial STRADA-PPDT 2020-2024.

Keywords: *Acceleration of Development of Disadvantaged Regions; STRANAS PPDT 2020-2024; Provincial STRADA-PPDT 2020-2024.*

INTRODUCTION

The President Joko Widodo (Jokowi) on 10 December 2021 was signed Presidential Regulation Number 105 of 2021 on National Strategy of the Acceleration of Development of Disadvantaged Regions 2020-2024 (Perpres STRANAS-PPDT 2020-2024).[1] As an integral part of national development, thus the STRANAS-PPDT must refer to the national development policy for 2020-2024 as stated in the National Medium-Term Development Plan 2020-2024 (RPJMN 2020-2024) which is stipulated by Presidential Regulation Number 18 of 2020 (Perpres RPJMN 2020-2024). In principle, the substance of the RPJMN 2020-2024 refers to the National Long-Term Development Plan 2005-2025 (RPJPN 2020-2025), Indonesia's Vision 2045, and the President's Vision and Mission 2020-2024. The Vision of the President of 2020-2024 is "The Realization of an Advanced Indonesia that is Sovereign, Independent, and Based on Mutual Cooperation (Gotong Royong)" which is realized through 9 (nine) Missions known as the Second Nawacita, are:

[1] "Gov't Issues Regulation to Speed Up Development in Underdeveloped Regions," Cabinet Secretariat of The Republic of Indonesia, n.d.

1. Improving National Human Quality.
2. Productive, Independent, and Competitive Economic Structure.
3. A Just and Equal Development.
4. Achieving a Sustainable Environment.
5. Improving National Human Quality.
6. Enforcement of a Corruption-Free, Dignified, and Reliable Legal System.
7. Protection for the whole nation and provide a sense of security for all citizens.
8. Clean, Effective, and Reliable Government Management.
9. Regional Government Synergy within the Framework of the Unitary State.

And the 7 (seven) Development Agendas 2020-2024, are:

1. Economic Resilience.
2. Regional Development.
3. Quality and Competitive Human Resources.
4. Mentality Revolution and Culture Development.
5. Infrastructure Strengthening.
6. Environment Development.
7. Legal Political Stability and Public Transparency.

Referring to the third mission and the second development agenda, regional development is directed to overcome the problem of regional inequality. With the aim of, among others:

1. Increasing equity between the eastern and western regions of Indonesia, and between Java and other islands.
2. Increasing the competitive advantage of regional growth centers.
3. Improving the quality of governance of basic services, competitiveness, and regional independence.
4. Increasing the synergy of regional spatial use.

In practice, the implementation of regional development is then implemented with several priority regional development programs, one of which is the national program for the acceleration of development of disadvantaged regions (PPDT). It is determined that the National Program of PPDT in the 2020-2024 RPJMN has the following objectives:

1. Reducing number of disadvantaged area (regencies) in 2024 (improved 25 regencies).
2. Reducing percentage of poor people in disadvantaged areas (PPM).
3. Increasing Average HDI in disadvantaged areas Human Development Index (IPM).

As an effort to achieve the PPDT targets as referred to in the RPJMN 2020-2024, the STRANAS-PPDT 2020-2024 is the roadmap which is described from the 2020-2024 RPJMN and then used as a guideline by relevant ministries/agencies and local governments (regional of the provincial government and regional of the regency government) in the implementation of PPDT.[2] With regard to the implementation of PPDT by local governments, it refers to the provisions of Article 262 paragraph (2) of Law Number 23 of 2014 concerning Regional Government as has been amended several times, most recently by Law Number 11 of 2020 concerning Job Creation (UU Pemda), it is stated that the Regional development plan pays attention to PPDT, then in the elucidation to UU Pemda it is further stated that the regional government is obliged to guide the national program PPDT.

Based on this, the issuance of the Perpres STRANAS-PPDT 2020-2024 as a manifestation of the implementation of the national program PPDT, has legal implications for regional governments, especially for

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[2] Dennis Shoesmith, Nathan Franklin, and Rachmat Hidayat, "Decentralised Governance in Indonesia's Disadvantaged Regions: A Critique of the Underperforming Model of Local Governance in Eastern Indonesia," *Journal of Current Southeast Asian Affairs* 39, no. 3 (2020): 359–80, https://doi.org/10.1177/1868103420963140. p. 366.

provincial governments to pay attention to the PPDT national program in their regional development plans in accordance with the provisions of Article 262 paragraph (2) UU Pemda. Based on this background description, this article will conduct a legal analysis regarding the implications of the stipulation of the Presidential Regulation Number 105 of 2021 on National Strategic of the Acceleration of Development of Disadvantaged Regions 2020-2024 for the provincial government and the role of the Government in facilitating the preparation of PPDT planning by the provincial government.

This research uses normative legal research method. This method aims to find principles or doctrines of positive law (ius constitutum). This type of research is generally known as dogmatic study or commonly known as doctrinal research or normative legal research. Types and sources of law materials, such as primary legal materials, and secondary legal materials. While the method collecting legal material is identifying and/or explore relevant laws and regulations, and then analyze the data using by statute approach and the result is presented in analytical form descriptive or prescriptive analysis.[3]

The primary legal materials in this study include:

a. The Constitution of the Republic Indonesia 1945;
b. Law Number 25 of 2004 concerning National Development Planning System;
c. Law Number 17 of 2007 concerning the National Long-Term Development Plan for 2005-2025;
d. Law Number 12 of 2011 concerning the Regulation Making;

[3] Ervina Dwi Indriati, Sary ana, and Nunung Nugroho, "Philosophy Of Law And The Development Of Law As A Normative Legal Science," *International Journal of Educational Research & Social Sciences* 3, no. 1 (February 2022): 314–21, https://doi.org/10.51601/IJERSC.V3I1.293. p. 316.

e. Law Number 23 of 2014 concerning Regional Government as has been amended several times, most recently by Law Number 11 of 2020 concerning Job Creation;
f. Government Regulation Number 78 of 2014 concerning Acceleration of Development of Disadvantaged Regions;
g. Government Regulation Number 19 of 2022 concerning Deconcentration and Assistance;
h. Presidential Regulation Number 18 of 2020 concerning the 2020-2024 National Mid-Term Development Plan;
i. Presidential Regulation Number 85 of 2020 concerning the Ministry of Village, Development of Disadvantaged Regions, and Transmigration;
j. Presidential Regulation Number 105 of 2021 concerning the National Strategy of the Acceleration of Development of Disadvantaged Regions 2020-2024; and
k. Regulation of the Minister of Home Affairs Number 86 of 2017 concerning Procedures for Planning, Controlling and Evaluation of Regional Development, Procedures for Evaluation of Draft Regional Regulations concerning Draft Regional Regulations concerning Regional Long-Term Development Plans and Regional Medium-Term Development Plans, as well as Procedures for Amendment to Long-Term Development Plans Regions, Regional Medium-Term Development Plans, and Regional Government Work Plans.

Meanwhile, secondary legal materials are documents other than legal products that provide additional information on primary legal materials. Secondary legal materials in this research include book literature as well as research results and scientific articles related to PPDT.

REGULATION OF THE ACCELERATION OF DEVELOPMENT OF DISADVANTAGED REGIONS

As a state based on law, in essence the rule of law is the mainstream in the administration of the state in Indonesia. The embodiment of state administration that puts its main principles on the law is what is referred to as the principle of legality (*wetmatigheid*).[4]Where in essence it is determined that every state administrator or government equipment (*bestuursorgan*) must be guided by legal provisions in every government action (*bestuurshandeling*).[5] One of the government instruments used by every bestuursorgan is a plan (*het plan*) which aims to carry out the duties and responsibilities of the Government in the field of public welfare through the implementation of national development.[6] Meanwhile, national development is a manifestation of the state's efforts through the Government in realizing one of the state's goals, namely realizing public welfare as stated in the fourth paragraph of the opening of the Constitution of the Republic of Indonesia 1945.

Currently, national development is implemented through a national development planning system (SPPN), as regulated by Law Number 25 of 2004 concerning the National Development Planning System (UU SPPN). The context of national development planning contained therein covers the implementation of macro planning for all government functions covering all areas of life in an integrated manner and applies nationally. Substantively, the regulation of the SPPN is basically to encourage the existence of a national development planning synergy, both the planning prepared by the

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[4] W. Riawan Tjandra, *Hukum Administrasi Negara* (Jakarta: Sinar Grafika, 2018). p. 101.

[5] W. Riawan Tjandra. p. 145.

[6] Enny Agustina, "The Existence of Legal Protection of Citizens to Government Action in Making Decision of State Administrative," *SHS Web of Conferences* 54 (2018): 03001, https://doi.org/10.1051/SHSCONF/20185403001. p. 4.

central government and by the regional government. So that national development programs that are designated as national priorities are in principle required to be relevant to regional development in order to synergize programs/activities to achieve national development targets and goals.[7] This shows a consequence of the adoption of the concept of a unitary state, so that whatever is the target and target of national development must be supported and must be implemented consistently and consistently by local governments. Although in the perspective of regional autonomy regulation, regional development affairs are the authority of the regional government, however, regional governments in preparing their regional development plans must pay attention to the national programs set out in national development.

National programs prepared by the Government are then incorporated into national development planning documents based on strategic development issues covering aspects of globality, nationality, and locality and then outlined through long-term, medium-term, and short-term/annual planning schemes. Based on the stipulations in the UU SPPN, the long-term development plan (RPJPN) is stipulated by law, the medium-term development plan (RPJMN) is stipulated by a Presidential Regulation (Perpres), and the short-term/annual plan or called the government work plan (RKP) determined by Presidential Regulation.[8] Currently, the regulation of the RPJPN refers to Law Number 17 of 2007 concerning the National Long-Term Development Plan for 2005-2025 (UU RPJPN 2005-2025). It is determined that the RPJPN 2005-2025 is a national development planning document which is a description of the objectives of the establishment of the Indonesian State Government as stated in the

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[7] Yesi Anggraini, Armen Yasir, and Zulkarnain Ridlwan, "Perbandingan Perencanaan Pembangunan Nasional Sebelum Dan Sesudah Amandemen Undang-Undang Dasar 1945," *Fiat Justisia: Jurnal Ilmu Hukum* 9, no. 1 (April 2015): 74–88, https://doi.org/10.25041/FIATJUSTISIA.V9NO1.589. p. 83-84.

[8] Imam Mahdi, "Reformulasi Sistem Perencanaan Pembangunan Nasional Model Garis-Garis Besar Haluan Negara," *Al Imarah : Jurnal Pemerintahan Dan Politik Islam* 2, no. 1 (July 2018): 1–14, https://doi.org/10.29300/IMR.V2I1.1025. p. 9-10.

Preamble to the 1945 Constitution of the Republic of Indonesia and then derived into the form of a vision, mission, and direction of national development for a period of 20 years starting from from 2005 to 2025. Judging from its legal status, the existence of the UU RPJPN 2005-2025 is then a guide in the formation of the RPJMN every 5 years by the President.[9]

The regulatory material of the UU RPJPN 2005-2025 contains a national development program to be implemented by the Government over a span of 20 years, from 2005 to 2025. The national development program to be implemented is then described in the Attachment of the UU RPJPN 2005-2025. In the context of realizing a more equitable and just development, one of the national development programs that will be implemented is a national program that encourages an increase in the government's alignment with developing disadvantaged and remote areas, especially those outside Java. This is intended so that these areas can grow and develop more quickly and can reduce the lagging behind in their development from other more developed areas. socio-economic, and political services and isolated from the surrounding area. Where empirically it can be seen that underdeveloped areas still have limited access to transportation that connects to relatively more developed areas, population density is still relatively small and scattered, limited resources (both natural and human resources), have not prioritized development in this area. underdeveloped areas by local governments because they do not have the potential to directly increase local revenue (PAD), and have not optimized the support of the relevant Ministries/Institutions (K/L) in providing programs or activities that can develop the region. In addition, the implementation of development in several border areas is still very far behind compared to development in neighboring countries because the development of outward-looking border areas has not been prioritized. Meanwhile, conditions in the outermost small islands are

[9] Mahdi.

still difficult to develop because of their isolated location and difficult to reach due to limited access to transportation, besides that there are no residents or only a few inhabitants of these islands and have not been touched by services. foundation of the Government. Based on this, to encourage the realization of the welfare of the people in these underdeveloped areas, great attention and support for development is needed from the government, especially by local governments.[10]

To implement national programs in the context of development in underdeveloped areas and to encourage the realization of community welfare in underdeveloped areas as referred to in the Attachment of the UU RPJPN 2005-2025, according to the attribution authority possessed by the President based on Article 5 paragraph (2) of the Constitution of Republic Indonesia 1945 as well as Article 12 of Law Number 12 of 2011 concerning the Regulation Making as has been amended several times, most recently by Law Number 13 of 2022 concerning the Second Amendment of Law Number 12 of 2011 concerning the Regulation Making (UU PPP), then the President issued Government Regulation Number 78 of 2014 concerning Acceleration of Development of Disadvantaged Regions (PP PPDT). In Article 1 Number 1 PP PPDT explains that Development of Disadvantaged Regions (PDT), is a planned process, effort, and action to improve the quality of the community and region which is an integral part of national development. Furthermore, the PDT is implemented by National Program namely the Acceleration of Development of Disadvantaged Regions (PPDT). As for the meaning of PPDT is an affirmative and sharpetening action in planning, funding and implementing of the PDT. Related to PPDT planning, thus the STRANAS-PPDT 2020-2024 was enacted as an effort by the

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[10] Saptono Jenar, "The Acceleration Development of Disadvantaged Region: On Government Affairs Perspective," *Nurani Hukum* 4, no. 2 (December 2021): 1–15, https://doi.org/10.51825/NHK.V4I2.12214. p. 2-3.

government to realize the implementation of PDT in the planning sector.[11]

Normatively, STRANAS-PPDT 2020-2024 as the delegated regulation of the provisions of Article 10 paragraph (1) of PP PPDT. In practice, Perpres STRANAS-PPDT 2020-2024 is to regulate the provisions of the 5-year plan of the implementation for development of disadvantaged regions and spell out of RPJMN. Thus, substantively, STRANAS-PPDT 2020-2024 is an elaboration of the substance of the Presidential Regulation RPJMN 2020-2024. As an elaboration of the RPJMN 2020-2024 in the development of disadvantaged regions, in essence the STRANAS-PPDT 2020-2024 provides PPDT policy in national scheme directions for various programs and activities that will be implemented by the central government in the framework of PPDT as listed in the Attachment of STRANAS-PPDT 2020-2024. The attachment of the STRANAS-PPDT 2020-2024 is the commitment of the central government, which in this case is the related K/L in giving sides to the development of disadvantaged regions, which is carried out in an integrated and synergic manner. Where the K/L commitment is then concreted into the Strategy Plan (RENSTRA) document and also becomes part of the government's annual development plan as stipulated in the RKP.[12]

Referring to Presidential Regulation Number 63 of 2020 concerning the Determination of Disadvantaged Regions 2020-2024, it is stated that in the RPJMN 2020-2024 period there are 62 regencies designated as disadvantaged regions in the national scale. The determination of the 62 regencies was based on the macro indicators of the Human Development Index (IPM) and Percentage of the Poor

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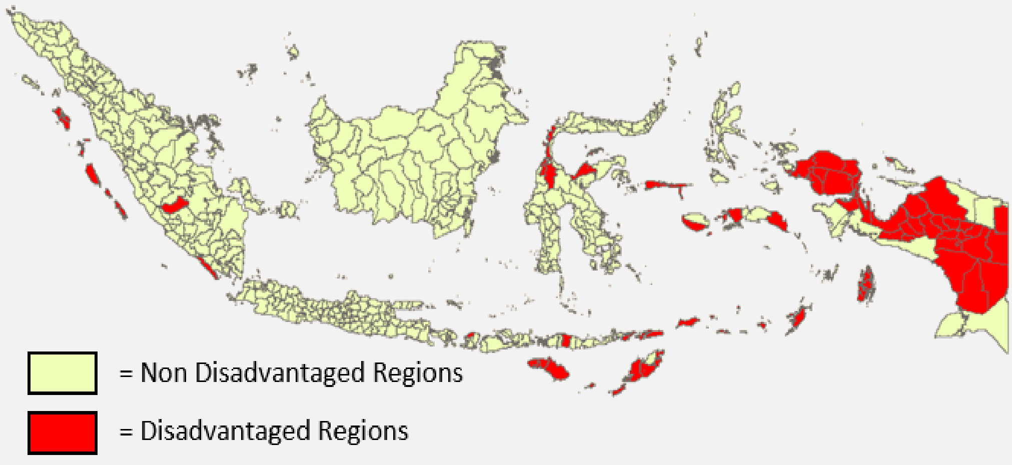
[11] Saptono Jenar and Agnes Harvelian, "Landasan Yuridis Peraturan Pemerintah Nomor 78 Tahun 2014 Tentang Percepatan Pembangunan Daerah Tertinggal Di Tinjau Dari Teori Daya Laku Hukum (Geltung)," *Iblam Law Review* 1, no. 2 (2021): 1–29, https://doi.org/10.52249/ilr.v1i2.21. p. 7.

[12] Saptono Jenar, "Analisis Penetapan Daerah Tertinggal Tahun 2020-2024 Dan Rencana Aksi Nasional Percepatan Pembangunan Daerah Tertinggal Tahun 2020," *Indonesia Law Reform Journal* 2, no. 1 (March 2022): 1–17, https://doi.org/10.22219/ILREJ.V2I1.19528. p. 3.

(PPM) in 2019. The average HDI in underdeveloped areas was 58.91 (fifty eight point ninety one), while nationally the HDI is at 71.92 (seventy one point ninety two). Meanwhile, PPM in underdeveloped areas is 25.85% (twenty five point eighty five percent), much higher than at the national level which is at 9.22% (nine point twenty two percent). Meanwhile, the number of provinces covering 62 regencies as disadvantaged regions is 11 provinces. The maps and details of disadvantaged regions as referred may be seen in Figure 1 and Table 1 below:



NO	PROVINSI	TOTAL KABUPATEN
1	NORTH SUMATERA	4
2	WEST SUMATERA	1
3	SOUTH SUMATERA	1
4	LAMPUNG	1
5	WEST NUSA TENGGARA	1
6	EAST NUSA TENGGARA	13

NO	PROVINSI	TOTAL KABUPATEN
7	CENTRAL SULAWESI	3
8	MALUKU	6
9	NORTH MALUKU	2
10	WEST PAPUA	8
11	PAPUA	22

Figure 1
Disadvantaged Regions Map 2020-2024 Source: MVDDRT (2021)

NO.	REGION	PROVINCE
1	Nias	North Sumatera
2	South Nias	North Sumatera
3	North Nias	North Sumatera
4	West Nias	North Sumatera
5	Mentawai Islands	West Sumatera
6	North Musi Rawas	South Sumatera
7	West Pesisir	Lampung
8	North Lombok	West Nusa Tenggara
9	West Sumba	East Nusa Tenggara
10	East Sumba	East Nusa Tenggara
11	Kupang	East Nusa Tenggara
12	South Central Timor	East Nusa Tenggara
13	Belu	East Nusa Tenggara
14	Alor	East Nusa Tenggara
15	Lembata	East Nusa Tenggara
16	Rote Ndao	East Nusa Tenggara
17	Central Sumba	East Nusa Tenggara
18	Soutwest Sumba	East Nusa Tenggara
19	East Manggarai	East Nusa Tenggara
20	Sabu Raijua	East Nusa Tenggara
21	Malaka	East Nusa Tenggara
22	Donggala	Central Sulawesi
23	Tojo Una-una	Central Sulawesi
24	Sigi	Central Sulawesi
25	Tanimbar Islands	Maluku
26	Aru Islands	Maluku
27	West Seram	Maluku
28	East Seram	Maluku
29	Soutwest Maluku	Maluku
30	South Buru	Maluku
31	Sula Islands	North Maluku
32	Taliabu Island	North Maluku
33	Teluk Wondama	West Papua
34	Teluk Bintuni	West Papua
35	South Sorong	West Papua
36	Sorong	West Papua
37	Tambrauw	West Papua
38	Maybrat	West Papua
39	South Manokwari	West Papua
40	Arfak Mountains	West Papua
41	Jayawijaya	Papua
42	Nabire	Papua
43	Paniai	Papua
44	Puncak Jaya	Papua
45	Boven Digoel	Papua
46	Mappi	Papua
47	Asmat	Papua
48	Yahukimo	Papua
49	Bintang Mountains	Papua
50	Tolikara	Papua
51	Keerom	Papua
52	Waropen	Papua
53	Supiori	Papua
54	Mamberamo Raya	Papua
55	Nduga	Papua
56	Lanny Jaya	Papua
57	Central Mamberamo	Papua
58	Yalimo	Papua
59	Puncak	Papua
60	Dogiyai	Papua
61	Intan Jaya	Papua
62	Deiyai	Papua

Table 1
List of 62 Disadvantaged Regions Based on Each Province[13]

[13] Source: Presidential Regulation Number 63 of 2020 concerning the Determination of Disadvantaged Regions 2020-2024

IMPLICATION OF THE STRANAS-PPDT 2020-2024 FOR THE PROVINCIAL GOVERNMENT

To find out the essence of this research, the first focus is to find the implications of the STRANAS-PPDT 2020-2024 for the provincial government (especially the provincial government which has disadvantaged regions in its territory). In the context of this research, the meaning of the legal implications intended is how the involvement of the provincial government after the issuance of the STRANAS-PPDT 2020-2024. As for the implementation of the national program to accelerate development of disadvantaged regions at the regional level, there are 11 provincial governments that have underdeveloped regencies in their territory. In accordance with the mandate of Article 262 paragraph (2) of the UU Pemda, it is determined that regional development plans (in this context, namely provincial and regency regions) pay attention to PPDT, where local governments are required to guide the national program of PPDT.

In line with the provisions referred to in the UU Pemda, it can be understood that 11 provincial government that have disadvantaged regions in their territory are in principle obliged to guide the national program of PPDT as regulated in the RPJMN. To implement these provisions, based on RPJMN 2020-2024 jo Article 8 paragraph (1) PP PPDT it is determined that PPDT planning at the regional level is part of the Regional Medium-Term Development Plan (RPJMD) and Provincial Government Work Plan (RKPD). Referring to the provisions of Article 8 paragraph (2) PP PPDT it is stated that the PPDT Planning at the provincial level is prepared by the Provincial Government through a consultation process with the Government. Then it is determined in Article 12 that the PPDT planning at the provincial level consists of the Regional Strategy for the Acceleration of Development of Disadvantaged Regions (Provincial STRADA-PPDT) and the Regional Action Plan for the Acceleration of Development of Disadvantaged Regions (Provincial

RAD-PPDT). It is explained in Article 13 PP PPDT that substantively the Provincial STRADA-PPDT is an elaboration of the Provincial RPJMD and takes into account the STRANAS-PPDT which is stipulated every 5 (five) years by the Governor (See In Figure 2). Understanding the provisions as referred to in Article 13 of the PP PPDT, in order to integrate PPDT planning into the provincial RPJMD, the provincial government is obliged to prepare STRADA-PPDT. In addition, to provide legal certainty to the Provincial STRADA-PPDT, the Governor stipulates the Provincial STRADA-PPDT with a legal instrument in the form of Regulation of Governor. As for the content of the Regulation of Governor, in principle it must pay attention to or guide the material content of STRANAS-PPDT.

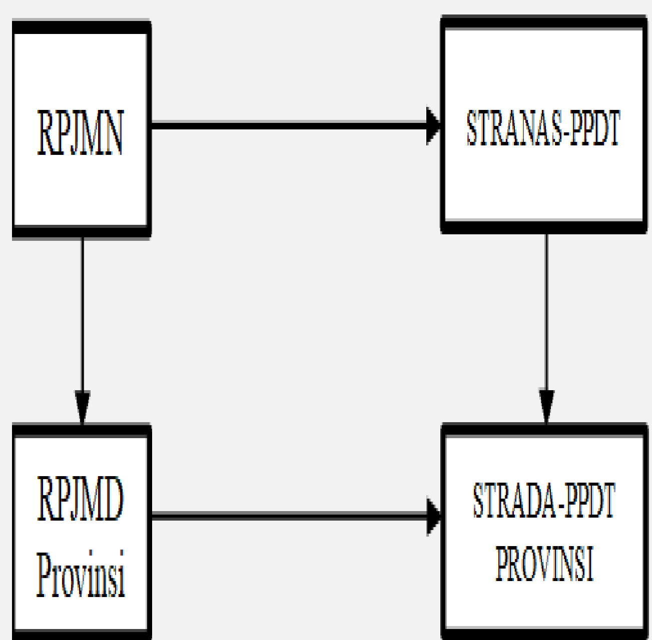


Figure 2
The linkage STRANAS-PPDT and Provincial STRADA-PPDT
Source: Ditjen PPDT (2021)

NO.	PROVINCE	DETERMINATION OF RPJMD
1.	North Sumatera	Regional Regulation of the Province of North Sumatera Number 5 of 2019 on the Regional Medium-Term Development Plan of the Province of North Sumatera 2019-2023
2.	West Sumatera	Regional Regulation of the Province of West Sumatera Number 6 of 2021 on the Regional Medium-Term Development Plan of the Province of West Sumatera 2021-2026
3.	South Sumatera	Regional Regulation of the Province of South Sumatera Number 1 of 2019 on the Regional Medium-Term Development Plan of the Province of South Sumatera 2019-2023
4.	Lampung	Regional Regulation of the Province of Lampung Number 13 of 2019 on the Regional Medium-Term Development Plan of the Province of Lampung 2019-2024
5.	West Nusa Tenggara	Regional Regulation of the Province of West Nusa Tenggara Number 2 of 2021 on the Amendment to Regional Regulation of the Province of West Nusa Tenggara Number 1 of 2019 on the Regional Medium-Term Development Plan of the Province of West Nusa Tenggara 2019-2023
6.	East Nusa Tenggara	Regional Regulation of the Province of East Nusa Tenggara Number 4 of 2019 on the Regional Medium-Term Development Plan of the Province of East Nusa Tenggara 2018-2023
7.	Central Sulawesi	Regional Regulation of the Province of Central Sulawesi Number 13 of 2021 on the Regional Medium-Term Development Plan of the Province of Central Sulawesi 2021-2026
8.	Maluku	Regional Regulation of the Province of Maluku Number 1 of 2020 on the Regional Medium-Term Development Plan of the Province of Maluku 2019-2024
9.	North Maluku	Regional Regulation of the Province of North Maluku Number 7 of 2020 on the Regional Medium-Term Development Plan of the Province of North Maluku 2020-2024
10.	Papua	Regional Regulation of the Province of Papua Number 3 of 2019 on the Regional Medium-Term Development Plan of the Province of Papua 2019-2023
11.	West Papua	Regional Regulation of the Province of West Papua Number 3 of 2017 on the Regional Medium-Term Development Plan of the Province of Papua 2017-2022

Tabel 2.0 List of Determination of Provincial RPJMD
Source: Processed Data

In accordance with the provisions of Article 19 paragraph (3) of the UU SPPN jo Article 264 paragraph (1) of the UU Pemda, it is determined that the RPJMD is stipulated by a Regional Regulation. Table 2 above is a list of 11 provincial RPJMDs as well as regional regulations that stipulate the provincial RPJM documents. In fact, the Provincial RPJMD documents in the 11 provinces mentioned above have been determined before the issuance of the STRANAS-PPDT. In addition, due to differences in the timing of regional head elections from one another, the period of the Provincial RPJMD differs from one another. This has resulted in the need for government efforts to identify and analyze the contents of the 11 Provincial RPJMDs.

The consequence of the existence of a norm in the PP PPDT which states that the Provincial STRADA-PPDT is an elaboration of the Provincial RPJMD and paying attention to the STRANAS-PPDT has implications for the need for adjustments to the content material that will be set forth in the Provincial STRADA-PPDT 2020-2024 against the Provincial RPJMD and adjusts it to the material content on STRANAS-PPDT 2020-2024 to provide legal certainty. Because, the importance of legal certainty in compiling the content material of the Provincial STRADA-PPDT 2020-2024, it is mandatory to guide the content of the Perpres STRANAS-PPDT 2020-2024 which was formed after the publication of the respective Provincial RPJMD. So that in providing legal certainty, the process of preparing the Provincial STRADA-PPDT document must be consulted with the government.

Technically, the preparation of the Provincial STRADA-PPDT is also regulated more operationally into the Regulation of the Minister of Home Affairs Number 86 of 2017 concerning Procedures for Planning, Controlling and Evaluation of Regional Development, Procedures for Evaluation of Draft Regional Regulations concerning Draft Regional Regulations concerning Regional Long-Term Development Plans and Plans Regional Medium-Term Development, and Procedures for Amendment to Regional Long-Term Development Plans, Regional Medium-Term Development Plans,

and Regional Government Work Plans (Permendagri). The Permendagri is an implementing regulation (*verordnung*) of Article 277 of the UU Pemda. In Form E.3 Attachment of the Permendagri, it is determined that the action program for disadvantaged, frontier, outermost, and post-conflict regions is defined as one of the components in Policy Control and Evaluation of the Medium Term Development Planning of the Provinces. So that the Provincial STRADA-PPDT as a form of action program for disadvantaged regions is one of the important things that must be prepared by provinces that have disadvantaged regencies in their territory.

The existence of the Provincial STRADA-PPDT document is a PPDT planning document at the provincial level which becomes a guideline in the implementation of PPDT by the provincial government. As the implementation of general government affairs, the Governor monitors and evaluates the level of achievement of the Provincial STRADA-PPDT, and Regency STRADA-PPDT in his area and the results of the monitoring and evaluation of the level of achievement of the Provincial STRADA-PPDT, and Regency STRADA-PPDT in his area then reported to the Minister who administers government affairs in the development of disadvantaged regions.

Cumulatively, the Minister who carries out government affairs in the development of disadvantaged regions then reports on the achievements of the entire implementation of STRANAS-PPDT, Provincial STRADA-PPDT, and Regency STRADA-PPDT. The mechanism refers to the provisions of Article 31 PP PPDT and is in accordance with the mechanism for implementing general government affairs as regulated in Article 25 paragraph (1) letter g of the UU Pemda.

THE GOVERNMENT'S ROLE IN FACILITATING THE PREPARATION OF PROVINCIAL STRADA-PPDT

To support the formation of the preparation of the Provincial STRADA-PPDT in 11 provinces that have disadvantaged regions in their area, certain treatments are needed in their preparation. Referring to the provisions of Article 9 of the Perpres STRANAS-PPDT 2020-2024 which stipulates that the Minister who carries out government affairs in the development of disadvantaged regions facilitates the preparation of the Provincial STRADA-PPDT and Regency STRADA-PPDT. The form of facilitation is carried out in coordination with the minister who organizes government affairs in the field of national development planning and the minister who organizes domestic government affairs.

With regard to the implementation of the facilitation, referring to the provisions regulated in Article 22 of PP PPDT which states that the Minister who carries out government affairs in the development of disadvantaged regions coordinates the management of PPDT at the national level with ministers/heads of institutions, Provincial Governments, and Regency Governments. In the context of coordinating the management of PPDT at the provincial level in terms of facilitating the preparation of the Provincial STRADA-PPDT, then based on the provisions of Article 24 letter a PP PPDT it is determined that the Minister who carries out government affairs in the development of disadvantaged regions shall stipulate guidelines for PPDT Planning for provinces and regencies.[14]

Referring to the provisions of Article 4 of Presidential Regulation Number 85 of 2020 concerning the Ministry of Village,

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[14] Saptono Jenar, "Politik Hukum Pembentukan Urusan Pemerintahan Pembangunan Daerah Tertinggal Dalam Penyelenggaraan Pembangunan Nasional," *Justitia et Pax* 38, no. 1 (June 2022), https://doi.org/10.24002/JEP.V38I1.5066. p. 196.

Development of Disadvantaged Regions, and Transmigration (Perpres Kemendesa PDTT) states that the Ministry of Village, Development of Disadvantaged Regions, and Transmigration has the task of carrying out government affairs in the field of village and rural development, empowerment rural communities, acceleration of development of disadvantaged regions, and transmigration to assist the President in administering state government. It was further determined that in carrying out these tasks, the Ministry of Village, Development of Disadvantaged Regions, and Transmigration carried out the following functions:

a. formulation, determination, and implementation of policies in the field of rural and rural development, economic development and investment in village, disadvantaged regions, and transmigration, development of transmigration areas, as well as harmonizing the acceleration of development of disadvantaged regions;
b. coordinating the implementation of tasks, fostering, and providing administrative support to all organizational elements within the Ministry of Village, Development of Disadvantaged Regions, and Transmigration;
c. management of state property/wealth which is their responsibility;
d. supervision of the implementation of tasks within the Ministry of Village, Development of Disadvantaged Regions, and Transmigration;
e. implementation of technical guidance and supervision of the implementation of the affairs of the Ministry of Village, Development of Disadvantaged Regions, and Transmigration in the regions;
f. implementation of policy development and competitiveness, preparation of integrated development plans, and management of data and information in the field of rural and rural development, disadvantaged regions, and transmigration;
g. implementation of human resource development and empowerment of rural communities, disadvantaged regions, and transmigration; and

h. implementation of substantive support to all organizational elements within the Ministry of Village, Development of Disadvantaged Regions, and Transmigration.

Referring the provisions in the Perpres Kemendesa PDTT, in principle the Minister who carries out government affairs in the development of disadvantaged regions is the Minister of Village, Development of Disadvantaged Regions, and Transmigration. Furthermore, to provide legal certainty in the implementation of facilitation in the preparation of the Provincial STRADA-PPDT, the Minister of Village, Development of Disadvantaged Regions, and Transmigration needs to stipulate guidelines of PPDT Planning for the province. This is certainly highly needed by the 11 provinces as reference material in the formation of the Governor Regulation that regulates the Provincial STRADA-PPDT. The problem that arises at this time is the Regulation of the Minister of Village, Development of Disadvantaged Regions, and Transmigration has not yet been established regarding guidelines for the preparation of PPDT planning at the provincial level. So that this can be a problem in the preparation of the Provincial STRADA-PPDT both in terms of adjusting the content material of the Provincial STRADA-PPDT with the Provincial RPJMD and with the STRANAS-PPDT 2020-2024.

The implication of *rechtsvacuum* the Regulation of the Minister of Village, Development of Disadvantaged Regions, and Transmigration regarding guidelines for the preparation of PPDT planning at the provincial level, it is potentially impossible to facilitate the preparation of the Provincial STRADA-PPDT in accordance with the provisions of Article 24 letter a PP PPDT jo provisions of Article 9 of the Perpres STRANAS-PPDT 2020-2024. Thus, there is an urgency to immediately form the Minister of Village, Development of Disadvantaged Regions, and Transmigration concerning guidelines for the preparation of PPDT planning at the provincial level as a legal basis in the implementation of facilitation for the preparation of the Provincial STRADA-PPDT 2020-2024.

CONCLUSION

Based on the discussion above, it is concluded that the issuance of Presidential Regulation Number 105 of 2021 concerning National Strategic of the Acceleration of Development of Disadvantaged Regions 2020-2024 has implications for 11 provincial governments that have disadvantaged regions to formulate and stipulate Governor Regulation concerning Regional Strategy of the Acceleration of Development of Disadvantaged Regions (Provincial STRADA-PPDT) in accordance with the provisions of Article 8 paragraph (3) of Government Regulation Number 78 of 2014 concerning Acceleration of Development of Disadvantaged Regions jo Article 4 paragraph (2) Presidential Regulation Number 105 of 2021 concerning National Strategic of the Acceleration of Development of Disadvantaged Regions 2020-2024.

In the preparation of the Governor Regulation concerning Provincial STRADA-PPDT 2020-2024, the material content of the Provincial STRADA-PPDT is the elaboration of each Provincial Medium-Term Development Plan (Provincial RPJMD) and guides the STRANAS-PPDT 2020-2024 as regulated in the provisions of Article 262 paragraph (2) of Law Number 23 of 2014 concerning Regional Government as amended several times, most recently by Law Number 11 of 2020 concerning Job Creation jo the Regulation of the Minister of Home Affairs Number 86 of 2017 concerning Procedures for Planning, Control and Evaluation of Regional Development, Procedures for Evaluation of Draft Regional Regulations concerning Draft Regional Regulations Regarding Regional Long-Term Development Plans and Regional Medium-Term Development Plans, as well as Procedures for Amendment to Regional Long-Term Development Plans, Regional Medium-Term Development Plans, and Regional Government Work Plans. In order to prepare the Provincial STRADA-PPDT 2020-2024, the Government through the Minister of Village, Development of Disadvantaged Regions, and

Transmigration coordinates with the minister of the national development planning and the minister of the home affairs in order to facilitate the implementation of the preparation of the Provincial STRADA-PPDT 2020-2024. In addition, to provide guidance to the provincial government in the preparation of the provincial STRADA-PPDT 2020-2024, the Minister of Village, Development of Disadvantaged Regions, and Transmigration needs to establish guidelines of PPDT Planning for the provincial governments.

Through the results of the research, the authors suggest that the Ministry of Village, Development of Disadvantaged Regions, and Transmigration immediately issue a Regulation of the Minister of Village, Development of Disadvantaged Regions, and Transmigration concerning guidelines for preparing PPDT planning at the provincial level as a guide for provincial local governments in the preparation of the Provincial STRADA-PPDT as well as the legal basis for the implementation of facilitation for the preparation of Provincial STRADA-PPDT 2020-2024. The material content in the Regulation of the Minister of Village, Development of Disadvantaged Regions, and Transmigration concerning guidelines for the preparation of PPDT planning at the provincial level is to be coordinated with the minister of the national development planning and the minister of the home affairs.

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The Principle of Legal Protection in the Provision of Emergency Contraception Services for Rape Victims under Law 36 of 2009 on Health

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ABSTRACT

Rape, a violent act involving coerced sexual intercourse, necessitates the provision of emergency contraception services to prevent unwanted pregnancies. Competent and authorized healthcare professionals are responsible for delivering these services, which are governed by government regulations in accordance with the health law. Thus, the author explores the legal protection that emergency contraception services offer to both rape victims and healthcare providers, highlighting the underlying principles of this implementation. This research employs a descriptive analysis using a normative juridical approach. Findings indicate several barriers to service provision, including limited doctor knowledge, inadequate standard operating procedures, and exclusion from the hospital's essential medicine formulary. Emergency contraception services are legally regulated as part of the Health law, as they fulfill the legal needs of rape victims, surpassing the hierarchy of Government Regulations. By preventing unwanted pregnancies without the need for complicated procedures like abortion, emergency contraception services significantly enhance the protection of rape victims and healthcare workers. However, the current regulations lack provisions mandating the provision of information and emergency contraception services to rape victims by healthcare providers. Consequently, not all healthcare workers are willing to offer these services due to the absence of legal obligations. To ensure the availability of emergency contraception services, legislative changes should be made by introducing new articles into the health law, explicitly stating the obligation of healthcare providers to offer emergency contraception services to rape victims.

Keywords: *Victim's rights, Emergency contraception, medical services Pregnancy Prevention, Rape*.

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INTRODUCTION

Rape is a criminal offense characterized by sexual conduct wherein one person forcibly or violently compels another individual to engage in sexual intercourse involving vaginal penetration with a penis. The regulation of sexual violence crimes is founded upon principles of human dignity, non-discrimination, the best interests of the victim, justice, utility, and legal certainty.[1]

The outcome of rape can result in pregnancy for the victim, as supported by research data conducted in South Carolina, United States, indicating a 5% occurrence of pregnancy in rape cases.[2] Based on data from the Ministry of Social Affairs until January 2022, there were a total of 780 cases of pregnancies resulting from rape.[3] Similarly, according to research conducted by the Institute for Criminal Justice Reform (ICJR) from 2018 to 2021, the majority of rape cases involve victims between the ages of 6 and 18, accounting for 72.1% of the total.

This is attributed to the fact that perpetrators often target victims within the reproductive age range. Additionally, the presence of stigma, fear, and intimidation from the perpetrators prevents victims from reporting the crime at an early stage, resulting in cases of pregnancy following rape. This, in turn, contributes to an increase in post-rape pregnancy cases.[4] According to a report from the quantitative study conducted by the Gender Equality Barometer of INFID (International NGO Forum on Indonesian Development) and

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[1] Undang-Undang No.12 Tahun 2002 Tentang Tindak Pidana Kekerasan Seksual

[2] Melisa M.Holmes et.al., *Rape-related pregnancy: Estimates and descriptive characteristics from a national sample of women,* American Journal of Obstetrics and Gynecology Volume 175, ssue 2, August 1996, Pages 320-325, https://www.sciencedirect.com/science/article/abs/pii/S0002937896701412

[3] *Biro Hubungan Masyarakat Kementerian Sosial RI, Terbitkan Surat Edaran, Mensos Perkuat Pengamanan dan Perlindungan Anak di Berbagai Lingkungan* https://kemensos.go.id/terbitkan-surat-edaran-mensos-perkuat-pengamanan-dan-perlindungan-anak-di-berbagai-lingkungan, diakses 23 April 2022

[4] Naskah Akademik Rancangan Undang-Undang Tentang Penghapusan Kekerasan Seksual 10 Februari 2017.

the Indonesia Judicial Research Society (IJRS) in 2020, the reasons for victims not reporting incidents of rape (57.2%) vary, ranging from fear, shame, lack of knowledge about reporting procedures, to feelings of guilt.[5]

Based on Article 66 paragraph (1), Article 67 paragraph (2), and Article 68 of Law Number 12 of 2022 concerning Sexual Violence Crimes, rape victims have the right to receive healthcare services, including medical examination, procedures, and treatment, from the moment the crime of rape occurs. The fulfillment of victims' rights is the obligation of the state and should be carried out according to the victims' conditions and needs. One of the necessary medical services for rape victims from the moment the crime occurs is emergency contraception services to prevent pregnancy. The provision of emergency contraception to rape victims to prevent pregnancy should be performed by healthcare professionals following the established standards stated in Article 24 of Government Regulation Number 61 of 2014 concerning Reproductive Health..

The provision of emergency contraception to rape victims by healthcare professionals is the implementation of reproductive health services conducted in accordance with religious values and legal provisions, as stated in Article 74 of Law Number 36 of 2009 concerning Health. Emergency contraception services, including the provision of emergency contraceptive pills to prevent pregnancy, should be given within 5 (five) days after sexual intercourse or the occurrence of rape by doctors and/or other healthcare professionals who have the competence and authority, as outlined in Article 27 and 30 of the Minister of Health Regulation Number 21 of 2021 regarding the Implementation of Pre-pregnancy, Pregnancy, Childbirth, Postnatal and Contraception Services, and Sexual Health Services.

The existence of stigma from society and the lack of knowledge among victims make it difficult to provide preventive services for

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[5] Dio Ansar Wisaksana et al, *Indek Akses Keadilan di Indonesia Tahun 2019,* Jakarta Konsorsium Masyarakat Sipil untuk Indeks Akses Keadilan, 2020, hal 9

pregnancy. Due to the delayed presentation of victims, the effectiveness of pregnancy prevention measures cannot be guaranteed. Additionally, the guidelines for providing information have not been established as standard operating procedures in handling rape cases, resulting in healthcare professionals rarely or never explaining this matter.

Based on Article 72 of Law Number 36 of 2009 concerning Health, every individual has the right to a safe reproductive and sexual life, free from coercion and/or violence within a legitimate partnership. They have the right to determine their reproductive life and live free from discrimination, coercion, and/or violence, while respecting the noble values that uphold human dignity in accordance with religious norms.

Based on the aforementioned article, the state has an obligation towards the health of rape victims, and such situations should not occur. However, if the focus of pregnancy prevention is directed towards rape victims, who are predominantly unmarried, it raises important considerations. Although the provision of emergency contraception for rape victims is regulated in Article 30 of Minister of Health Regulation Number 21 of 2021, it does not provide detailed guidance on the specific actions that healthcare professionals should take to fulfill the reproductive rights of rape victims.

The failure of healthcare professionals to provide services or information regarding pregnancy prevention to rape victims, which is one of the state's obligations, can exacerbate the suffering of the victims. Given this background, the author is interested in writing about the Principle of Legal Protection in the Implementation of Emergency Contraceptive Services for Rape Victims based on Law Number 36 of 2009 concerning Health.

Emergency contraception is one of the medical services commonly provided to couples to prevent pregnancy after sexual

intercourse.[6] Emergency contraception is a Family Planning (FP) method that can be used in cases of unprotected sexual intercourse or when the chosen FP method fails. It is important to note that emergency contraception does not cause abortion when taken by a person who is already pregnant. Its mechanism of action is similar to natural hormones produced by the ovaries, which are believed to prevent or delay the release of an egg (ovulation), thereby preventing pregnancy from occurring.[7] This is often referred to as "post-coital contraception" or "morning-after treatment." It is hoped that with emergency contraception, unintended pregnancies can be prevented.[8]

Emergency contraception does not provide ongoing protection against pregnancy if a woman engages in unprotected sexual intercourse at any time after taking the emergency contraceptive pill. Therefore, this medication cannot be used as a regular contraceptive method. Hence, emergency contraception is ideally provided to rape victims because those who have reported or come to the emergency unit as rape victims are not likely to be subjected to repeated incidents or engage in multiple sexual encounters during the post-reporting period, thus preventing pregnancy.[9]

The question often arises as to who can use emergency contraception. Most women can use emergency contraceptive pills, including those who cannot use hormonal contraceptives. Girls under the age of 16 who are victims of rape can also be provided with emergency contraception as a measure to prevent pregnancy resulting from rape. However, if the victim has allergies to the components of the medication, suffers from severe asthma, or is taking medications that can interact with emergency contraception

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[6] *Emergency Contraseption (morning after pill, IUD) your Contrasepstion Guiide*, https://www.nhs.uk/conditions/contraception/emergency-contraception/ 22 February 2021 accepted 21 November 2022

[7] Finer, L.B., Zolna, M.R. *Declines in unintended pregnancy in the United States, 2008-2011*.The New England Journal of Medicine; . (2016)374(9):843–52.

[8] Raymond E, Pradhan A, Keder L. Practice bulletin No.152: *Emergency contraception. Obstetry Gyncool. 2015;126(3): e1-11*

[9] Curtis, K.M., Tepper, N.K., Jatlaoui, T.C., et alU.S. *Medical Eligibility Criteria for Contraceptive Use*, 2016. MMWR Recomm Rep; 65(RR-3):1–104. Appendix A.

such as epilepsy medication, HIV or TB drugs, gastric medication, and certain antibiotics that can affect the effectiveness of emergency contraception, it is advisable not to administer it. Therefore, if the victim is currently taking any of the aforementioned medications, it is necessary to inform the healthcare provider in order to adjust the dosage or type of emergency contraception to be provided.[10]

Every medication inevitably has side effects, and the same goes for emergency contraception. However, the side effects associated with emergency contraception can be classified as mild, such as headache, abdominal pain, and changes in the subsequent menstrual cycle. If severe side effects occur within 2 to 3 hours after taking the contraceptive pill, it is imperative to promptly report them to a doctor or paramedic.[11]

In accordance with established legal principles, it is acknowledged that every medication inherently entails certain side effects, including emergency contraception. However, it is essential to note that the side effects stemming from the use of emergency contraception can generally be categorized as mild in nature, encompassing symptoms such as headaches, abdominal discomfort, and alterations in the subsequent menstrual patterns. Nevertheless, in the event of experiencing severe side effects within a period of 2 to 3 hours subsequent to the administration of the contraceptive pill, it is of utmost importance to expeditiously report such occurrences to a qualified medical practitioner or certified paramedic.[12]

The provision of emergency contraception to rape victims not only prevents unwanted pregnancies but also affords them the opportunity to exercise their reproductive health rights in accordance with Article 78 of the health law.

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[10] *Emergency Contraseption* (morning after pill, IUD) *op cit*

[11] *Ibid*

[12] American College of Obstetricians and Gynecologists, *Emergency Contraception, Practice Bulletin*, PB Number 152 September 2015, https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2015/09/emergency-contraception

The problem approach in this research is a normative juridical approach, which involves examining written legal norms in the form of legislation (statute approach) and conceptual analysis (conceptual approach) regarding the legal protection for healthcare professionals in performing medical procedures related to the fulfillment of the criminal victims' rights to reproductive healthcare services.[13] The author will explore the aspects of legal protection for healthcare professionals and victims in the provision of emergency contraception services for rape victims.

THE LEGAL PROTECTION FOR RAPE VICTIMS

1. Legal Basis for the Provision of Emergency Contraception by Healthcare Providers to Rape Victims

Every activity and effort to enhance the well-being of rape victims shall be carried out based on the principle of protection in accordance with the national objectives stated in the preamble of the 1945 Constitution. Protection, as stipulated in Law Number 12 of 2022 concerning Sexual Violence, encompasses all efforts to fulfill rights and provide assistance to ensure the safety of rape victims, which must be implemented by witness and victim protection institutions or other relevant bodies in accordance with the provisions of the laws and regulations. Legal protection, according to Soetjipto Rahardjo, refers to the efforts to safeguard an individual's interests by allocating power to them, and one of the inherent qualities and goals of the law itself is to provide protection to society.

[13] Rianto Adi, *Metode Penelitian Sosial dan Hukum*, Jakarta : Granit, 2004, h.128.

This is manifested in the form of legal certainty, ensuring that the society can enjoy the rights bestowed upon them as legal protection for the community.[14]

According to Philipus M. Hadjon, Legal Protection is the safeguarding of the dignity and integrity of individuals and the recognition of their fundamental human rights possessed by legal subjects based on the provisions of the law derived from the authority, rooted in Pancasila and the concept of the rule of law. According to Philipus M. Hadjon, there are two types of legal protection mechanisms, namely preventive legal protection and repressive legal protection.[15]

After the incident of rape, the victim experiences physical and mental suffering. The victim requires protection for the fulfillment of their violated rights by the perpetrator. The victim requires comprehensive services that provide integrated, multi-aspect, cross-functional, and cross-sectoral assistance. The most urgent form of assistance for the victim after the rape incident is to receive healthcare services. Access to healthcare services is a right that should be promptly provided after the incident of rape.

After receiving healthcare services, it is expected that healthcare professionals can assist the victim in recovering their health and conducting an examination of the evidence of the rape for inclusion in the medical report. Healthcare professionals responsible for examining the victim are required to coordinate with the local Technical Implementation Unit for the protection of women to ensure comprehensive services for rape victims.

One of the legal protections that must be provided is the right to medical services and prevention of unwanted pregnancies, with the aim of creating a situation where rape victims no longer feel afraid to

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[14] Qur'ani Dewi Kusumawardhani, "Hukum Progresif dan Perkembangan Kecerdasan Buatan", Jurnal Veritas et Justitia, Vol. 5 No. 1, Juni 2019.

[15] Nikan Savitri, *Pembuktian Dalam Tindak Pidana Kekerasan Seksual Terhadap Anak*, Jurnal Bina Mulia Hukum, Volume 4, Nomor 2 Maret 2022 isi 17 Desember 2019, DOI: http://dx.doi.org/10.23920/jbmh.v4i2.323, Halaman Publikasi: http://jurnal.fh.unpad.ac.id/index.php/jbmh/issue/archive

report the incidents, they have experienced to law enforcement authorities. Based on Article 68, letter e of the Law on the Elimination of Sexual Violence, Article 6, paragraph 1, letter a of Law Number 13 of 2006 as amended by Law Number 31 of 2014 on the Protection of Witnesses and Victims, the right of rape victims to access healthcare services includes medical examination, procedures, and treatment, including prevention of unwanted pregnancies. However, it is evident that the specific provision for such healthcare services is not explicitly stated in the health law and the Law on the Elimination of Sexual Violence.

The health law implicitly only regulates reproductive rights and mandates further regulation through Government Regulations and Minister of Health Regulations in the form of emergency contraception services. Emergency contraception services are not specifically regulated in the provisions of the Health law, but rather as a follow-up to the implementing rules of Article 74 paragraph (3) of the Health law. The provision of emergency contraception services is clearly regulated in Article 24 of Government Regulation Number 61 of 2014 concerning Reproductive Health, Article 27 paragraph (2) letter d, and Article 30 of the Minister of Health Regulation of the Republic of Indonesia Number 21 of 2021 concerning the Provision of Health Services during Pre-pregnancy, Pregnancy, Delivery, Postpartum Period, Contraceptive Services, and Sexual Health Services.

Emergency contraception services are provided to rape victims to prevent pregnancy by competent and authorized healthcare providers. Emergency contraception services are given to rape victims to prevent pregnancy within 5 (five) days after sexual intercourse or the occurrence of rape. The provision of emergency contraception services is a right of rape victims to pursue a reproductive and sexual life free from coercion and/or violence, respecting the noble values that uphold human dignity in accordance with religious norms.

To realize Indonesia as a legal state, the government is obligated to implement national legal development in a planned, integrated, and sustainable manner within the national legal system that guarantees the protection of the rights and obligations of all Indonesian citizens based on the 1945 Constitution of the Republic of Indonesia. The enactment of laws must be based on the mandate of the Constitution and the common legal needs that should be reflected in the content or substance of the laws formed collectively by the President and the DPR (People's Consultative Assembly).

The Substance of Legislation refers to the content contained within legislation in accordance with the type, function, and hierarchy of the legislation. Based on Article 10 of Law Number 12 of 2011 concerning the Formation of Legislation, the Substance of Legislation that must be regulated by Law includes: a. further regulation regarding provisions of the 1945 Constitution of the Republic of Indonesia; b. the instruction for a Law to be regulated by Law; c. the ratification of certain international agreements; d. the follow-up to decisions of the Constitutional Court; and/or e. the fulfillment of legal needs within society. On the other hand, the Substance of Government Regulations contains provisions to properly implement the Law.

The legal force of Legislation is determined by its hierarchy based on Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, which consists of: a. the 1945 Constitution of the Republic of Indonesia; b. the Decree of the People's Consultative Assembly; c. Laws/Regulations in lieu of Laws; d. Government Regulations; e. Presidential Regulations; f. Provincial Regional Regulations; and g. District/City Regional Regulations.

The provision of emergency contraception is clearly regulated in Article 24 of Government Regulation Number 61 of 2014 concerning Reproductive Health, seemingly covering the deficiencies that should have been addressed in the content of the Health law. The regulation of emergency contraception services in the form of

Government Regulations, such as the overlooked provisions in the Health law, serves as supplementary rules that prevent general practitioners and other healthcare professionals in Emergency Departments from providing emergency contraception services. This is due to the lack of mandatory training, expertise, and standardized operating procedures for emergency contraception services in Emergency Departments. As a result, victims of sexual assault are deprived of access to emergency contraception services.

The provision of emergency contraception, as regulated in Article 24 of Government Regulation Number 61 of 2014 concerning Reproductive Health, constitutes material that should be regulated by an Act of Law, as it pertains to the fulfillment of legal needs within society in accordance with the provisions of Article 10 paragraph 1 letter e of Law Number 12 of 2011 concerning the Formation of Legislation.

Furthermore, as a means to address the legal needs of society, particularly victims of sexual assault, the law governing emergency contraception must include provisions regarding the responsibilities of healthcare professionals in providing emergency contraception services, in order to fulfill the reproductive rights of victims of sexual assault, as well as prescribe sanctions in the event that healthcare professionals fail to provide information and pregnancy prevention services to victims of sexual assault. The existence of binding regulations, accompanied by sanctions and standardized operating procedures or guidelines, will compel healthcare professionals to provide information and pregnancy prevention services to victims of sexual assault.

2. The Legal Protection for Victims of Sexual Assault and Healthcare Professionals Providing Emergency Contraception to Victims of Sexual Assault

The protection of healthcare professionals or doctors providing emergency contraception to victims of sexual assault, as described, will be ensured, as healthcare professionals are granted legal protection while carrying out their duties in accordance with professional standards and operational procedures. Based on Article 57 letter a of Law Number 36 of 2014 concerning Healthcare Professionals, it is also stated that healthcare professionals are entitled to legal protection while performing their practice in accordance with professional standards, professional service standards, and operational procedures.

Healthcare/medical services constitute a complex system with tight interconnections, particularly in emergency rooms, operating theaters, and intensive care units. Complex systems are typically characterized by specialization and interdependence. Within such a complex system, components can interact with many other components, sometimes in unexpected or imperceptible ways. The more complex and tightly coupled a system is, the more susceptible it is to accidents. Therefore, healthcare/medical practices must be carried out with a high level of caution.[16]

The inherent principles in every healthcare service, such as the principles of legality, balance, timeliness, good faith, honesty, caution, and transparency, serve as guidelines and standards for providing healthcare services to individuals receiving such services. [17] Regarding the provision of emergency contraception to rape victims, it can be inferred that the law provides protection for both rape

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[16] Sofia J. A, *Kajian Penerapan Etika Dokter Pada Pemberian Pelayanan Kesehatan di Era Pademi Covid-19,* Jurnal Hukum dan Pembangunan Ekonomi, Volume 8, Nomor 2, 2020 ISSN (Print) 2338-1051, ISSN (Online) 2777-0818

[17] Dr. Veronica Komalawati, S.H., M.H. *Peranan Informed Consent Dalam Transaksi Terapeutik (persetujuan dalam Hubungan Dokter dan Pasien) Suatu Tinjauan Yuridis*. PT, Citra Aditya Bakti. 1999 hal 125

victims and healthcare providers who administer emergency contraception to them. Emergency contraception services can protect rape victims from unwanted pregnancies.

In accordance with Law Number 36 of 2014 concerning Healthcare Providers, the government is empowered to enforce legal provisions that ensure legal protection for healthcare providers. Article 28D paragraph (1) of the 1945 Constitution states that every person has the right to recognition, guarantees, fair legal protection, and equal treatment before the law. This is similar to Article 5 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, which also states that every person is recognized as an individual entitled to demand and obtain equal treatment and protection in accordance with their human dignity before the law. Article 27 paragraph (1) of Law Number 36 of 2009 concerning Health states that healthcare providers have the right to receive compensation and legal protection in carrying out their duties in accordance with their profession. [18]

Basically, both the health law, Healthcare Providers Law, and Medical Practice Law provide guidelines regarding legal protection for the medical profession. Considering that the medical relationship between doctors and patients is a legal contractual relationship, both parties, the doctor and the patient, have equal and balanced positions. This balanced relationship is also regulated in Article 3 of the Medical Practice Law, which states that the provision of medical practice should provide protection not only to patients but also to doctors. Similarly, in the case of rape victims, if the victim receives medical services, they have two rights as a victim: the right to collect evidence in the form of a medical examination report, regulated in Article 133 of the Criminal Procedure Code (KUHAP), and the right as a patient, which is governed by the health law.

[18] Liana Endah Susanti, '*Economic Law Creation Beautiful Global Indonesia*', Bestuur, 7.1 (2019), 47–53.

The standards of protection for doctors in providing healthcare can be seen in several articles as follows. Article 27 of Law Number 36 of 2009 concerning Health states that healthcare professionals have the right to receive compensation and legal protection in carrying out their duties in accordance with their profession. Article 24 of Government Regulation Number 32 of 1996 concerning

Healthcare states that legal protection is provided to healthcare professionals who perform their duties in accordance with the professional standards of healthcare professionals. Specifically, it is regulated in Article 44 of Law Number 29 of 2004, which states that doctors and dentists, in carrying out medical practice, are obliged to follow medical service standards. If a doctor's actions deviate from the elements of professional standards, the doctor is considered to have committed negligence or an error, and therefore may not be granted legal protection.

Based on Article 46 and Article 50 of Law Number 29 of 2004 concerning Medical Practice, it states that doctors receive legal protection as long as they carry out their duties in accordance with professional standards and operational procedures. Based on the law, doctors have an obligation to practice medicine in accordance with professional and operational standards, including in fulfilling the rights of rape victims for emergency contraception to prevent pregnancy. If we analyze it further, it is evident that law enforcement provides legal certainty to the justiciable or seekers of justice. In the medical relationship, both victims and doctors must receive legal protection. There is no distinction in providing legal protection between doctors and rape victims because there is already an equality before the law.

If emergency contraception services for rape victims are not provided, it would not provide protection for both the victims and the healthcare providers. Whether the failure to provide such services by healthcare providers can be considered a violation of rights or negligence is still a subject of debate. This is because the regulations

pertaining to this matter are only stated in ministerial regulations and government regulations, which do not possess the same binding or compliance power as laws. As a result, it becomes difficult to ensure the fulfillment of rape victims' rights to reproductive prevention of pregnancy, unlike the clear regulations regarding the right to abortion for rape victims.

Furthermore, the implementation guidelines issued by the government do not specify the responsibilities of each healthcare professional involved, such as whether it is the general physician conducting the examination in the emergency unit, the forensic medical examiner with the authority to conduct examinations and collect evidence without intervention, or the obstetrician who only practices during scheduled clinics. The ambiguous nature of the protection provided raises significant doubts regarding the provision of reproductive rights for rape victims, along with delayed reporting patterns by the victims.

Emergency contraception services provide greater protection for both rape victims and healthcare providers because they do not require complex conditions like abortion procedures for rape victims. It is hoped that with information about emergency contraception services for rape victims, more rape victims will be willing to report the crime as early as possible in order to access these services. This will contribute to their overall well-being and ensure their timely access to necessary healthcare.

THE IMPLEMENTATION OF EMERGENCY CONTRACEPTION SERVICES FOR RAPE VICTIMS BY HEALTHCARE PROVIDERS BASED ON THE PRINCIPLE OF LEGAL PROTECTION

The implementation of a regulation or policy is one of the stages in the public policy process. Typically, implementation takes place after a policy is formulated with clear objectives. Implementation is a series of activities aimed at delivering the policy to the public, so that the policy can yield the desired outcomes. For instance, from an enacted law, various government regulations, presidential decrees, or local regulations may arise. Implementation involves preparing human resources, finances, and determining the responsible parties for carrying out the policy, as well as devising concrete methods to deliver the policy to the public.[19]

According to Law Number 44 of 2009, a Hospital is a healthcare institution that provides comprehensive individual healthcare services, including inpatient, outpatient, and emergency care. In delivering medical services, hospitals are required to have operational standards in place.[20] Comprehensive healthcare services refer to healthcare services that encompass promotion, prevention, treatment, and rehabilitation. Hospitals, as one of the healthcare facilities, are essential resources in supporting healthcare initiatives. It is mandatory for hospitals to provide high-quality services with a focus on patient safety.[21] The victim arriving at the hospital also possesses rights, not only as a victim but also as a patient entitled to

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[19] Afan Gaffar, *Otonomi Daerah Dalam Negara Kesatuan* (Yogyakarta: pustaka pelajar kerjasama, 2009)cet ke-4 hal, 295.

[20] Peraturan Pemerintah Republik Indonesia Nomor 47 Tahun 2021 Tentang Penyelenggaraan Bidang Perumahsakitan. 229, 1–15.

[21] Peraturan Menteri Kesehatan Republik Indonesia Nomor 80 Tahun 2020 Tentang Komite Mutu Rumah Sakit

medical services. If a rape victim presents with physical or psychological abnormalities, whether mild, moderate, or severe, they have the same rights as comprehensive patients, including legal protection. Therefore, there is a need for Special Procedures for Forensic Services in Women and Child Violence Clinics in every hospital, including cases of rape.[22]

The concept of providing services to victims of sexual violence in hospitals is implemented in a comprehensive manner (promotive, preventive, curative, and rehabilitative) and is able to meet the needs of the victims (medical, psychosocial, and medico-legal). It involves a multidisciplinary approach considering the complexity of the issues faced in handling victims.

The personnel involved in handling cases of victims form a team consisting of medical professionals (doctors, psychiatrists, midwives, and nurses) and non-medical professionals (psychologists/social workers, police, and NGOs). The services should be available and accessible 24 hours, ensuring good quality. The services are conducted in accordance with the established standards, and the available equipment must meet the required specifications. All actions must be properly documented, and there should be a monitoring and evaluation system in place.[23]

In cases where healthcare facilities have limitations in terms of human resources, they may refer to more comprehensive medical and medico-legal examinations. In situations where guidelines are lacking or healthcare providers have doubts in delivering services, it is necessary to update the guidelines and provide specialized training for general practitioners with the required qualifications and competence to handle rape cases. Similar to the provision of abortion for rape victims, general practitioners who have undergone training and supervision and have been declared competent by the local health

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[22] Kementerian Kesehatan RI, Keputusan. (2009). Keputusan Menteri Kesehatan nomor 12226/Menkes/SK/VII/2009 tentang Pedoman Penatalaksanaan Palayanan Terpadu Korban Kekerasasn terhadap Peerempuan dan Anak.

[23] Keputusan Menteri Kesehatan nomor 12226/Menkes/SK/VII/2009

department may be authorized to handle such cases. This authorization should be reviewed simultaneously with the renewal of their practice licenses to determine their continued eligibility for such competence. It is important to emphasize that this does not undermine the importance of standardized professional training for doctors and nurses who encounter female rape victims, as they play a crucial role in providing quality care for women who have survived rape.

The recording and storage of medical records must be accurate, maintaining their confidentiality. Evidence and services provided as part of fulfilling the reproductive rights of rape victims should be documented in the medical records. Timeliness in the effectiveness of emergency contraception is highly encouraged, and therefore, victims should report as early as possible to ensure the implementation of reproductive health services for pregnancy prevention. Services are provided based on the request or consent of the respective rape victim and with the informed written consent of the rape victim. In cases where the rape victim is not of legal age to provide consent through informed consent, consent may be given by the family of the rape victim. Safe, high-quality, and responsible emergency contraception services must be conducted at healthcare facilities designated by the Minister and are referral hospitals for cases of violence against women and children.

Emergency rooms have failed to offer pregnancy prevention through emergency contraception to rape victims. They even fail to inform the victims about the availability of pregnancy prevention options, as such treatments are not provided. Based on research conducted by the ACLU, less than 40% of the eleven hospitals studied in the state do not offer emergency contraception as a means of pregnancy prevention, thereby putting victims at risk of pregnancy following the assault. The provision of emergency contraception significantly protects victims from the risk of pregnancy. Emergency contraception is a comprehensive form of care that fulfills the victim's

right to reproductive health, and therefore, it should be informed and provided to the victims.[24] Emergency contraception is a standard of care for rape victims.[25]

The government should establish more detailed regulations and provide greater support for emergency contraception services. It is expected that all Type A and Type B hospitals are required to provide emergency contraception services for rape victims and disseminate information through banners and their websites about the availability of emergency contraception services for rape victims. Public awareness campaigns should be conducted to inform the community about the protection and prevention of pregnancy that can be provided to rape victims.

The government should also provide training and certification for healthcare professionals to assist rape victims. The cost of emergency contraception services should be covered by the national and local budgets, ensuring that no rape victim is unable to access emergency contraception due to financial constraints. This provision is already stipulated in Article 87 of the Law on the Elimination of Sexual Violence, which guarantees that the state funds the protection of sexual violence victims for necessary medical examinations and healthcare services.

The victims are not the only ones lacking knowledge about emergency contraception; healthcare providers often lack information regarding the availability of emergency contraception that can be provided to rape victims who report their cases within a timeframe of less than five days as part of pregnancy prevention services. This occurs because the provision of emergency contraception has not been included and regulated in the Health law Number 36 of 2009 and Government Regulation Number 47 of 2018 on Emergency Services.

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[24] *Ensuring Acces To Emmergency Contraception After Rape.* https://www.aclu.org/other/ensuring-access-emergency-contraception-after-rape, acepted 21 November 2022

[25] Steven S. Smugar, MD, Bernadette J. Spina, BA, and Jon F. Merz, JD, PhD, *Informed Consent for Emergency Contraception: Variability in Hospital Care of Rape Victims*, American Journal of Public Health, September 2000, Vol. 90, No. 9

The components of medication and pregnancy prevention measures are not included in the required drugs provided by hospitals, even though these hospitals are designated as integrated facilities for handling violence against women and children. [26]

At the policy level, the provision and logistics pose the greatest challenge as the exclusion of the said medication from the hospital formulary prevents all hospitals from having access to emergency contraception. The author acknowledges the difficulty in advocating for emergency contraception for rape victims in society due to moral or religious issues, the stigma associated with justifying casual sex, rape, or incest. The World Health Organization (WHO) has provided clear guidelines for preventing unintended pregnancies and reducing the rate of unsafe abortions in Indonesia, sparking debates surrounding reproductive health as a fundamental human right.

The author earnestly hopes for changes in the Health law by incorporating provisions regarding emergency contraception for rape victims, ensuring that healthcare providers and hospitals are legally protected in providing emergency contraception services to rape victims. Additionally, continuous training, guidelines, and comprehensive socialization aligned with evidence-based guidelines from the World Health Organization (WHO) are essential for access to emergency contraception and safe abortion services for rape victims.

This will eliminate any doubts surrounding the provision of pregnancy prevention services for rape victims. In order to establish legal certainty, legal protection, and organize concepts related to the laws governing emergency contraception services for rape victims in accordance with the existing norms in Indonesian society, which encompass religious, moral, ethical considerations, as well as advancements in science and technology, it is necessary to regulate the implementation of emergency contraception services for rape

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[26] Peraturan Pemerintah Nomor 47 tahun 2018 tentang Pelayanan Kegawatdaruratan

victims in detail within the Health law, following the provisions on abortion and after the Reproductive Health Article.

CONCLUSION

The legal protection for rape victims and healthcare providers in Emergency Contraception Services is regulated by Government Regulation as the implementing regulation of the Health law. The provision of emergency contraception services, as regulated by the Government Regulation, should ideally be addressed in the Health law itself, as it pertains to the legal needs of rape victims, and hierarchically, the Health law holds higher authority than Government Regulation. Emergency contraception services provide enhanced protection for rape victims and healthcare providers, as they prevent unwanted pregnancies and do not require complex requirements such as abortion procedures for rape victims.

The implementation of provisions regarding emergency contraception services for rape victims does not currently specify the obligation to provide information and emergency contraception services by healthcare providers to rape victims. Due to the absence of regulations mandating the provision of emergency contraception, not all healthcare providers are willing to offer such services, citing the lack of provisions in the law and the regulation being limited to ministerial regulations and government regulations. To ensure the consistent provision of these services, a revision of the content of the Health law is necessary.

In order to fulfill the legal needs of rape victims, it is advisable to undertake a revision of the Law to incorporate provisions regarding emergency contraception and the obligation of healthcare providers to provide emergency contraception services in order to fulfill the reproductive rights of rape victims.

It is advisable to harmonize the Health law with the Law on Sexual Violence Offenses to mandate training on emergency contraception services for healthcare providers and require emergency units in hospitals serving rape victims to include emergency contraception drugs and related healthcare equipment that are readily available and accessible to both rape victims and healthcare providers.

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Overcoming Global Issues on Gender-Biased in Adjudication Process: The Role of Companions for Rape Victims

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ABSTRACT

This study aims to determine the level of state protection provided to rape victims throughout the litigation process under existing laws. However, the prevailing gender bias in society and among law enforcement often leads to victim-blaming, discouraging victims from reporting their cases. Consequently, this study argues for the necessity of providing a victim's companion during the trial, particularly during the victim-witness examination, to ensure their comfort and security while providing detailed information. Employing a normative-empirical legal approach and utilizing primary and secondary data sources, the study explores the extent of protection offered to rape victims and the importance of a companion in the litigation process. The findings indicate that the State has made efforts to protect rape victims by implementing a series of laws beyond the Criminal Code, such as Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and Supreme Court Regulation No. 3 of 2017 regarding Guidelines for Adjudicating Cases Involving Women. However, these efforts are deemed insufficient in providing adequate protection for rape victims, as evidenced by the significant number of rape cases resulting from the insensitivity of legal enforcement authorities towards women as victims during the litigation process.

Keywords: *The Crime of Rape, Victim's Companion, Criminal Justice System*

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INTRODUCTION

Rape is a sexual crime that must be dealt with a focus and earnest approach since it brought severe and complex impacts on the lives of the victims in broad society, primarily for the lives of women and children and the future of a family.[1]

Supporting by the data, the authorities reported that rape cases occur on average every four hours and no fewer than 1,700 per year. Nonetheless, these data confirmed to exceed the actual condition considering the presence of 'dark numbers' coming from unreported rape cases in criminal statistics.[2] According to the annual records of the National Commission on Violence Against Women (KOMNAS Perempuan), in 2021, violence in the personal sphere experienced the same pattern as in previous years, the most prominent form of violence was physical violence in 2,025 cases (31%) ranked first followed by sexual violence with 1,983 cases (30%), psychological 1,792 (28%), and economic 680 cases (10%). This shows that the level of violence against women is still high, including rape.[3]

In Lampung Province, rape cases steadily ranked first amongst the category of violence against women acts. In 2000, there were 199 (76%) cases reported, 103 (53%) cases in 2001, and 175 (69,7%) cases in 2002, calculated from the total criminal acts of violence against women.[4] Moreover, the development of rape cases reported by the DAMAR Women's Advocacy Institute in 2014 noted 237 rape cases

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[1] Bambang Heri Supriyanto, "Perlindungan Hukum Terhadap Anak Pelaku Perkosaan Berdasarkan Hukum Positif Indonesia," *Adil: Jurnal Hukum* 6, No. 2 (2015): 147–81.

[2] Sabar Yonathan Reynaldo S, "Kebijakan Hukum Pidana Perkosaan Dalam Perkawinan Dalam Perspektif Pembaharuan Hukum Pidana" (Universitas Jambi, 2022).

[3] Komnas Perempuan, "Perempuan Dalam Himpitan Pandemi: Lonjakan Kekerasan Seksual, Kekerasan Siber, Perkawinan Anak, Dan Keterbatasan Penanganan Ditengah Covid-19," *Catatan Tahunan*, 2021.

[4] Hidayat Arif, "Layanan Konseling Dalam Meningkatkan Kepercayaan Diri Korban Pemerkosaan (Studi Kasus Korban Pemerkosaan Inses Di Unit Pelaksana Teknis Daerah (Uptd) Perlindungan Perempuan Dan Anak (Ppa) Provinsi Lampung)" (Uin Raden Intan Lampung, 2021).

with case details of 15 incest[5], 12 rapes in the private realm, and 210 rapes in the public realm. This data decreased significantly compared to the previous year (2013), which confirmed 352 rape cases with case details of 10 incest, 10 rapes in the private realm, and 332 rapes in the public realm.[6]

However, these numbers are considered nothing compared to the actual cases that occur in society. The condition is worsened by the fact that there are only very few cases informed by the media. Other supporting factors are the low numbers of the institution involved in the protection of violence against women, along with the discouragement of victims or victims' families to report their case due to fear and shame.[7]Unfortunately, these events are exasperated by the judicial mechanism that is deemed not in favor of the victim. It is rather often to find that the litigation process, or even court decision, still fails to possess impartiality and achieve a proper perspective of human rights and gender equality.[8]

The inadequate protection from mentioned factors will potentially retain women and children as a victim. These events are torturous for them, considering in their perspective, rape could ruin their lives and future. Rape mostly caused immense psychological damage and not to mention severe effects on their reproductive health. Oftentimes, the victims had to experience Reproductive Tract Infections (RTI's), Sexually transmitted Diseases (STD's, including Human Immunodeficiency Virus (HIV) and AIDS, undesirable pregnancy or others reproductive organ damages.

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[5] Incest Is The Crime Of Sexual Relations Or Marriage Taking Place Between A Male And Female Who Are So Closely Linked By Blood Or Affinity That Such Activity Is Prohibited By Law. Incest Considered As A Statutory Crime, And Often As A Felony. The Purpose Of Incest Statues Is To Prevent Sexual Intercourse Between Individuals Within The Degrees Set Forth, For The Furtherance Of The Public Polivy In Favor Of Domestic Peace.

[6] Asliani Asliani, "Legal Protection Against Rape Victims Based On Victimology," In *Proceeding International Seminar Of Islamic Studies*, Vol. 1, 2019, 891–900.

[7] Damar, "Catatan Akhir Tahun 2014" (Lampung, 2014).

[8] Elisabeth Yulia Rana Sinta Dewi, Melina Gabrila Winata, And Ella Yolanda Sakerebau, "Perspektif Gender Dalam Putusan Pengadilan Pada Kasus Pelecehan Seksual," *Kanun Jurnal Ilmu Hukum* 22, No. 2 (2020): 345–62.

Ironically, the actions to seek justice in the litigation process are a difficult challenge for victims. Commencing from the police's reporting process, examining at a Regional General Hospital appointed by the police, examining BAP at the police, and providing information at trial are the steps that must be carried out by the victim. In the trial process, based on article 153 paragraph (3) of the Criminal Procedure Code (KUHAP), the trial is closed to the public. However, these trial situations are rather depressing for the victims due to shame, solitude, and rage as their sense of humanity and honor has been shattered. In the courtroom, the victim must encounter a judge, prosecutors, the defendant attorney, and even the defendant itself, which most of them are males and considered insensible to the victims due to the patriarchal perspectives. In addition, the gender imbalance composition in the trial, provokes victims to sense the lack of protection from the State.

For instance, prosecutors, which ideally expected to represent victims' interests, often do not reflect these expectations. Therefore, this study argues that the state must accommodate companion for victims at the trial. The existence of companion, hopefully, will help victims to seek justice through the litigation process, as well to encourage the government to take responsibility and possess adequate protection and justice for victims through the enforcement of Regional Regulation (PERDA).

This study approach uses normative and empirical legal research. According to Soerjono Soekanto, the normative approach study conceptualizes law as norms, rules, regulations, and laws enforced at a particular time and place as a product of absolute sovereign state power . Normative legal research used in this study is a process to obtain related legal rules, principles, or doctrines to address the mentioned issue. In contrast, this study's empirical approach is taken from the author's personal experience in serving companion to women as rape victims at the trial. Moreover, this study uses primary and secondary data sources. Primary data are taken

directly at the field from the author's experience in serving companion for rape victims at the trial and interviews with distinct members of DAMAR Women's Advocacy Institute along with Judges at the Tanjung Karang District Court, whereas, the secondary data were obtained from regulations related to criminal law and criminal procedural law, doctrines, and some supporting information from relevant literature.

THE CHALLENGES OF THE RAPE VICTIM IN THE LITIGATION PROCESS AND THE IMPORTANCE OF A COMPANION

The discussion will further explain and describe 4 (four) main issues, namely the challenges of rape victims in the litigation process and the importance of a companion, the protection towards women as rape victims in the Criminal Code, the protection of women as rape victims at the trial based on the Criminal Procedure Code, and PERMA No.3/2017 concerning Adjudicating Women's Cases Against the Law.

Generally, rape and sexual assault are crimes of violence and control that arise from a person's determination to seek power over another. Rape happens due to the perpetrator's inability to endure his sexual turmoil, worsening by the perpetrator's perspective of being powerful over the victim (element of power). The element of power is an outcome of a patriarchal society, wherein the social aspect; believes that power is in the hands of men. The belief ultimately makes men considered as active beings (subjects) while women are considered passive or objective (subordinate).[9]

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[9] Anna Puji Lestari, "Blaming The Victim: Alienasi Gender Dalam Media Online," *Jurnal Ilmu Dakwah* 39, No. 2 (2019): 197–213.

Most of the victim is experiencing a massive trauma by the incident, and generally are unfamiliar in dealing with any legal issues, also received insufficient information regarding the 'what to do after the raping incident'. Another factor is the fear of retaliation from the perpetrator (in case the perpetrator is closely related to the victim); an obligation of the women as victim to protect the family's integrity, therefore, metaphorically reporting will only tarnish the charcoal on his own forehead (*mencoreng arang di kening sendiri*); victim also fears the victim-blaming phenomenon by law enforcers, and there is no guarantee that, as a victim, they will be protected immediately. These are one of many reasons why victims may choose not to report to law enforcement or tell anyone about what happened to them.[10] The trauma, shame, and destruction rape caused are not only the challenge rape victims have to encounter. Even after the police reporting, the victim still had to coverage many steps forward through the litigation process. Therefore, a companion for rape victims is considered essential to make them feel safer and comfortable to assert their experience.

Rape under international law is categorized as a crime that violates human rights. International Humanitarian Law (IHL) and International Human Rights Law (IHRL) expressly prohibit rape and any sexual violation. However, In UN Special Rapporteur on violence against women Dubravka Simonovic, stated that there are gaps present in the legal concept of rape, who is protected, how long a victim has to disclose a crime, whether marital rape is prosecuted, whether prosecution is gender-sensitive and victim-focused, and whether victims are given protections.[11] Then, this prompted the

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[10] Imam Alfi And Umi Halwati, "Faktor-Faktor Blaming The Victim (Menyalahkan Korban) Di Wilayah Praktik Kerja Sosial," *Islamic Management And Empowerment Journal* 1, No. 2 (2019): 217–28.

[11] United Nations Human Rights, "Harmonization Of Criminal Laws Needed To Stop Rape – Un Expert," United Nations Human Rights, 2021, Https://Www.Ohchr.Org/En/Press-Releases/2021/06/Harmonization-Criminal-Laws-Needed-Stop-Rape-Un-Expert#:~:Text=Rape Is Recognized Under International,Perpetrators Are Prosecuted%2c She Said.

emergence of many organizations that campaigned for human rights, especially women's rights from sexual violence such as the Women's March. The presence of the Women's March since 2017 in the United States continues to receive support from outside the United States to Indonesia. Women's March is considered necessary to advocate and promote women's rights.[12]

According to Article 17 of Law No. 3 of 2004 on the Elimination of Domestic Violence (UU PKDRT), the definition of victim companion is a person who has the expertise in conducting counseling, therapy, and advocacy to strengthen and support healing to victims of violence. Furthermore, stipulated on Article 23 of UU PKDRT, the role of the companion is assisting the victim through the legal process, providing security, physical and psychological support, and providing information for legal interest on behalf of the victim. UU PKDRT also highlights several provision regarding victim companion, as follows:

1. Article 10 outlined the necessity for the victim's companion in each stage of the examination process under existing laws and regulations.
2. Article 17 outlined the companion's role to cooperate with the police in providing temporary protection towards the victim.
3. Article 23 outlined the role of companion to (a) provide information relating to the rights of the victim to receive one or several companions; (b) assisting the victim at the investigation, prosecution, or examination at the trial by encouraging the victim to objectively and comprehensively describe the violence they experienced; (c) listen empathically to narratives in order to conceive the victim to feel safe; (d) provide psychological and physical support to victims.
4. Article 29 outlined the protection warrant application for a companion in carrying out its duties.
5. Article 37 outlined the submission of a written report regarding the alleged violation of the protection order.

[12] M Solahudin Al Ayubi And M Syaprin Zahidi, "Perbandingan Pengaruh Women's March Terhadap Kebijakan Publik Di Indonesia Dan Amerika Serikat," *Politica* 13, No. 1 (2022).

6. Article 39 outlined the role of companion to provide service in victim recovery.
7. Article 41 outlined the companion's role to provide counseling and a sense of security in strengthening the victim mentally.
8. Article 42 outlined the companion's role in collaborating with health workers, social workers, and spiritual mentors for the victim restoration purposes.

Based on the information above, a companion has a vital role in carrying out protection and security for the victim through all litigation processes. However, in the trial adjudication process, the Criminal Procedure Code Article 153 Paragraph (3) stated that "For the examination purposes, the chief judge will open the trial and declare the trial to be accessible to the public, except in case concerning public decency or cases where the defendants are children". This article is furtherly emphasized in paragraph (4) that stated, "In any circumstance that Paragraph (3) is not fulfilled, the case is considered null and void."

Even though it strictly stipulated that in case of rape, the trial will be held close to the public, a companion's presence is allowed. However, the companion is required to attach a power of attorney or letter of assignment from their institution of origin. Thenceforth, the panel (judges) will inquire the approval of prosecutors and the defendant's lawyers. After the approval, the panel may ask several questions relating to the companion's interest at the trial.

The vital role of companion for a victim at the adjudication process visible at the examining process where the judge, prosecutor, and lawyers begin to ask the question to the victim, whereas, generally, the gender of those individuals are men. This situation will bring nervousness and mental fragility and may lead to missing or inconsistent information by the victim. In principle, the companion possessed a passive role in the trial. However, other than its duty to encourage the victim to provide detailed information, a companion also has the authority to answer questions on behalf of the victim.[13]

[13] Nirmala, "Wawancara Pribadi [Wawancara Pribadi]," 2016.

An interview with the Executive Director of the DAMAR Women's Advocacy Institute, Mrs. Selly Fitriani, stated that a victim's companion at the trial would effectively empower women as a victim of violence to convey the event they experienced, encourage them to answer the question comprehensively and accordingly, and even have the authority to provide detailed information on behalf of the victim. As an expert in assisting women in violence, a companion will possess a deep understanding of the victim's condition.

Therefore, the companion will be able to represent the victim's interest accurately. In striving for victims' rights, a companion can also provide a written opinion regarding the psychological condition of the victim after conducting *psychiatric visum et repertum* beforehand.[14] The material will elaborate explicitly on the extent of trauma suffered by the victim. The material is practical as an overview to the panel that the incident suffered by the victim, indeed, leaves a deep trauma and is irreversible to the victim, which will effectively encourage the panel to achieve the fairest verdict.

Despite all the effort, in actual circumstances, several challenges are inevitable, such as:

1. The insufficient number of judges specializes in women and children's cases. In this circumstance, the case will be adjudicated by general judges. General judges are considered apathetic and insensitive to the psychological condition of victims/witnesses.
2. The pressure of question relating to the defendant would potentially break down the psychological stability and could lead to missing and conflicting information provided by the victim. This circumstance will conceivably fall into the light verdict of the defendant.
3. During the trial process in cases where the rape victims is a minor, some panel still has the audacity to ignore the regulation stipulated on Article 22 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, which prohibits the use of toga or any attributes in the adjudication process, however, this provision is still widely violated.
4. Based on the author's experience in accompanying victims through the adjudication process, some panel of judges and prosecutors do

[14] Selly F, "Wawancara Pribadi," 2016.

not bear gender awareness or gender-based violence, or worse, unrecognized the existence of PERMA No. 3 2017.

5. During the examination of evidence through *visum et repertum*, the judge frequently presents the doctor as an expert witness in the trial. However, some doctors feel objected to the duty, and as a result, they refuse to undergo *visum et repertum* towards the victim.
6. In the adjudication process, the majority of the Panel declines a *visum et repertum psychiatricum* issues by a psychologist, arguing that such evidence is impermissible due to an unclear mechanism.
7. Most of the victim is unaware of the verdict received by the defendant. However, this study argues that the defendant's conviction is necessary for the victim to ensure the safety of the rape victims, both physically and mentally.
8. Poor coordination amongst law enforcers in implementing PERMA No. 3 of 2017, mainly on Article 8 Paragraph (2) regarding ordinary lawsuits and demands for restitution under article 98 of the Criminal Procedure Code. Until now, there has been no restitution decision for rape cases.

PROTECTION TOWARDS WOMEN AS RAPE VICTIMS IN THE CRIMINAL CODE (KUHP)

The regulation relating to public rape outlined under the Criminal Code Chapter XIV concerning Crimes against Decency commencing from Articles 281 to 303. The term of 'decency' (zeden, eerbaarheid) is defined as a sense of disgrace related to sexual activities, such as intercourse, grope on private lady's parts, flashing genitals, caress, etc. Furthermore, the scope of rape crimes emphasized in Chapter XIV of the Criminal Code Article 285, stated that: "*Any whom (men) by the threat of violence forces intercourse to a woman who is not legally married to them will be punished for rape with a maximum imprisonment of twelve years.*" Article 285 convicts the perpetrator with a maximum imprisonment of 12 years.

According to the previous matters, to determine a criminal act as rape, some elements need to be fulfilled, namely: *violence or any*

threat of violence, coercion (without consent of women), *not bound in marriage* (the woman as a rape victim is not a wife of the perpetrator), *women as a rape victim* (in rape crimes the victim are only women, any sexual assault against other genders, is not considered as rape).

However, this study further describe articles that should qualify as rape are outlined in Articles 286 and 287 of the Criminal Code, according to the definition by dr. Handoko Tjondroputranto states that "in Article 286 of the Criminal Code, intercourse forced to unconscious women shall be considered rape".[15] In case the victim's unconsciousness is caused by the perpetrator, or the victim is considered minor, the perpetrator will be convicted under Article 89, Article 286, and 287 for nine years sentenced. Thus, it is understood that the younger the rape victim, the lighter is the verdict. Therefore, this regulation shows that young women's protection as a victim of rape is deemed inadequate.[16]

The study argues that rape crimes shall not be contained in the section of Crimes Against Decency. Rape crime included in such section will lead to the perspective that women as victims play a role in the criminal act, assuming that the victim is also violating the social norm. Often, women of rape victims are considered immoral by society as a result of a patriarchal viewpoint. It is a common circumstance that women of rape victims experienced victim-blaming from both society and the litigation process.

However, this study showed that Law No.23 of 2002 concerning Child Protection (UU PA) provides more reliable protection towards rape victims. Article 81 paragraph (1) stated, "Each individual who intentionally commit violence by forcing intercourse to a child, shall be punished for a maximum 15 (fifteen)

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[15] Ismail Navianto, "Perkembangan Konsep Tindak Pidana Perkosaan Dan Perlindungan Hukum Bagi Korbannya Sebagai Manifestasi Hak Asasi Manusia," *Risalah Hukum*, 2012, 1–12.

[16] Ahmad Jamaludin, "Perlindungan Hukum Anak Korban Kekerasan Seksual," *Jcic: Jurnal Cic Lembaga Riset Dan Konsultan Sosial* 3, No. 2 (2021): 1–10.

years imprisonment and a maximum fine of Rp. 300,000,000 (three hundred million rupiahs)". Emphasized by Paragraph (2), which stated that "the crimes referred to in paragraph (1) shall too apply for any individuals who are intentionally deceiving, or persuade a child to have intercourse with them or other individuals". It is clear that, UUPA carried better protection by imposing perpetrators with a maximum imprisonment of 15 years instead of 12 years, as stated in KUHP.

Moreover, in adjudicating rape cases, law enforcers shall consider the existence of Supreme Court Decree (SEMA) No. 1 of 2000 concerning Criminal Act to Justify Pressure and Nature, SEMA No. 3 of 2001 concerning Legal cases require special attention from the court and PERMA No. 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law. Regulations issued by the Supreme Court show its seriousness and maintain the commitment of judges in conducting examinations and imposing sanctions on accused perpetrators, and protecting women victims of rape. Although in actual circumstances, law enforcers are failed to coincide with these expectations.

PROTECTION TOWARDS WOMEN AS RAPE VICTIMS IN THE CRIMINAL PROCEDURAL CODE (KUHAP)

Formal criminal law or widely known as criminal procedural code is a regulation which provides systems followed by the bodies involved in criminal proceedings and the courts to ensure that criminal offenses are correctly investigated and the perpetrators legally punished under the law due to fundamental rights and freedoms of natural persons and legal entities.[17] Criminal procedural

[17] Andi Hamzah, "Hukum Acara Pidana Indonesia," 2010.

law functions in providing procedures to carry out the Criminal Code (KUHP) as substantive material. KUHAP regulates how law enforcers such as police, prosecutors, law and judges must collaborate to ensure criminal law enforcement based on humanity and justice in achieving the State's goals in protecting society against the crime.[18] This function is emphasized by Article 36 of Law 4 of 2004 concerning Judicial Power.[19]

Furthermore, article 153 paragraph (3) KUHAP regulates that in case of decency or when the defendant is a minor, the trial will be held close to the public, as stated in Article 3 letter h, and article 54 of Law No. 11 of 2012 concerning the Criminal Justice System for Children. This article aims to protect women or children in the trial to ensure the victim or defendant's safety and comfort.

The protection of a rape victim in the litigation process is essential to the victim and their families. This study argues that in order to ensure the rehabilitation of the victim's condition run effectively, it is necessary to impose a restitutive sentence for the perpetrator. The restitutive sanction will lie a responsibility to the perpetrator due to the misery they caused since such sanction is considered concrete and gives more direct impacts to the victim.[20]

The protection towards rape victims in the litigation process under Indonesian's positive law relating to restitutive justice outlined on Article 98-101 KUHAP. The law provides the option to the victim for filing restitutive claims towards the defendant. In case the claim is granted by the judge, the restitutive justice will compensate solely for material damage (accessoire sanction).[21] Unfortunately, in practice, prosecutors never put any charges in respect of the victim's damage.

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[18] C Djisman Samosir, "Hukum Acara Pidana" (Nuansa Aulia, 2018).

[19] Eigen Justisi, "Efektivitas Penegakan Hukum Tindak Pidana Perkosaan Dari Putusan Hakim Dihubungkan Dengan Undang-Undang No 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban," *Justisi: Jurnal Ilmu Hukum* 1, No. 1 (2016).

[20] Miszuarty Putri, "Pelaksanaan Restitusi Bagi Anak Yang Menjadi Korban Tindak Pidana Sebagai Bentuk Pembaruan Hukum Pidana Berdasarkan Peraturan Pemerintah Nomor 43 Tahun 2017," *Soumatera Law Review* 2, No. 1 (2019): 115–34.

[21] Maria Novita Apriyani, "Restitusi Sebagai Wujud Pemenuhan Hak Korban Tindak Pidana Kekerasan Seksual Di Indonesia," *Risalah Hukum*, 2021, 1–10.

In the evidence examination process on the rape case, the majority of evidence that could strengthen the verdict are victims/witnesses and expert testimony in the form of *visum et repertum*. However, the problem occurs if the victim has had intercourse prior to the rape incident. One solution is to provide *psychiatric visum et repertum* to verify internal trauma experienced by the victim.[22] However, in practice *psychiatric visum et repertum* has not been implemented effectively due to unclear mechanism.

In connection with victim/witness's testimony, according to Article 1 point 26 of the Criminal Procedure Code, a witness is a person who can provide information for the investigation, prosecution, and trial regarding a criminal case that they heard, seen and experienced.[23] However, based on the principle of *unus testis nullus testis* empathized by Article 185 paragraph (2) of KUHAP, which states that there must be a minimum of two witnesses for each accusation and testimony from only one witness is insufficient, unless supported by other valid evidence (Article 183 Paragraph (3).

Thenceforth, the testimony of one victim-witness is insufficient to prove the accused act of the defendant. Meanwhile, in the rape crimes, witnesses' finding is considered complex since it is very likely that rape will not occur in witnesses' presence unless the perpetrator or victim-witness is more than one individual or linked with other crimes such as robbery *et al*. Thus, in judgment consideration, the panel of judges must earnestly adjust the compatibility among witnesses' testimony, the background motives, decency, and related evidence in ensuring the authenticity of the information provided (Article 185 paragraph (3)).

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[22] Yitro Daniel, Dian Adriawan Dg Tawang, And M H Sh, "Analisis Yuridis Terhadap Alat Bukti Visum Et Repertum Psikiatrikum Dalam Kasus Tindak Pidana Perkosaan (Studi Kasus Putusan Pengadilan Tinggi Banjarmasin Nomor 42/Pid/2017/Pt Bjm)," *Jurnal Hukum Adigama* 2, No. 2 (2019): 882–906.

[23] Ahmad Deda Darwis, "Peranan Saksi Korban Tindak Pidana Perkosaan Pada Tingkat Penyidikan," *Journal Of Law (Jurnal Ilmu Hukum)* 5, No. 2 (2020): 276–94.

Another challenge faced by rape victims is the service provided during the litigation process by law enforcement officers (police, prosecutors, judges) who usually place victims of sexual violence as objects instead of subjects whose legal rights must be considered and respected. Inevitably, revictimize often experienced by the victim due to the lack of gender equality awareness from law enforcers. The victim often blamed over the rape case for their experience since law enforcers are failed to understand and place themselves in victim's perspective.[24]

Ironically, sometimes the defendant's testimony stated that the rape occurs based on mutual interest between them and the victim, or plead that they had given some amount of money in exchange to 'their service', or any related plead in which they deny to confess that the rape occurs by force as outlined in article 285 KUHP. The point being made is most perpetrators considers victim to be subordinated to them; therefore, in this case, the incident was not considered as rape but only as proof the men will always have the control over women.

Moreover, contradictions of logical thinking among judges relating to the legal burden of proof and conviction towards the defendant are constant issues that occur at the court decision process. Frequently, the judgment did not impose maximum conviction on the defendant. The circumstance is inversely equivalent to what happened in the lengthy litigation process, even when the perpetrator is proven legally that they commit rape cases, in fact, this is still insufficient to maximize the sentence received by the defendant.

The light verdict imposed by the judge occurs due to the victim's inability to present supporting evidence apart from their own testimony, such as material evidence or the supplementary witnesses. Moreover, the victim never really receive a direct impact from the incident they experienced since restitutive justice has never been implemented at the court. Therefore, the study aims to encourage law

[24] Mia Hadiati Et Al., "Upaya Pemenuhan Ganti Kerugian Terhadap Perempuan Dan Anak Korban Kekerasan Seksual Di Indonesia," *Prosiding Serina* 2, No. 1 (2022): 191–98.

enforcers to recognize that dealing with rape cases will require specific measurements and gender equality-based mechanisms distinct from other forms of crimes adjudicated at the court.[25] It must be emphasized that judges' primary duty is to provide justice and protection to rape victims. Judges are the core actors who functionally execute judicial power, thus, the judge must understand the scope of his duties and obligations as regulated in statutory regulations.

PROTECTION TOWARDS RAPE VICTIMS BY SUPREME COURT REGULATION (PERMA) NO.3 OF 2017 CONCERNING GUIDELINES IN ADJUDICATING WOMEN'S CASES AGAINST THE LAW

The State's effort in strengthening protection towards women as victims in the litigation process is regarded by the enforcement of Supreme Court Regulation (PERMA) No.3 of 2017 concerning Guidelines in Adjudicating Women's Cases Against the Law. The regulation aims to ensure that women in its case against the law, especially women as victims of violence, do not be victimized at the litigation process due to the judge's poor perception of crimes and gender-biased perspective. Several provisions outlined in this regulation in administering its function effectively, as follows:

Provisions	Contents
Article 5	In examining Women's case against the law, judges may not: a. Show attitudes or address condescending statements, intentional blaming and/or intimidate women

[25] Atikah Rahmi, "Pemenuhan Restitusi Dan Kompensasi Sebagai Bentuk Perlindungan Bagi Korban Kejahatan Seksual Dalam Sistem Hukum Di Indonesia," *De Lega Lata: Jurnal Ilmu Hukum* 4, No. 2 (2019): 140–59.

	b. Justifying Discrimination Against Women adopted from culture, customary laws, and other traditional practices as well as gender-biased doctrines; c. To question or take into consideration women's sexual experience and background as an exculpatory for releasing or lesser the sentence of the perpetrator d. Declare a statement or perspective related to gender stereotypes
Article 6	Judges in adjudicating woman cases against the law, demand to: a. Take into consideration Gender Equality and Gender Stereotypes in statutory regulations and unwritten law; b. Interpreting statutory regulations and/or unwritten laws to guarantee Gender Equality; c. Examine legal values, local wisdom, and a sense of social justice in order to support gender equality, equal and non-discrimination based protection; d. Take into consideration the implementation of ratified international conventions and treaties related to Gender Equality.
Article 8	[1]. Judges shall question women as victims regarding the losses, the impact suffered, and the necessity for recovery. [2]. Judges shall inform the right victims to merge their case based on Article 98 of the Criminal Procedure Code and/or ordinary lawsuit or claim for restitution as provided in the provisions of laws and regulations. [3]. In the case of victims' recovery or harmed parties, the judge shall: a. consistent with human rights principles and standards b. disengaged themselves from gender stereotypes; and c. taking into account the situation and interests of victims of disproportionate harm due to gender inequality.
Article 9	In the case of women experiencing physical and psychological obstacles that require assistance, therefore: a. The judge shall encourage women in its case against the law to present a companion; b. The judge shall grant the woman's request in its case against the law to present a companion

Table 1.0 PERMA No. 3 of 2017 provisions to ensure protection towards women as victims against the law

Based on the provisions explained above, it indicates that the State has made its effort in providing adequate protection towards the women as a victim of violence by enforcing specific procedures during the litigation process. Furthermore, in preserving its commitment to ensuring justice and compliance of women's rights, Article 10 of this regulation stated that, in providing testimony, the victim-witness could give the information through an audiovisual communication platform, in case the victim has psychological trauma due to the incident.[26] Related procedures were also outlined under Article 58 of Law No.11 of 2012 concerning the Juvenile Criminal Justice System, which stated:

"In case the child victim and/or child witness is unable to attend and provide testimony at the trial, the judge may order the child victim and/or child witness to gives their testimony:

a. outside court proceedings through electronic recordings conducted by Social Adviser in the local jurisdiction under the presence of Investigators or Public Prosecutors and Advocates or other legal aid services; or
b. through direct remote examination through audiovisual communication accompanied by a parent/guardian, social adviser or other companions."

The method explained above aims to generate comfort and safe situations for violence victims to run the examining process effectively. Moreover, this study argues that PERMA No. 3 of 2017 is sufficient to fulfill victims' needs in dealing with the trial process. Therefore, if this PERMA is running effectively, the victim will feel more comfortable attending the trial due to the judge's obligation to fully respect the victim, eliminating the perspective of gender bias, and showing high empathy to the victim's trauma. Unfortunately, in concrete circumstances, this PERMA is scarcely implemented by law enforcers due to ignorance of this regulation's existence.

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[26] Akbar Sayudi, "Upaya Perlindungan Korban Tindak Pidana Perkosaan Dalam Sistem Peradilan Pidana Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 10, No. 1 (2016).

However, victims shall be given protection from any threats and intimidating events that violate their rights. It is the government's obligation to provide sufficient protection towards women as rape victims due to the impact they have to endure by ensuring the enforcement and implementation of the existing laws. Sufficient protection towards the victim of violence will hopefully prompt them to be courageous in reporting such crimes they experience to law enforcers. Moreover, it should be underlined that the losses suffered by victims are not only in materials form such as costs incurred for healing physical wounds, but also immaterial losses that are difficult, even impossible to overcome, such as loss of mental balance, loss of life spirit and confidence out of anxiety and fear from experience.

Therefore, this study argues that, in the establishment of the National Criminal Code, the State shall integrate the rights of victims into the whole criminal justice system, including the provision of sufficient protection towards victims to restore the psychosocial and economic conditions of the victim in order to bring a sense of peace in society as one of the main concepts of the Criminal Code (KUHP). The significant number of rape cases in Indonesia is considered a State's failure to protect its citizen against the crimes. The State has not protected women as rape victims adequately, while at the same time, they encounter physically, psychologically, sexually, financially, and spiritual trauma.[27] These circumstance contrasts with the criminal justice system's purposes to protect society and victims against the crime.

[27] Andika Wijaya And Wida Peace Ananta, *Darurat Kejahatan Seksual* (Sinar Grafika, 2022).

CONCLUSION

According to the previous explanation, this study concludes that:

Victims of rape crimes require serious concern by the State in the means of protection against them. Unfortunately, the Indonesian criminal justice systems considered failed to achieve this function. The significant growth of rape cases has proved the insufficiency of protection provided. This issue occurs due to the victim-blaming phenomenon appearing in the society and legal aspect. In carrying out rape cases in the litigation process, the victim is often treated unfairly by law enforcers, commencing police reporting to the trial's adjudication process. This study proves that most law enforcers are ignorant of the gender-equality perspective and often place the victim (women) as a party who also plays a role in rape crimes, which results in leniency of the verdict.

Considering the victim's trauma and a series of challenges in the litigation process, this study argues that the victim's companion is considered important. A companion plays an influential role in assisting the victim through all stages of the litigation process, especially at the evidence examining process, where the victim-witness is required to provide their testimony. A companion conducting their support by encouraging the victim to elaborates their experience in the most comfortable manner. It is also possible for a companion to conduct a written opinion as a consideration material for the judge in drafting the verdict.

Protection towards women as rape victims in both Criminal Code (KUHP) and Criminal Procedural Code (KUHAP) is considered insufficient. Therefore, the study argues that the State must take into account an immediate improvement of legal protection, both materially and formally, in dealing with sexual violence cases.

To date, the protection carried out by the State marked by the enforcement of Supreme Court Regulation (PERMA) No.3 2017

concerning Guidelines for Adjudicating Women's Cases Against the Law. However, the regulation has not yet run effectively due to poor collaboration among law enforcers.

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Fostering Constitutional Equality: Unveiling the Implementation of Legal Aid for Underprivileged Citizens in Karimun Regency

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ABSTRACT

The provision of legal aid is a manifestation of access to law and justice for the underprivileged, provided by the state under the mandate of the Constitution of the Republic of Indonesia. However, in Karimun Regency, there is a significant disparity between the number of underprivileged people and the availability of legal aid organizations. This study aims to investigate two key aspects: firstly, the application of legal aid for the underprivileged from the perspective of constitutional rights of Karimun Regency citizens; and secondly, strategies to optimize the provision of legal aid for the underprivileged in Karimun Regency. The research employs a normative-empirical legal research approach, utilizing legal, conceptual, and case analysis. Primary and secondary data sources are utilized. The findings reveal that the implementation of legal aid for the underprivileged in Karimun Regency has not been optimal due to various problems and factors, including the absence of regional regulations specifically addressing legal aid for the underprivileged, suboptimal performance of legal aid providers, imbalanced ratio of legal aid providers to recipients, and lack of legal knowledge and awareness among the underprivileged. To optimize the application of legal aid in Karimun Regency, several stages are suggested, such as immediate ratification of regional regulations addressing legal aid, enhanced supervision and strict sanctions for legal aid providers, and the verification of additional Legal Aid Organizations (OBH) in Karimun Regency by the Ministry of Law and Human Rights.

Keywords: *Legal Aid, Underprivileged People, Constitutional Rights of Citizens*

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INTRODUCTION

Equality before the law is a legal principle that means every citizen has an equal position before the law[1]. According to this principal Indonesia is a law-abiding country and the logical consequence of this law is that everyone has the right to be treated equally before the law including the underprivileged. Section 27(1) of the Constitution of 1945 provides for this.

Except Article 34 (1) of the Constitution of 1945 the provisions of law relating to underprivileged and/or disadvantaged regions shall take care of underprivileged and abandoned children. The designation is designed not only to meet the needs of food and clothing but also to provide equal access and justice to all before the law.[2]

With the necessity of equality before the law to the underprivileged, this is the basis for the birth of a regulation for justice seekers, especially the underprivileged, to get justice and access to law and justice through Law Number 16 of 2011 concerning Legal Aid (Law on Legal Aid). The substance of the Legal Aid Law requires law enforcers, especially advocates as legal aid providers, to provide free legal assistance to the underprivileged in Indonesia, moreover this obligation is a normative obligation for advocates as an *officium nobile* (noble profession) and mandated by Law Number 18 of 2003 concerning Advocates (Law of Advocates) to provide defense for everyone when in trouble with the law Regardless of individual background, race, ethnicity, political beliefs, social strata, economics and gender[3] so that it is in line with one of the objectives of access to

[1] A.V. Diecy, 2007 Introduction to the Study of The Law of the Constitution, translation *Introduction to the Study of The Law of the Constitution*, translator Nurhadi, M.A Nusamedia : Bandung, p. 251. See also Ahmad Ulil Aedi and FX Adji Samekto, "Reconstruction of the Principle of *Equality Before The Law*, Journal of Law Reform, *Vol.* 8 No. 2 Year 2013, UNDIP Master Program: Semarang. p. 2

[2] Deborah L. Rhode, *Access to Justice*, Oxford University Press : New York, 2004, p.3

[3] Frans Hendra Winarta, 2009, Pro Bono Publico, The Constitutional Right of the Poor *to Legal Aid, Gramedia : Jakarta, pp.1-2, see also in Frans Hendra Winarta, 2011*, Legal Aid

law and justice, namely the right to obtain legal assistance for the underprivileged .

Normatively, the context of legal assistance to the underprivileged is not only contained in the Legal Aid Law and the Advocates Law, but also regulated in Government Regulation Number 42 of 2013 concerning terms & procedures for providing legal aid &; distributing funds and Regulation of the Indonesian Advocates Association Number 1 of 2010 concerning Guidelines for the Implementation of Free legal aid All of them have clearly regulated and mentioned all matters related to the provision of legal aid to the underprivileged .

Related to the focus of research in this study, namely in Karimun Regency (Riau Islands Province), data from the Central Bureau of Statistics of Karimun Regency shows that the development of the underprivileged population in Karimun Regency in terms of percentage has increased compared to the previous year. In March 2022, the number of underprivileged people in Karimun Regency reached 16.44 thousand people (6.87 percent), an increase of 0.16 thousand people compared to March 2021 conditions of 16.28 thousand people (6.85 percent).[4]

Based on this, if it is related to the number of verified legal aid organizations, the Ministry of Law & Human Rights is only 2 (two) legal aid organizations in the Karimun Regency area,[5] and in addition, based on Article 11 of the Indonesian Advocates Association (PERADI) Regulation No. 1 of 2010 concerning Guidelines for the Implementation of Free Legal Aid Provision, states "Advocates are encouraged to provide free legal assistance for at least 50 hours annually" so that this provision explicitly indicates that an advocate is encouraged to provide legal assistance to the underprivileged .

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in Indonesia, Right to Be Accompanied by Legal Counsel for All Citizens, *Elex Media Komputindo : Jakarta, p. 101.*

[4]https://karimunkab.bps.go.id/pressrelease/2021/12/20/144/profil-kemiskinan-kabupaten-karimun-maret-2021.html Retrieved March 3, 2023.

[5] https://bphn.go.id/layanan/bantuan-hukum/obh Retrieved March 3, 2023.

There is a fundamental question related to the description above, namely whether the role of the state in this case is the local government and advocates in providing legal assistance to the underprivileged in Karimun Regency has run effectively and optimally, especially by looking at the reality of the increasing index of underprivileged people every year in Karimun Regency. Therefore, the author formulates several problems for assessment and research First, how is the application of citizens' constitutional rights for the underprivileged in a legal perspective in the Karimun Regency area? Second, how to optimize the provision of legal aid for the underprivileged in Karimun Regency? The results of this study and research can be a solution to optimize the provision of legal assistance to realize Equality before the law for the underprivileged in Karimun Regency.

This research is a type of normative-empirical legal research (applied law research).[6] The approach used in this study is the statutory approach, conceptual approach, and case approach. The data sources used are primary data and secondary data. Primary data uses the selection of samples or informants by purposive sampling, namely: the Government (Legal Section of the Regional Secretariat of Karimun Regency), advocate organizations (PERADI), and recipients of legal aid. The location of this research was conducted in Karimun district. The secondary data is in the form of legal materials, journals, books, and scientific study results that support the focus of research. For all data sources, qualitative analysis is carried out[7] which has descriptive analytical specifications[8] to solve the identification of the problems that have been posed.

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[6] *Abdulkadir Muhammad, Law and Legal Research,* Bandung: Citra Aditya Bakti, 2004, p. 134

[7] Pupu Saeful Rahmat, "*Qualitative Research*", Journal of Equilibrium, Vol. 5 No. 9 January-June 2009 Edition, Universitas Muhamadiyah Makassar : Makassar, pp. 1-2

[8] Soerjono Soekanto, *Introduction to Legal Research* ,Jakarta: University of Indonesia, 1996, p. 9

APPLICATION OF LEGAL AID FOR THE UNDERPRIVILEGED (CONSTITUTIONAL PERSPECTIVE OF RIGHTS OF CITIZENS)

Legal aid is a legal service specifically provided to the underprivileged who need free defense, both outside and inside the court, criminally, civilly and administratively, from someone who understands the ins and outs of legal defense, legal principles and rules, and human rights.[9]

In essence, in the implementation of legal aid, there are several methods, namely: 1) Traditional legal aid is legal services provided to the underprivileged privately and passively using the formal legal system.2) Constitutional legal aid for the underprivileged is an important element in establishing the rule of law promoting awareness of the rights of the underprivileged including respect for the law promoting human rights values and promoting the rule of law. broad purpose of promotion.[10]3) Structural legal support is an activity aimed at creating conditions for the implementation of laws that transform unequal structures into equal structures that ensure the rule of law and its implementation in the legal and political spheres. The concept of structural legal aid is closely related to structural poverty. [11] 4) responsive legal assistance[12] is provided to the underprivileged free of charge and covers all areas of law and human rights and without distinction the defense of both individual and collective cases and Services provided in responsive legal aid can

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[9] Frans Hendra Winarta, Op.Cit, p. 23

[10] YLBHI, 2014, *Guide to Legal Aid in Indonesia,* Yayasan Obor Indonesia: Jakarta, p. 462

[11] Suradji, 2008, *Ethics and Enforcement of the Code of Ethics of the Legal Profession (Advocates),* National Legal Development Agency Ministry of Law and Human Rights of the Republic of Indonesia : Jakarta, p. 77

[12] Frans Hendra Winarta, Op.Cit, p. 12

be in the form of legal counseling to the underprivileged so that there is public understanding / awareness of the law.

In addition, to measure the effectiveness of legal aid to the underprivileged , according to Soerjono Soekanto, the effectiveness or failure of a law is determined by 5 (five) factors, namely:[13]

1. Legal Factors;
2. Law Enforcement Factors;
3. Legal Facilities and Facilities Factors;
4. Community Factors; and
5. Cultural factors as a result of human creation, taste, and charities in social life.

These five factors are the basis for measuring the effectiveness of legal aid to the underprivileged in Karimun Regency. Based on the results of research conducted by the author, there are problems that hinder the implementation of legal aid for the underprivileged in the Karimun Regency area, namely:

1) There is no regulation related to legal assistance to the underprivileged in the form of regional regulations

The birth of the Law on Legal Aid burdened the central government with the responsibility to allocate funds for administering legal aid in the State Revenue and Expenditure Budget (APBN). The fund is allocated in the budget of the Ministry of Law and Human Rights of the Republic of Indonesia which is responsible for law and human rights-related activities. However, the framers of the legal aid law realized that the funds allocated in the State Budget would not be able to meet all legal aid requests in all regions. For this reason, through the provisions of Article 19 of the legal aid law, it provides space for regions to allocate funds for the implementation of

[13] Soerjono Soekanto, Factors Affecting Law Enforcement, PT. Raja Grafindo Persada, Jakarta, 2007, p. 5

legal aid in the regional budget (APBD). The legal aid Law does want to impose an obligation for each region to allocate funds for the implementation of legal aid, because in the provisions of Article 19 paragraph (1) it uses the phrase "may", so that there is a choice for regions whether to regulate it or not. However, it should be understood that if the region wants to allocate legal aid funds in the regional budget, then the regional government and DPRD must regulate it in a Regional Regulation (Perda).

Until now, Karimun Regency does not have a Regional Regulation that specifically guarantees the implementation of the constitutional rights of these citizens. This becomes very sad, especially when related to the poverty line, number, and percentage of underprivileged people in Karimun Regency which is quite high. This can be seen in the table below:[14]

Year	Poverty Line	Sum (Thousand inhabitants)	Percentage
2018	360.087	15.92	6.90
2019	376.853	15.36	6. 61
2020	411.052	15.99	6.83
2021	422.961	16.28	6.85
2022	446,856	16.44	6.87

Table 1.0 poverty line, number, and percentage of Underprivileged People

[14] https://karimunkab.bps.go.id/pressrelease/2021/12/20/144/profil-kemiskinan-kabupaten-karimun-maret-2021.html Retrieved March 3, 2023.

Year	Poverty Depth Index	Poverty Severity Index
2018	0.7	0.13
2019	0.6	0.11
2020	0. 59	0.08
2021	1.14	0.34
2022	0.78	0.13

Table 2.0. Depth Index and Poverty Severity Index

If referring to Table 1.0, in 2022, the number of underprivileged people in Karimun Regency reached 16.44 thousand people (6.87 percent), an increase of 0.16 thousand people compared to the conditions in 2021 which amounted to 16.28 thousand people (6.85 percent). Similarly, Table 2 shows that the poverty depth index & poverty severity index are increasing from year to year.

Based on the results of the author's research in the form of interviews with respondents that the provision of legal aid carried out in Karimun Regency has not touched many people or groups of underprivileged people because legal aid recipients are increasing every year and the limited number of legal aid providers so that legal aid recipients find it difficult to obtain their constitutional rights related to legal aid. [15] In fact, the regulation regarding the provision of legal assistance to the underprivileged in Regional Regulations is a guarantee of the constitutional rights of underprivileged people or groups of people.

Although basically, currently (in 2023) the draft Regional Regulation on legal aid has been proposed from the government's initiative through the Legal Section of the Regional Secretariat of Karimun Regency with the Karimun Regency DPRD, but it has not yet entered the ratification stage because there is still debate regarding the benchmark for the underprivileged category, after completion it will be seaborne with ratification and socialization related to the

[15] Interview with Dp. Agus Rosita (Chairman of Dpc Peradi Tanjung Balai Karimun), dated March 10, 2023 at the secretariat of Dpc Peradi Tanjung Balai Karimun

[16]regional regulation . The establishment of this legal aid regional regulation is very important as a legal basis for regions to fulfill the rights of the underprivileged in accessing justice and equal treatment before the law.

2) Legal Aid Providers do not Work optimally

If you read about legal aid for the underprivileged the meaning of providing legal aid in the legal aid Act is different from that of free legal aid in the Advocates Act. The legal aid law regulates the provision of legal assistance provided by the state to underprivileged people or groups of people, while the provision of free legal assistance by advocates is a form of service required by the Advocates Law to advocates for indigent clients. The way the state provides legal aid is by providing funds to legal aid providers, namely legal aid organizations, community organizations, universities, and others as determined by the legal aid law. Conceptually, legal aid is part of the state's obligation, the state can also determine the conditions for the giver and recipient of legal aid, including advocates as legal aid providers according to the legal aid law. If the advocate provides legal assistance as described below, the provision of legal aid is the implementation of legal assistance by the state regulated in the legal aid law, not the advocate's service by providing free legal assistance as stipulated in the Advocates Law or its implementing regulations.

Satjipto Rahardjo said "The law that was created and never implemented has essentially ceased to be law".[17] Normatively regarding the provision of legal aid at the practical level, especially in the constituents of the regulation, namely the underprivileged are still not optimally carried out by advocates / legal aid institutions as legal aid providers because not all advocates want to join the legal aid

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[16] Interview with Rusmawar Dewi (Head of Legal Section of Karimun Regency Regional Secretariat) Dated March 15, 2023 at Tanjung Balai Karimun.

[17] Satjipto Rahardjo, *Law and Social Change*, Genta Publishing : Yogyakarta, 2009, p. 69

organization or personally tap their conscience in defending the underprivileged but some of them have also tried to carry out their duties as well as possible The duty of the profession considers this part of worship because it helps people in difficulty selflessly.[18]

There are three things about the behavior of lawyers in solving the problem of helping the underprivileged namely avoiding taking cases on the condition that they attract the media to raise the quality of lawyers for various reasons. It is not very fond of nutrition.[19]

These reasons are a deviation from the ideal legal framework to provide legal aid because legal aid is usually given without knowing the legal problem to be solved and who will be protected but the right of the underprivileged to have access to law and justice . People have problems with the law.

Talking about the principle of equality before the law, access to law and justice and human rights is easy and fun in theory. However, in the practical setting of reality in society, it will be a "slap" because it is not at all what legal aid lawmakers expect. This is almost not done, ignored and even violated blatantly both from the government, law enforcement and even to justice seekers so that there are still many underprivileged people who have not received justice and may be due to lack of knowledge / information related to legal aid programs carried out by the government and advocates as law enforcers.

3) Unbalanced Number of Legal Aid Providers and legal Aid recipients

If you refer to Table 1.0 data, the number of underprivileged people in Karimun Regency in 2022 has reached 16.44 thousand people, while the Poverty Depth Index (P1) and Poverty Severity Index (P2) if you look at the data in Table II show a downward trend,

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[18]*Op.Cit*. Interview with Dp. Agus Rosita (Chairman of Dpc Peradi Tanjung Balai Karimun)

[19] Marudut Tampubolon, *Dissecting the Advocate Profession, Social Science Perspectives on Advocate-Client Interaction*, Student Library: Yogyakarta, 2014, pp. 133-134.

thus indicating that the average expenditure of underprivileged people tends to get closer to the Poverty Line and the inequality of underprivileged people's expenditure is also narrowing.

Seeing this, indirectly in the context of legal aid, the recipients of legal aid are increasing every year so that it must be in line with the number of human resources from legal aid providers. In Karimun Regency there are only 27 advocates and has 2 legal aid organizations accredited and verified by the Ministry of Law and Human Rights.[20]

This certainly affects the level of legal services for the people in Karimun Regency. Although the existence and quality of legal services for the community is not the only measure from the comparison of the population with the number of advocates, the availability of adequate human resources has an inseparable correlation in efforts to improve legal services and development in Karimun Regency.

4) Lack of Legal Knowledge and Awareness for the underprivileged

A person who does not understand the law can lead someone to be deceived by unscrupulous people or surrounded by some wicked person and the most surprising thing is that these people are usually law enforcement or government. As John Rawls put it,[21] "all legal systems fail unless they are encouraged by justice *as farness* in society."[22] Based on this opinion if it contradicts the implementation of legal aid for the underprivileged then in practice the underprivileged still lack legal awareness and knowledge of the importance of legal aid. Sometimes underprivileged people do not

[20] *Op.Cit*. Interview with Dp. Agus Rosita (Chairman of Dpc Peradi Tanjung Balai Karimun)

[21] Muhadi Zainuddin, "*The Role of Socialization of the Advocate Law in Empowering Community Legal Awareness*". Al-Mawarid Journal No. 12 of 2004, Faculty of Religious Sciences UII : Yogyakarta, p. 93

[22] Theo Huijbers, *Legal Philosophy in Linstas Histori*, Canisius : Yogyakarta, 2013, pp. 193-202

want to use legal aid by advocates because the mindset of the community using legal aid services is paid with a large nominal[23] so they do not want to seek information and cannot get knowledge related to legal aid provided by advocates / government as providers of free legal aid for the underprivileged , then the provision of legal aid will not function optimally.

OPTIMIZATION OF THE IMPLEMENTATION OF LEGAL AID FOR THE UNDERPRIVILEGED IN KARIMUN REGENCY

If you look at the discussion above the actual implementation of legal aid in Cremont Regency is not socially good because it still has all sorts of systemic issues that affect underprivileged people from having access to law and justice. Therefore, an idea is needed that can solve the problem in the application of providing legal assistance to the underprivileged , so that *access to law and justice is* realized so that it is not just a myth or sweet promise made by the state. Referring to the definition and strategy for realizing *access to law and justice*, there are several efforts to optimize the implementation of legal aid for the underprivileged as follows:

1. Local regulations related to legal aid will soon be ratified

Through this regional regulation on the implementation of legal aid, the Karimun Regency government has the basis to provide legal aid implementation that has legal problems. The existence of this Regional Regulation also fulfills the pillars of legal aid in accordance with international practices, which are as follows:[24]

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[23] Interview with Legal Aid Beneficiaries, Dated March 12, 2023 at Tanjung Balai Karimun

[24] Ministry of Law and Human Rights of the Republic of Indonesia, *2013, Implementation of Law Number 16 of 2011 concerning Legal Aid*, Annual Report

a. Accessible, legal aid must be easily accessible;
b. Affordability, where legal aid is financed by the state;
c. Sustainable, namely legal aid must continue to exist and not depend on donors so that the state must budget it in the State Budget;
d. Credibility in which legal aid must be credible and provide confidence that it is provided in the framework of an impartial judiciary (also when they face cases against the state, there is no doubt about that); and
e. Accountability where the legal aid provider must be able to provide financial accountability to the central body and then the central body must account to parliament.

When reflecting on the 5 (five) pillars of legal aid described above, the main focus is related to the responsibility carried out by the Karimun Regency Government to provide legal assistance to the community. With the establishment of the Karimun Regency Regional Regulation on the Implementation of Legal Aid, it can become a legal basis for the Karimun Regency Government to play an active role in providing legal assistance for the underprivileged and ensuring the implementation of Human Rights properly. This is because the Government in organizing bureaucratic life must be for the welfare of the community as much as possible, including providing legal assistance for the benefit of citizens who face legal problems in the defense of rights, both inside and outside the court[25].

2. Supervision and Strict Sanctions Against Legal Aid Providers for the Implementation of Legal Aid.

The context of providing legal aid by Legal Aid Organizations in terms of its implementation must have strict sanctions with the intention that when legal aid organizations that have been verified by the Ministry of Law and Human Rights, providing assistance must be

[25] Article 17 paragraph (1) of Law Number 11 of 2009 concerning Social Welfare

right on target and accompany the rights of the underprivileged to the maximum so that there is no more discrimination / a formality in terms of accompanying the underprivileged in the investigation stage, prosecution and trial.

In the event that supervision of the provision of legal aid is carried out by the Regional Supervisory Team of Legal Aid established by the Regional Office of the Ministry of Law and Human Rights only in the form of supervision of administrative matters, but does not reach very important substantive issues such as the quality of legal aid services provided by Legal Aid Organizations, as well as weak supervision carried out by the Regional Supervisory Team on service standards legal aid because only the Regional Office of the Ministry of Law and Human Rights supervises the provision of legal aid.

The provision of legal aid carried out by Advocates is also the same, in the case of its implementation there must be strict sanctions against Advocates who do not carry out in the Advocates Law and do not even regulate any sanctions for advocates who do not carry out this obligation. Sanctions for advocates who refuse requests for free legal assistance are regulated in Article 14 of PP Number 83 of 2008, namely in the form of oral reprimands, written reprimands, temporary suspension from their profession for 3 (three) to 12 (twelve) consecutive months; or permanent dismissal from the profession. The same sanction is also given to advocates who in providing free legal assistance receive or request gifts in any form from Justice Seekers.

3. Addition of Legal Aid Organization (OBH) in Karimun Regency verified by the Ministry of Law and Human Rights

Looking at the number of legal aid organizations verified by the Ministry of Law and Human Rights, there are only 2 legal aid organizations in the Karimun Regency area while the number of

underprivileged people based on Table I, above is relatively high, so it is necessary to add OBH and efficient procedural verification so that the more OBH verified, the more people in Karimun Regency will get free legal assistance, This happens because the ratio of givers and recipients of legal aid is not balanced and also advocates as legal aid providers entrusted by the profession to provide free legal assistance to the community must be implemented so that at least with the support of the number of existing advocates so that they can maximize the provision of legal aid to underprivileged people in Karimun Regency.

CONCLUSION

The results of the study show: the implementation of legal aid for the underprivileged in Karimun Regency has not been implemented optimally. This happens because of various problems or factors including, 1) the absence of regulations related to legal assistance to the underprivileged in the form of regional regulations; 2) Legal Aid Providers Do Not Work optimally; 3) The unbalanced number of Legal Aid Providers and Legal Aid recipients; and 4) Lack of legal knowledge and awareness for the underprivileged. To optimize the application of legal aid to the underprivileged in Karimun Regency can be done through several stages including, 1) Regional Regulations related to legal aid are immediately ratified; 2) Supervision and Strict Sanctions Against Legal Aid Providers for the Implementation of Legal Aid; and 4) The addition of Legal Aid Organizations (OBH) in Karimun Regency verified by the Ministry of Law and Human Rights. Based on the above conclusions, the author suggests that local governments and legal aid organizations provide adequate facilitation of legal aid to the underprivileged because legal aid is an obligation that must be organized. This facilitation needs to be realized through the right policy framework from local governments and consistency of legal aid organizations in providing

legal assistance to communities without having to distinguish social strata.

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Analyzing the Legality of Confiscating Third Party Property in Cases of Corruption

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ABSTRACT

This article examines the legal confiscation of third-party property in cases of corruption. The research method used is normative or doctrinal, which involves analyzing legal concepts and principles found in court decisions, laws, and statutory regulations. The focus of the research is to examine the legal aspects of confiscating third-party property in corruption cases. The findings reveal that, legally, a third party can submit an objection within a maximum period of 2 months. However, an objection lawsuit can only be filed after the court decision attains permanent legal force, indicating that the court has restricted or diminished the rights of third parties to enjoy or utilize their assets.

Keywords: *Confiscation; Third Party Property; Corruption Cases*

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INTRODUCTION

In general, criminal law regulates actions that are contrary to positive law[1]. The presence of criminal law in society is intended to provide a sense of security to individuals and groups in society in carrying out their daily activities. The sense of security that is meant in this case is a state of calm, without any fear of threats or actions that can harm individuals in society. Article 10 of the Criminal Code (KUHP) states that the types of punishment that can be imposed on criminal defendants consist of principal crimes and additional crimes[2]. Principal punishments include death penalty, imprisonment, confinement, fines and imprisonment. While additional punishment includes revocation of certain rights, confiscation of certain items and announcement of judge's decision.

The mechanism of deprivation without criminal prosecution which is considered a breakthrough contains a very crucial point, namely, related to human rights as set forth in Article 28-H paragraph (4) of the 1945 Constitution which reads: "Every person has the right to have private property and Such property rights may not be taken over arbitrarily by anyone. One of the characteristics of a rule of law is that the state must provide protection for a person's assets from arbitrariness. Thus, it is important to examine the extent to which the defendant's confiscation of assets does not violate the principles of a person's constitutional rights.

An interesting legal issue in the provisions of Article 10 of the Criminal Code above, namely regarding additional punishment. In Indonesian law, additional punishment can only be imposed on certain crimes, for example terrorism, narcotics, corruption and the like (which includes organized crime). Additional punishment in the form of confiscation of corruption assets, as a result of state losses that

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[1] Sudarto, *Hukum Pidana IA*, (Malang : Fakultas Hukum dan Pengetahuan Masyarakat,1974),pp. 6.

[2] Moeljatno, *Asas-asas Hukum Pidana*, (Jakarta: Bina Aksara, 1987) pp. 37

must be borne by the corruptors. In this confiscation, it is possible that the property of a third party or other parties may also be confiscated. In this case, we will discuss the confiscation of certain items.

Article 39 paragraph (3) of Law Number 31 of 1999 concerning the eradication of non-criminal corruption, stipulates that confiscation can be carried out against guilty persons who have been handed over to the government, but only for goods that have been confiscated. It becomes a legal question later if there are items that are confiscated by investigators, either Polri investigators, the Attorney General's Office or the Corruption Eradication Commission in cases specifically of criminal acts of corruption against goods that do not belong to the suspect.

Based on Article 19 paragraph (1) of Law Number 31 of 1999 concerning the eradication of Corruption (hereinafter referred to as Law No. 31 of 1999) if it harms the rights of third parties who have good intentions, then the court's decision regarding goods that are not belonging to the defendant must be set aside or returned to the third party, and if the decision to confiscate the goods of a third party in good faith is dropped (also confiscated), then the third party can submit an objection letter in the form of an application to the court concerned.

Third parties with good intentions receive legal protection in relation to evidence seized for the state in corruption cases as emphasized in Article 19 Law number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. In essence, the provision stipulates that the confiscation of goods not belonging to the defendant is not imposed. If the rights of a third party with good intentions are harmed, a third party with good intentions can submit an objection to the court.

The research method used in writing this article is normative or doctrinal law. Doctrinal legal research is research on legal concepts and principles in court decisions, laws and statutory regulations other than statutes. Doctrinal research deals with the analysis of legal

doctrines and how those doctrines are developed and applied[3]. This type of normative research tends to lead to the norm in a broad sense. This means an attempt to find out whether a rule of law is in accordance with legal norms, in conformity with principles, or community actions are in accordance with legal norms or legal principles[4].

The statutory approach (statute approach) is an approach through statutory regulations which in this writing will be related to several statutory regulations, the statutory approach (statute approach) is usually used to examine statutory regulations which in their norms there are still deficiencies or even foster deviation practices both at the technical level or in their implementation in the field. This approach is carried out by examining all laws and regulations that are related to the problems (legal issues) that are being faced. This statutory approach, for example, is carried out by studying the consistency/compatibility between the Constitution and laws, or between one law and another law[5].

Corruption in terminology comes from the Latin word *corruptio* or *corruptus*. Then *corruptio* comes from the word *corrumpere*, whereas in English corruption, corrupt. Corruption in Dutch is *corruptie*. Literally the meaning of all these words is rottenness, dishonesty, bribery, immorality. In the Big Indonesian Dictionary, regarding corruption is a bad act such as embezzlement of money, bribes, and so on.[6]

The criminal act of corruption is defined as an act of giving, surrendering to someone to do or not do something for the benefit of

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[3] A'an Efendi Dkk, Penelitian Hukum Doktrinal, (Yogyakarta: LaksBang Justitia, 2019), pp. 50.

[4] Vidya Prahassacitta, "Penelitian Hukum Normatif dan Penelitian Hukum Yuridis", dalam https://business-law.binus.ac.id/2019/08/25/penelitian-hukum-normatif-danpenelitian-hukum-yurudis/ , accessed 7 January 2022

[5] Law Office Saiful Anam & Partners Advocates & Legal Consultants, *Pendekatan Perundang-Undangan (Statute Approach) Dalam Penelitian Hukum.*, Office Suites A529, Kuningan – Jakarta Selatan 12940. Accessed tanggal 17 April 2022

[6] Andi Hamzah, *Pemberantasan Korupsi Melalui Hukum Nasional dan International*, (Jakarta, PT Raja Grafindo Persada. 2005), pp..4-5

the giver, which in turn also benefits the recipient. According to Treisman Daniel, the definition of corruption is "Immoral conduct or practices harmfull or offensive to society or a sinking to a state of low moral standards and behavior (the corruption of the upper classes eventually to the fall of the Roman Empire". In Black's Law Dictionary regarding The definition of a criminal act of corruption is an act which, when carried out, uses the intent, namely to provide an unfair advantage with an official obligation from a certain party, by abusing one's position or authority in order to benefit oneself or others[7].

The elements of corruption are inseparable from the laws and regulations on corruption that have been formulated and enforced in Indonesia. According to Firman Wijaya, the elements include everyone, unlawfully, acts of enriching themselves and other people or corporations, and can be detrimental to the country's finances or economy. The element used is more to look at the elements listed in the formulation of the article offense regulated in Law no. 31 of 1999 in conjunction with Law no. 20 of 2001 concerning the Eradication of Corruption Crimes.

Thus, it can be said that a criminal act of corruption if it fulfills the elements with the aim of benefiting oneself or another person or corporation, abuse of authority, opportunity or means because of position or position, and then can cause financial or economic losses to the country[8].

[7] Kristian dan Yopi Gunawan, Tindak Pidana Korupsi Kajian Terhadap Harmonisasi Antara Hukum Nasional dan The United Nations Convention Against Corruption (UNCAC), Bandung, Refika Aditama. 2015, pp. 20-21

[8] Modul Materi Tindak Pidana Korupsi, dalam https://aclc.kpk.go.id/wpcontent/ uploads/ 2019/07/Modul-tindak-pidana-korupsi-aclc-KPK.pdf, accessed tanggal 16 Maret 2022

CONFISCATION OF GOODS AND ITS PROCEDURES IN CORRUPTION CASES

Confiscation is a series of investigators' actions to take over and or keep under their control movable or immovable, tangible or intangible objects for the purposes of evidence in investigations, prosecutions and trials (Article 1 number 16). Apart from being used as a tool for operationalizing investigations and prosecutions as well as trials, confiscation in the context of returning criminal assets is the most important part at the beginning of the process. law enforcement to eradicate corruption. As is well known, the modus operandi of corruption is so shrewd that it is easy to hide its assets from criminal acts of corruption. If law enforcement does not confiscate it quickly, there is a possibility that the assets will be taken somewhere or even transferred to another party.

This confiscation action is one of the forced efforts (dwang middelen) owned by the Investigator. As part of a coercive effort, its existence is very sensitive and has the potential to be misused or excessive in its use, causing disruption to the human rights of the suspect or defendant. Therefore, the Criminal Procedure Code determines that confiscation is only carried out by investigators with a permit from the Head of the local District Court (Article 38 paragraph (1). In very necessary and urgent circumstances when the Investigator must act immediately and it is not possible to obtain a permit in advance, the Investigator can carry out confiscation is only on movable objects and for this purpose it is obligatory to immediately report to the Head of the local District Court in order to obtain his approval (Article 38 paragraph (2)).

The Criminal Procedure Code details the items that can be subject to confiscation including: First, objects or claims by the suspect or defendant which are wholly or allegedly obtained from a crime or part of the proceeds from a crime; Second, objects that have been used directly to commit a crime or to prepare it; Third, objects used to

obstruct criminal investigations; Fourth, objects specifically made or intended to commit criminal acts; and Fifth, other objects that have a direct relationship with the crime committed. Objects that are confiscated due to civil cases or due to bankruptcy can also be confiscated for the purposes of investigation, prosecution and trial of criminal cases as long as the five existing conditions are met (Article 39).

Objects subject to confiscation shall be returned to the person or to those from whom the object was confiscated, or to the person or to those who are most entitled if: First, the interests of the investigation and prosecution are no longer required; Second, the case was not prosecuted because there was insufficient evidence or it turned out that it was not a crime; and Third, the case is set aside in the public interest or the case is closed for the sake of law, unless the object is obtained from a crime or used to commit a crime.

Furthermore, if the case has been decided, then the object subject to confiscation is returned to the person or to those named in the decision, unless according to the judge's decision the object is confiscated for the state, to be destroyed or to be damaged until it can no longer be used or, if the object is still required as evidence in other cases (Article 46 of the Criminal Procedure Code). However, if the court decision also stipulates that the seized evidence is for the state (other than the exceptions as stipulated in Article 46), the Prosecutor authorizes the said object to the state auction office to be sold at auction, the proceeds of which are put into the state treasury for and on behalf of the Prosecutor[9].

Confiscation of certain goods is one of the additional penalties as stated in Article 10 letter b number 2 of the Criminal Code, Article 39 of the Criminal Code states:

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[9] Pasal 273 ayat (3) KUHAP.

a. Items belonging to the convict which were obtained from the crime or which were intentionally used to commit the crime may be confiscated;
b. In the case of punishment for a crime that was not committed intentionally or because of a violation, a decision of confiscation can also be imposed based on matters specified in the law;
c. Confiscation can be carried out against a guilty person who is handed over to the Government, but only for goods that have been confiscated.

The court decision regarding confiscation of evidence for the benefit of the state as stipulated in Article 194 of the Criminal Procedure Code is linked to the provisions of Article 19 of Law No. 31 of 1999, Article 10 letter b of the Criminal Code, Article 39 of the Criminal Code. if the court decision stipulates that the confiscated evidence is confiscated for the state, then from the perspective of evidence in a criminal case as stipulated in Article 184 of the Criminal Procedure Code, the Judge views that the Public Prosecutor can prove his indictment that the confiscated evidence was obtained from the proceeds of corruption, supported by evidence lawful and has strong and decisive evidentiary value.

In that context, if the court determines that the confiscated evidence was confiscated for the state, then based on the provisions of Article 19 paragraph 2 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, a third party can submit an objection letter to the court within 2 months after the court's decision is pronounced in a hearing that is open to the public. The objection here is a new facility in the Indonesian Criminal Procedure Code which is specifically regulated in Articles 19 and 38 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001.[10]

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[10] Muhamad Nur Ibrahim, *Perlindungan Hukum Pihak Ketiga Terhadap Keberatan Atas Putusan Pengadilan Dalam Perkara Korupsi*, Program Studi Magister Ilmu Hukum Pascasarjana Universitas Tadulako.

According to Lilik Mulyadi, if specified, additional punishments can be imposed by judges in their capacity which are correlated with returning assets through this criminal procedure which can be in the form of:

a. Confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by the convict where the criminal act of corruption was committed, as well as the prices of the goods that replace these goods. (Article 18 paragraph (1) letter a Corruption Law); Payment of replacement money in the maximum amount equal to the assets obtained from criminal acts of corruption. If the convict does not pay compensation as referred to in paragraph (1);
b. At the latest within 1 (one) month after the decision has obtained permanent legal force, the property can be confiscated by the prosecutor and auctioned off to cover the replacement money. In the event that the convict does not have sufficient assets to pay the replacement money as referred to in paragraph (1) letter b, he shall be sentenced to imprisonment for a term not exceeding the maximum threat of the principal sentence in accordance with the provisions of this Law, the duration of the sentence has been determined in a court decision. (Article 18 paragraph (1) letter b, paragraph (2), (3) of the Corruption Law);
c. Fines where this aspect in the Corruption Crime Eradication Law uses the formulation of criminal sanctions (*strafsoort*) which are cumulative (prison sentences and or criminal fines), cumulative-alternative (prison sentences and/or criminal fines) and the formulation of the duration of criminal sanctions (*strafmaat*) is determinate sentences and indefinite sentences;
d. Determination of confiscation of goods that have been confiscated in the event that the defendant dies (trial

in absentia) before the verdict is handed down and there is sufficiently strong evidence that the perpetrator has committed a criminal act of corruption. The judge's stipulation on confiscation cannot be appealed and any party concerned can submit an objection to the court that has rendered the stipulation within 30 (thirty) days from the date of the announcement. (Article 38 paragraph (5), (6), (7) of the Corruption Law);

e. Decision on confiscation of property for the state in the event that the defendant cannot prove that the property was not obtained due to a criminal act of corruption demanded by the Public Prosecutor when reading out the charges in the main case. (Article 38B paragraph (2), (3) of the Corruption Law). In practice, the act of deprivation which is carried out based on a criminal justice decision can encounter several obstacles and even termination in the framework of the deprivation. Among these things.

Regulation of the Central War Authority Number: PRT/PEPERPU/013/1958 concerning Investigation, Prosecution and Examination of Corruption Acts and Ownership of Property, which is the first provision to use the term corruption, there is a regulation that gives power to property owners to confiscate one's property or an entity if after carrying out a thorough investigation based on certain circumstances and other evidence it obtains a strong allegation, that the assets are included in assets that can be confiscated and confiscated.

Government Regulation in Lieu of Law Number 24 of 1960 concerning Investigation, Prosecution and Examination of Corruption Crimes stipulates that all property obtained from corruption is confiscated, and the accused may also be required to pay replacement money in the same amount as the property obtained from corruption. Law Number 3 of 1971 concerning the Eradication of Corruption Crimes, gives authority to judges to confiscate assets

from someone who has died, before there is an irreversible decision in their case, has committed a criminal act of corruption, then the judge against the demands of the prosecution General, with a court decision can decide the confiscation of goods that have been confiscated[11].

CONFISCATION OF THIRD-PARTY PROPERTY IN CORRUPTION CRIMES FROM A LEGAL PERSPECTIVE

If referring to Article 19 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 paragraph 2 concerning the Eradication of Corruption Crimes, it emphasizes that in terms of the court decision as referred to in paragraph (1) also includes goods from third parties who have good faith, so the third party can submit an objection letter to the court concerned no later than 2 (two) months after the court's decision is pronounced in a hearing open to the public.

Confiscation of goods belonging to third parties with good intentions suspected of originating from criminal acts of corruption has the potential to cause harm to certain parties if the goods are used as evidence in court proceedings, especially when confiscation is carried out in order to recover state losses. This is because third parties cannot use and/or utilize their goods because they are confiscated, confiscated and frozen for the purposes of proof at trial, based on a court decision.

Based on the provisions above, a third party who has good faith in having his goods confiscated can submit an objection to the court.

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[11] Suprabowo, *Perampasan dan Pengembalian Aset Hasil Tindak Pidana Korupsi Dalam Sistem Hukum Indonesia Sebagai Upaya Pencegahan dan Pemberantasan Tindak Korupsi*. Pp..4-5

Likewise in Article 3 Paragraph 1, Supreme Court Regulation Number 2 of 2022 Concerning Procedures for Settlement of Objections by Good Faith Third Parties Against Decisions on Confiscation of Goods Not Belonging to the Defendant in Corruption Cases, it is stated that; Goods or companies that are declared confiscated become the property of the state or to be destroyed can be objected in writing by a Good Faithful Third Party.

This is further emphasized in Article 3 Paragraph 2 which reads; Third parties who can submit objections as referred to in paragraph (1) are the owner, trustee, guardian of the owner of the Goods, or curator in a bankruptcy case of a Goods, either wholly or partly being confiscated.

In Article 4 Paragraph 1, Supreme Court Regulation Number 2 of 2022 it is stated that; Objections must be filed no later than 2 (two) months after the court's decision on the Main Case is pronounced in a hearing that is open to the public. Then in Paragraph 2 it is stated that "In the event that the decision of the Main Case is an appeal or cassation decision, Objections are filed no later than 2 (two) months after the excerpt/copy of the decision is notified to the public prosecutor, the accused and/or announced on the court notice board and/or electronically.

However, the existence of Perma Number 2 of 2022 in terms of normative content is quite positive as a reference for similar legal cases in the future. But in the context of the legal issues which are the object of this research, the Perma cannot be used as an analytical basis for resolving these legal issues. Because theoretically, a law does not run backwards, but dynamically, the Perma can only be applied to future cases.

In the context of settling the objection case against confiscation of assets through the Court, the position of the 2022 Perma does not have legal certainty. Certainty is a characteristic that cannot be separated from law, especially for written legal norms. Law without certainty value will lose meaning because it can no longer be used as

a guideline for everyone's behavior. Certainty itself is referred to as one of the objectives of the law. Community order is closely related to certainty in law, because order is the essence of certainty itself. Order causes people to live with certainty so that they can carry out the activities needed in social life.

The context of understanding third parties according to Article 19 of Law No. 31 of 1999 Jo Law No. 20 of 2001 is the owner or entitled to an item legally confiscated according to law, where the party has no legal connection in the process of realizing an offense. Good faith has 2 (two) perspectives in the context according to Article 19 of the PTPK Law, namely:

a. In a subjective sense, it is an inner attitude that is manifested in the honesty of ownership of confiscated property which is one's own property and has nothing to do with the law in the process of realizing an offense;
b. In an objective sense, assets that are confiscated/confiscated are assets obtained by appropriate means/violating decency or goods resulting from criminal acts (*corpora delictie*) or goods related to criminal acts.

The regulation of objection efforts in Article 19 (2) of the PTPK Law is a manifestation of the State in its duties and obligations in order to protect the rights of citizens in the field of law enforcement. Objections to court decisions regarding confiscation of evidence are a new means for third parties to seek justice. The sentence in Article 19 (2) of the PTPK Law is "..., within a period of no later than 2 (two) months after the court decision was pronounced in a hearing open to the public". Having problems in implementation that can lead to injustice and legal certainty.

In the practice of the criminal justice system in Indonesia, there are 2 (two) models of justice, namely Judex factie (where the public can attend and witness the trial/reading of the decision) and judex Juris (where the community/the parties cannot be present at pronouncing the decision). The Judex Factie and Judex Juris decision

models mean that the outcome of the decision can be immediately known by the public/the parties (JF) and the decision cannot be known by the public/the parties (hidden) until it is notified by the court.

The legal implication if the decision is made in a Judex Juris (Supreme Court Decision)/an uttered decision where the public/parties witness, then in Article 19 (2) of the PTKP Law, the sentence "...the court pronounced in a trial open to the public" will be interpreted to the extent that the general public (or at least the parties) are notified of the decision.

Based on the sentence "... uttered in a hearing open to the public" will be interpreted until the general public (or at least the parties) are notified of the decision, then the expiration calculation is also calculated 2 (two) months from the day and date the parties were notified of the decision. This is in line with the opinion of Dr. Muzakir who stated that there are two theories for calculating expiration. First, criminal acts that are easily known to the public (open). Like killing, burning the house. Then the expiration is calculated from the actions that occurred at that time. Meanwhile, the second expiration date is for hidden (covert) crimes. So, the calculation since it was known that the crime was revealed. Since then, it is counted expired.

Based on Law Number 49 of 2009 concerning General Courts article 52 A, “(1) The court is obliged to provide access to the public to obtain information relating to decisions and case fees in the trial process. (2) The court is obliged to deliver a copy of the decision to the parties within a period of no later than 14 (fourteen) working days after the decision is pronounced. (3) If the court does not implement the provisions referred to in paragraph (1) and paragraph (2), the head of the court shall be subject to sanctions as regulated in laws and regulations."

Referring to SEMA No. 01 of 2011 concerning Amendments to SEMA No. 02 of 2010 concerning Submission of Copies and Excerpts of Decisions, notification of court decisions to the parties, namely the

defendant or his legal counsel, public prosecutors use excerpts of decisions and copies of decisions.

A copy of the decision can be defined as a derivative of the decision issued by the court which contains the entire minutes of the trial starting from the reading of the indictment to the final decision. A copy of the decision also contains the judge's considerations explaining the judge's considerations so that the defendant must be punished. While excerpts of court decisions are excerpts or excerpts from court decisions whose contents only contain the verdict regarding the verdict handed down to the defendant.

It can be ensured that the copy of the decision contains more complete contents because each trial process is written in it. In addition, there is a judge's consideration which is the judge's argument before deciding the case. Therefore, with a copy of the legal adviser's decision, he can analyze the legal reasons why his client was convicted and confiscated assets were confiscated.

The implementation of the decision is clearly regulated in Article 270 of the Criminal Procedure Code which states that, "The implementation of a court decision that has obtained legal force is still carried out by the prosecutor, for which the clerk sends a copy of the decision letter to him."

An excerpt of a decision is a valid letter but it has been clearly determined that what can be used as a basis for execution is a copy of the decision (Article 270 of the Criminal Procedure Code). This is reinforced by the existence of article 197 paragraph (3) of the Criminal Procedure Code (KUHAP) which states that the decision is carried out immediately according to the provisions of this law.

Based on the above arguments, it cannot be used as a basis for prosecutors to execute the assets of third parties who have good faith because they do not have executive powers. Article 19 (1) of the PTPK Law implies that the principle of criminal responsibility is based on an in personal mechanism (only against the person charged), so it is wrong if the judge in this decision also imposes a sentence on third

parties, especially on the assets (in rem) of third parties who have good intentions.

In addition, Article 19 (1) of the PTPK Law is a form of protection for third party assets in good faith so that they do not become direct victims in eradicating corruption. Especially when the assets/properties that were confiscated were the main and supporting assets of his life so that the welfare and survival of the third party was greatly affected.

CONCLUSION

Based on the description above, it can be concluded that legally confiscation of third-party goods in acts of corruption can be submitted and filed for objections to the court as long as it does not exceed the two-month limit. This is in accordance with Article 19 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 paragraph 2 concerning the Eradication of Corruption Crimes. Likewise in the Supreme Court Regulation No. 2 of 2022 Article 4 paragraph and 2. However, an objection lawsuit can only be filed if the case does not yet have permanent legal force or is willing. If the case has permanent legal force, then indirectly the court has usurped or reduced the rights of third parties to enjoy or use their assets.

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Analyzing Regional Legal Measures for Subsidizing Restrictions on Community Activities (PPKM) during the Covid-19 Pandemic: A Study of State Administrative Law in Java and Bali Regions

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ABSTRACT

In recent years, Indonesia and the world have experienced a non-natural disaster, namely the Covid-19 Virus which has paralyzed the economy of almost all countries. For this reason, as a legal state, Indonesia issues several legal instruments, both legislation and policy regulations. The legal instrument that had become a polemic in Indonesia was the Minister of Home Affairs' Instruction Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for the 2019 Corona Virus Disease in Java and Bali. This paper discusses related the Instruction of the Minister of Home Affairs in the form of policy regulations, which then the regions of Java and Bali follow up on the policy regulations issued by the center. Various instruments are issued by regions such as DKI Jakarta Province, Banten Province, Central Java Province, West Java Province, East Java Province, and Bali Province. The research method that the author uses in this study is the normative juridical research method (Legal Research). From the results of this study, the authors found that policy regulations are not part of the legislation, the variety of legal instruments issued by regions in following up on the instructions of the Minister of Home Affairs, and both central and regional governments in issuing legal instruments in the form of policy regulations must pay attention to the requirements stipulated in the applicable laws and regulations. Because Indonesia is a legal state, all actions of government officials must be based on law.

Keywords: *Covid-19, Instructions from the Minister of Home Affairs, Policy Regulations*

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INTRODUCTION

Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Implementation of Restrictions on Corona Virus Disease 2019 Emergency Community Activities in the Java and Bali Regions (Inmendagri No.15 of 2021), is the legal basis for state administrative officials in running the wheels of government in a pandemic situation that occurs. Local governments form policies as a legal basis to follow up on Inmendagri No.15 of 2021, the problems in each local government are different, so the need for follow-up of Inmendagri No.15 of 2021 is certainly different from one another.

This worsening situation, due to the increasingly widespread and massive transmission of the Covid-19 Virus which resulted in an increasingly high rate of Covid 19 transmission, thus making the government have to re-issue a policy of tightening community activities. The new variant of Covid-19, namely the Delta variant and also the high mobility of the community during the Eid al-Fitr holiday in 2021 are the main factors for the high level of Covid-19 virus transmission currently experienced by Indonesia. The latest government policy at this time is the Imposition of Restrictions on Community Activities (PPKM).

Various policies available in the Law have been selectively tried by the Government, in its efforts to reduce the number of infected patients, including Large-Scale Social Restrictions (PSBB), but the implementation of PSBB is considered ineffective in controlling the outbreak, which is why the Government initiated the implementation of the Enforcement of Restrictions on Community Activities (PPKM) which in the Instruction of the Minister of Home Affairs is called PPKM. The policy was first implemented by the Government through Inmendagri No. 01 of 2021 concerning the Implementation of Activity Restrictions to Control the Spread of Covid-19. The PPKM policy is

considered by the Government to be much more effective in tackling the spread of the Covid-19 virus compared to the PSBB policy.[1]

This situation cannot be allowed, because it will cause a prolonged crisis, in order to handle it as a state of law, of course, legal instruments are needed. As laws and regulations, the Government has acted by issuing various laws and policies, including Presidential Regulation Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Covid-19, Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB). In the context of Accelerating the Handling of Covid-19, Presidential Regulation Number 11 of 2020 concerning Determination of Public Health Emergency Status, Perppu Number 1 of 2020 concerning State Financial Policies and Financial System Stability for Handling the Covid-19 Pandemic which is now Law Number 2 of 2020, Presidential Regulation Number 54 of 2020 concerning Changes in Posture and Details of the State Budget for Fiscal Year 2020 and Presidential Decree Number 12 of 2020 concerning Determination of Non-Natural Disasters of the Spread of Covid-19 as a National Disaster.[2]

Indonesia is a State of Law, therefore in implementing the government, the government must be based on the rule of law.[3] The state is still required to move quickly, do not let the absence of basic laws and regulations, making the government unable to carry out its activities. In order to avoid deadlock and dysfunction in governance, the government is required to have the courage to issue Policy Regulations (*beleidsregel*).[4] Policy Regulations function as part of the

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[1] Ahmad Gelora Mahardika and Rizky Saputra, "Kedudukan Hukum Pemberlakuan Pembatasan Kegiatan Masyarakat Dalam Sistem Ketatanegaraan Indonesia," *Legacy : Jurnal Hukum Dan Perundang-Undangan* 1, no. 1, (March 2021). pp. 2.

[2] Fahmi Ramadhan Firdaus and Anna Erliyana, "Perlindungan Kebijakan Diskresi Dalam Penanganan Covid-19 Menurut Undang-Undang No. 2 Tahun 2020," *Pakuan Law Review* 6, no. 2, (December 2020). pp. 24.

[3] Pada pasal 1 ayat (3), Undang-Undang Dasar Negara Republik Indonesia, menjelaskan bahwa, "Indonesia Adalah Negara Hukum".

[4] Reza Yustiyanto, "Diskresi Pemerintah Dalam Penanganan Pandemi Covid 19 Berdasarkan Undang-Undang Nomor 2 Tahun 2020," *Jurnal Restorasi Hukum* 5, no. 1, (June 2022). pp. 7.

operational implementation of government tasks, addressing concrete problems encountered, and therefore cannot change or deviate from laws and regulations.[5]

This Inmendagri, which was issued on July 2, 2021, also complements the implementation of the previous Inmendagri, regarding Micro-Based PPKM and Optimizing Covid-19 Handling Posts at the Urban Village Level to Control the Spread of Covid-19.[6] This Inmendagri in its substance regulates the reduction of community activities to reduce the number of spread of Covid-19 transmission, by limiting activities that have the potential for crowds,[7] but there are exceptions in essential and critical sectors.

Although we have Law No. 6/2018 on Health Quarantine and Law No. 4/1984 on Communicable Diseases. But the law does not regulate technical details related to procedures to reduce the rate of spread of the Covid-19 virus. So that Policy Regulations (*beleidregels*) become the means chosen by state administrative officials. We can see this in Law No. 6/2018 on Health Quarantine Article 5 paragraph (1) which reads:[8]

"The Central Government is responsible for organizing Health Quarantine at the port of entry and in the region in an integrated manner."

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[5] Muhammad Tabrani Mutalib, "Eksistensi, Fungsi, Dan Penormaan Diskresi Pemerintah Dan Peraturan Kebijakan (Beleidsregels) Dalam Penyelenggaraan Pemerintah Di Negara Hukum Indonesia," *Jurnal Hukum Dan Kemasyarakatan* 14, no. 2, (December 2020). pp. 155.

[6] Detikcom, "Ini Dasar Hukum PPKM Darurat, Yuk Disimak!," www.News.detik.com, 2021. (diakses tanggal 22 Juli 2021)

[7] Instruksi Menteri Dalam Negeri Nomor 15 Tahun 2021 tentang Pemberlakuan Pembatasan Kegiatan Masyarakat Darurat *Corona Virus Disease* 2019 di Wilayah Jawa dan Bali, menjelaskan bawha: "Menindaklanjuti arahan Presiden Republik Indonesia yang menginstruksikan agar melaksanakan Pemberlakuan Pembatasan Kegiatan Masyarakat (PPKM) Darurat Corona Virus Disease (COVID-19) di wilayah Jawa dan Bali sesuai dengan kriteria level situasi pandemi berdasarkan assesmen dan untuk melengkapi pelaksanaan Instruksi Menteri Dalam Negeri mengenai Pembatasan Kegiatan Masyarakat Berbasis Mikro serta mengoptimalkan Posko Penanganan COVID-19 di Tingkat Desa dan Kelurahan untuk Pengendalian Penyebaran COVID-19"

[8] Indonesia, *Undang-undang Tentang Kekarantinaan Kesehatan*, UU No.6 Tahun 2016, LN Tahun 2016 Nomor 60, TLN Nomor 5866, pasal 5 ayat (1).

The central government issued a policy outside of the regulations mentioned above. The central government policy is the 2021 Instruction of the Minister of Home Affairs concerning the Implementation of Restrictions on Community Activities in the Corona Virus Disease Emergency 2019 in the Java and Bali Regions. Due to the increasing number of Covid-19 transmission, so that the government must again issue a policy of tightening community activities. The new variant of Covid-19, namely the Delta variant, is a contributing factor to the high rate of transmission of the Covid-19 virus in 2021 in May.[9] Data shows an increase in Covid-19 cases as of July 23, 2021, there were 3,082,410 confirmed cases exposed to Covid-19,[10] on July 6, 2021 alone, the addition of daily cases in Indonesia was recorded at 14,536 cases.[11] After the issuance of the Inmendagri, regions with a high level of Covid-19 virus spread made a policy regulation to tackle the spread of the Covid-19 virus. The Policy Regulation is the biological child of Discretion. Discretion is defined in Article 1 Paragraph (9) of Law Number 30 of 2014 concerning Government Administration, which explains discretion as follows:[12]

"Discretion is a Decision and/or Action determined and/or carried out by a Government Official to overcome concrete problems encountered in the administration of government in the event that the laws and regulations that provide options, do not regulate, are incomplete or unclear, and/or there is government stagnation."

Policy Regulations are created to solve problems faced by the state, due to legal gaps and/or existing legal regulations that do not specifically regulate, due to the dynamics of community development. Therefore, Policy Regulations become an alternative in

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[9] Harris Y. P. Sibuea, *Loc-Cit.*

[10] Layanan Corona Jakarta, "Data Pemantauan COVID-19 DKI Jakarta," www.corona.jakarta.go.id, 2020. (diakses tanggal 23 Juli 2021)

[11] Luthfia Ayu Azanella, "Update Corona Global 22 Juni 2021: Kasus Covid-19 Di Indonesia Tembus 2 Juta | Ancaman Duterte Penjarakan Warga Filipina Yang Menolak Vaksinasi," www.Kompas.com, 2021. (diakses tanggal 22 Juli 2021)

[12] Indonesia, *Undang-Undang Tentang Administrasi Pemerintahan,* UU Nomor 30 Tahun 2014, LN No. 292 tahun 2014, TLN. No 5601, Pasal 1 Ayat (9).

order to keep up with the development of society. Policy regulations are used to take strategic policies in the form of decisions or actions in addressing urgent concrete problems that require immediate handling. Government policy is carried out as a discretionary power protected by a legal umbrella, so that every government official who acts on behalf of his position and is used for the public interest must receive legal protection.[13]

The research method that the researchers used in this research was the *Yuridis Normatif* (Legal Research) research method. Normative legal research method or library legal research method is a method used in legal research conducted by examining existing library materials.[14] The research approach used was qualitative research with the aim of not only producing descriptive data but also the research to be carried out was typed as explanatory and evaluative research.[15] The purpose of the explanatory type of research was because the research conducted was aimed at answering the question of how the Instruction of the Minister of Home Affairs when viewed from the theory of Legislation, and how the policies taken by the Java and Bali regions in following up on the Instruction of the Minister of Home Affairs Regarding the Enforcement of Restrictions on Community Activities of Corona Virus Disease Emergency 2019 in the Java and Bali Regions.[16] From the results of the search for literature analysis and laws and regulations.[17] Where, in the research in this paper a description was made of the applicability of the Instruction of the Minister of Home Affairs Regarding the Enforcement of Restrictions on Corona Virus Disease 2019 Emergency Community

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[13] Henny Juliani, "Analisis Yuridis Kebijakan Keuangan Negara Dalam Penanganan Pandemi Covid-19 Melalui Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020," *Administrative Law and Governance Journal* 3, no. 2, (June 2020). pp. 331.

[14] Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Cet. 8 (Jakarta: PT Raja Grafindo Persada, 2004). pp. 14.

[15] Andri Gunawan Wibisana, "Menulis Di Jurnal Hukum: Gagasan, Struktur, Dan Gaya," *Jurnal Hukum & Pembangunan* 49, no. 2, (June 2019). pp. 475.

[16] *Ibid.*

[17] Soekanto Soerjono, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia, 2008). pp. 42.

Activities in the Java and Bali Regions as a Policy Regulation based on the positive law that regulates it.

Researchers used secondary data sources to obtain a theoretical basis in the form of opinions or writings of experts or other authorized parties and also to obtain information both in the form of several formal provisions and data through existing official texts using primary legal materials (in the form of laws and regulations), secondary legal materials (law books, legal journals, papers, etc.), and tertiary legal materials such as dictionaries. Data collection tools used literature studies or searches. Furthermore, from the results of the literature study, the researchers analyzed the data qualitatively by grouping and selecting the data obtained then arranged systematically which was reviewed by deductive thinking method then connected with theories from the field of literature study (secondary data), then conclusions were made that are useful to answer the problems in this research.

ANALYSIS OF MINISTERIAL INSTRUCTION NO. 15/2021: COVID-19 COMMUNITY ACTIVITY RESTRICTIONS IN JAVA AND BALI

he Instruction of the Minister of Home Affairs Regarding the Implementation of Restrictions on Corona Virus Disease 2019 Emergency Community Activities in the Java and Bali Regions is one of the state regulations, namely *beleidsregel* or Policy Regulations. Policy Regulations are part of State Regulations. State Regulations (*staatsregelings*) are written regulations issued by state institutions, or certain officials. Examples of regulations are Laws, Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Ministerial Regulations, Regional Regulations,

Instructions, Circulars, Announcements, Decrees, and others, this was stated by M. Solly Lubis.[18]

Conceptually, discretion or *Freies Ermessen* are those (Government Administration Officials) who have the freedom to make a decision under certain conditions, so that discretion is commonly used and applied in the administration of government, which then discretion is interpreted as a means of entering state officials to take action without full prosecution through laws and regulations. The direction of policy and regulation of a policy regulation (*beleidsregel*) is to focus on the performance of action-oriented government responsibilities and emphasize the aspect of expediency (*doelmatigheid*) rather than *rechtsmatigheid* in the *Freies Ermessen* framework, the principle of discretionary policy or granting freedom of action to state administrators is intended to achieve government objectives and in the public interest.[19]

J.M de Meij and I.C. van der Vlies explained that the law cannot answer all matters, but leaves it to government organs to practically take action regarding whatever resolution is best for the concrete matters that occur. the authority to take various considerations or choices in concrete situations is called the Discretionary authority.[20] This opinion explains that indeed the law will always be inferior to the development of society for the need for an instrument to regulate things that come in the future, but not yet or not clear an existing legislation to be able to regulate the objective conditions of society.

Philipus M. Hadjon is of the view that policy regulations are essentially the product of state administrative actions aimed at "*naar buiten gebracht schriftelijk beleid*", namely to bring out a written policy.[21]

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[18] Arif Christiono Soebroto, "Workshop Kedudukan Hukum Peraturan/Kebijakan Di Bawah Peraturan Menteri Negara Ppn/Kepala Bappenas," www.jdih.bappenas.go.id, 2012. pp. 1. (diakses pada tanggal 11 Agustus 2021)

[19] Zaenuddin B. Palalas, "Eksistensi Peraturan Kebijakan (Beleidsregel) Dalam Penyelenggaraan Pemerintahan," *Jurnal Media Hukum (Jmh)* I, no. 2, (September 2013). pp. 18.

[20] Muhammad Tabrani Mutalib, *Op., Cit,* pp. 165.

[21] Eric and Wening Anggraita, "Jurnal Komunikasi Hukum," *Jurnal Komunikasi Hukum* 7, no. 1, (February 2021). pp. 474.

Policy regulations only function as part of the operational implementation of government tasks, therefore they cannot change or deviate from laws and regulations. This regulation is a kind of "shadow law" of a statute or law. Therefore, this regulation is also called *psudo-wetgeving* (pseudo legislation) or *spiegelsrecht* (shadow/mirror law).[22] n the concept of the administrative law system in the Netherlands, for example, policy regulations are defined as a decision that is determined as a general regulation, not a written regulation that is binding on the public, with regard to consideration of various interests, determination of facts or explanation of written regulations regarding the use of the authority of government organs.[23] Then other jurists such as Bagir Manan and A. Hamid S. Attamimi use the term "policy regulations" while Prajudi Atmosudirdjo uses the term "policy regulations". and also uses the term "pseudo-legislation" as a guide to the term "*pseudo-wetgeving*". In other Indonesian administrative law literature, the terms "pseudo legislation" and "policy regulations" are found.[24]

In the hierarchy of legislation in Indonesia, as we know that which is included in statutory regulations, such as what is contained in article 7 paragraph (1) and article 8 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, Policy Regulations are not included in Legislation. Policy regulations are born from the discretionary policies of Government Officials in this case such as the Instruction of the Minister of Home Affairs Regarding the Enforcement of Restrictions on Corona Virus Disease 2019 Emergency Community Activities in the Java and Bali Regions. Policies (beleidsregel) are born from discretionary policies or freies Ermessen,

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[22] Marcus Lukman, “Eksistensi Peraturan Kebijaksanaan Dalam Bidang Perencanaan Dan Pelaksanaan Rencana Pembangunan Di Daerah Serta Dampaknya Terhadap Pembangunan Materi Hukum Tertulis Nasional,” (Disertasi, Pascasarjana Fakultas Hukum, Universitas Padjajaran, Bandung, 1996). pp. 29.

[23] Sadhu Bagas Suratno, “Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintahan Yang Baik,” *E-Journal Lentera Hukum* 4, no. 3, (December 2017). pp. 167.

[24] Muhammad Thabrani Mutalib, *Op., Cit*, pp. 160.

namely the freedom of action of government officials in solving problems that arise such as the current Covid-19 pandemic.[25] Then in the Regulation of the Minister of Home Affairs Number 42 of 2016 concerning Office Manuscripts within the Ministry of Home Affairs, Article 5 letter c explains that Inmendagri is included in one of the Regulatory Service Manuscripts.[26]

The legislation that can be used as a legal basis for formulating and implementing policy regulations is the Government Administration Law. This law does not clearly define policy regulations. But if we use Bagir Manan's premise that policy regulations (beleidsregel, pseudowetgeving, policy rules), namely regulations made, both authoritative and material, are not based on statutory provisions, mandates or authorities, but originate from the principle of Freies ermessen (discretionary power), the formation and implementation of policies and regulations must pay attention to the definition, scope, requirements, procedures, and legal consequences of discretionary authority regulated in the Government Administration Law.[27] Bagir Manan explained that policy regulations have the following characteristics:[28]

"(1). Policy regulations are not laws and regulations; (2). The principle of limitation and testing of laws and regulations cannot be applied to policy regulations; (3). Policy regulations cannot be tested by wetmatigheid (the touchstone for laws and regulations); (4). Policy regulations are made based on the function of the principle of freies emerrmisen; (5). Testing policy regulations emphasizes the doelmatigheid principle of AAUPB (6) In practice in the form of instructions, decisions, circulars, announcements."

According to A. Hamid S. Attamimi, policy regulations in practice have the same substance and binding force as laws and

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[25] I Suryana, "Pembatasan Terhadap Asas Freies Ermessen," *Jurnal Ilmu Sosial Dan Ilmu Politik* 9, no. 2, (September 2018). pp. 105.

[26] Indonesia, *Peraturan Menteri Dalam Negeri Tentang Tata Naskah Dinas Di Lingkungan Kementerian Dalam Negeri*, Permendagri Nomor 42 Tahun 2016, Pasal 5 Huruf c.

[27] Sadhu Bagas Suratno, "*Op., Cit,* pp. 167-168.

[28] Ahmad Gelora Mahardika dan Rizky Saputra, *Op., Cit,* pp.10.

regulations, although they are said to be different from laws and regulations, but policy regulations can be felt to be generally binding, so that people follow these policy regulations as they follow laws and regulations.[29] A. Hamid S. Attamimi also explained that, policy regulations when we look at the form and format are often the same as statutory regulations, such as the existence of a consideration and body, which are similar to statutory regulations. Policy regulations are not included in statutory regulations as described above, but the nature of the substance is often a regulatory norm that has a general impact.[30]

Policy Regulations often also appear in other forms and formats, such as official notes, circulars, implementing instructions, technical instructions, announcements and so on. It can even be in oral form to subordinates who do not have a form and format.[31] The examples above show that there is no format and substance of what should be contained in policy regulations.[32] One of the requirements for government officials in issuing policy regulations is that these matters have not been regulated in laws and regulations and or as an effort to answer the stagnation and rigidity of the Law.[33] Conditions like this in practice can certainly lead to legal uncertainty, especially in terms of its binding force. Therefore, policy regulations should be regulated in law to prevent the arbitrary use of policy regulations.[34]

The Instruction of the Minister of Home Affairs related to PPKM in Java and Bali is addressed to the Governor and Regent/Mayor, and explains in detail what must be done by regional heads whose level 3 and 4 areas must implement the Restriction of Community Activities (PPKM) in order to reduce the rate of spread

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[29] A Hamid S Attamimi, "Hukum Tentang Peraturan Perundang-Undangan Dan Peraturan Kebijakan" (Pidato Purna Bakti, Fakultas Hukum Universitas Indonesia, 1993). pp. 12.

[30] *Ibid*, pp. 13.

[31] Arif Christiono Soebroto, *Op. Cit,* pp. 5.

[32] A Hamid S Attamimi, *Loc-Cit.*

[33] Zaenuddin B. Palalas, *Op. Cit*, pp. 17.

[34] Victor Imanuel W Nalle, "Kedudukan Peraturan Kebijakan Dalam Undang-Undang Administrasi," *Jurnal Refleksi Hukum* Vol. 10, no. 1, (April 2016). pp. 4.

of the Covid-19 virus.[35] So, if we measure the legal norms of this Inmendagri, it can be said to have concrete individual legal norms. Concrete individual legal norms are norms that are addressed only to a person or several specific people and regulate in detail the actions they regulate, so they are concrete.[36] According to Maria Farida, the reason why instructions are not included in laws and regulations is because an instruction or policy regulation (*beleidsregel*) does not apply continuously, and there must be an organizational relationship between superiors and subordinates, while the nature of legal norms in laws and regulations is general, abstract, and applies continuously.[37]

Because policy regulations are not laws and regulations, Inmendagri cannot delegate to laws and regulations. Judging from its type, the legal instrument that is the object of this research is indeed a policy regulation issued by regional officials. The legal instrument is not a delegation of the Ministerial Instruction. By looking at the position of Policy Regulations, as explained above, so that policy regulations are only a basis for regions to make regulations on PPKM whose characteristics and substance are different from laws and regulations, and local governments cannot make local regulations that are included in laws and regulations only based on the Inmendagri.

The use of Policy Regulations is a vehicle for government officials to make breakthroughs and solve problems that require quick resolution and there are no rules governing this. However, it must be remembered that the use of discretion has legal consequences. Policy Regulations issued not based on objectives, laws and regulations, and general principles of good governance that lead to discretion will encourage arbitrary actions and abuse of power. Arbitrary behavior

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[35] Indonesia, *Instruksi Menteri Dalam Negeri Tentang Pemberlakuan Pembatasan Kegiatan Masyarakat Darurat Corona Virus Disease 2019 di Wilayah Jawa dan Bali*, Inmendagri No. 15 Tahun 2021.

[36] Maria Farida Indrati S, *Ilmu Perundang-Undangan 1 : Jenis, Fungsi Dan Materi Muatan* (Yogyakarta: Kanisius, 2007). pp. 18.

[37] Ahmad Gelora Mahardika dan Rizky Saputra, *Op-Cit*, pp. 6.

can occur because the government does not have rationality as a parameter. Therefore, all forms of Policy Regulations both at the central and regional levels must be based on the principles of legitimacy, principles of democracy, principles of purpose, and general principles of good governance as meta-norms underlying government actions.[38]

COVID-19 COMMUNITY ACTIVITY RESTRICTIONS IN JAVA AND BALI: MINISTERIAL INSTRUCTION

Article 18 paragraph (6) of the Constitution of the Republic of Indonesia states that: "The regional government has the right to establish regional regulations and other regulations to implement autonomy and assistance tasks".[39] In addition to the laws and regulations referred to, the regional head has the authority to issue discretion when there is no governing legislation. During the pandemic, regions in Java and Bali made legal instruments as a follow-up to the Inmendagri related to PPKM as an effort to tackle the spread of the Covid-19 virus, these legal instruments issued by regions in Java and Bali, namely:

1. Circular Letter of the Governor of Central Java Number: 443.5/0000429 dated January 8, 2021 Regarding the Implementation of Restrictions on Community Activities and Anticipation of an Increase in Covid-19 Cases in Central Java.

In the contents of the Circular Letter of the Governor of Central Java, *Adressat* is addressed to Regent / Mayor Officials in the territory of Central Java, to carry out arrangements related to PPKM, starting from the availability of hospitals, improving health protocols by

[38] Henny Juliani, *Op., Cit,* pp. 336.

[39] Bhenyamin Hoessein, *Perubahan Model, Pola, Dan Bentuk Pemerintahan Daerah: Dari Orde Baru Ke Era Reformasi* (Depok: Departemen Ilmu Administrasi, Fakultas Ilmu Sosial dan Ilmu Politik Universitas Indonesia, 2009). pp. 152.

involving related parties in their regional environment with specifics also written in this Circular Letter the time of implementation. In theory, the Circular Letter is included in the form of Policy Regulations (*beleidsregel*), as explained by Jimly Asshiddiqie in his book entitled Subject of Law, Jimly explains that the forms of Policy Regulations are Instructions, Circulars, Program Drafts, Project terms of reference, work guidelines, warrants, notes.[40] This Circular Letter is a policy regulation that has concrete individual legal norms. This is because the legal norm is addressed to a specific person or body, and the matter regulated is concrete.[41]

2. DIY Governor Instruction Number 1 of 2021 on the Policy of Limited Tightening of Community Activities in the Daerah Istimewa Yogyakarta.

In this Yogyakarta Governor's Instruction, there are at least 11 points that make up the contents of this Governor's Instruction, which in essence carry out restrictions to minimize crowds, with the aim that the DIY government can reduce the level of spread of the Covid-19 Virus. This Governor's Instruction is included in the policy regulation. This Instruction of the Governor of DIY has individual-concrete legal norms because *Adressat*, this Instruction is addressed to offices, restaurants, and places of worship. Then it is called concrete because this Instruction regulates specifically related to operating hours, crowds in restaurants, places of worship and offices.

3. Banten Governor Instruction Number 1 of 2021 concerning the Implementation of Activity Restrictions to Control the Spread of Corona Virus Disease 2019 (Covid-19) in Banten Province.

The substance of the Banten Governor's Instruction is basically the same as the Central Java Governor's Circular Letter and the DIY Governor's Instruction. As in the Circular Letter of the Governor of Central Java addressed to Regents/Mayors, implementing WFH, although the number of restrictions in the workplace is similar

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[40] Jimly Asshiddiqie, *Perihal Undang-Undang* (Jakarta: Konstitusi Press, 2006). pp. 20.
[41] Maria Farida Indrati. S, *Op., Cit*, pp. 29.

between the Banten Governor's Instruction and the DIY Governor's Instruction. Then related to the tightening of health protocols, this is the same as what is regulated in the Circular Letter of the Governor of Central Java. But there are still slight differences. The difference is: in the Banten Governor's Instruction there are four parameters and other considerations to strengthen Covid-19 control efforts. The four parameters are: a. mortality rate above the average national mortality rate; b. recovery rate below the average national recovery rate; c. active case rate above the average national active rate; and four other parameters and considerations to strengthen Covid-19 control efforts. d. Hospital bed occupancy rate Bed Occupation Room (BOR) for Intensive Care Unit (ICU) and isolation room above 70% (seventy percent).

The form of the regulation made by Banten Province is clearly a Policy Regulation and this Instruction has a Concrete Indivisual legal norm because it is addressed to state administrative bodies or officials, namely: Regent of Tangerang, Mayor of Tangerang, and Mayor of South Tangerang. Then the action regulates specifically, which means that the action is concrete.

4. Decree of the Governor of East Java Number 188/7/KPTS/013/2021 concerning the Implementation of Restrictions on Community Activities to Control the Spread of Corona Virus Disease 2019.

The legal instrument issued by the Governor of East Java is in the form of *Beschikking* state regulation. *Beschikking* is a decision that has the nature or content of an administrative determination, and can also be a decision in the form of a judge's verdict or court decision.[42] In general, the East Java Governor's Decree, whose state legal instruments fall into the Beschikking category, has or contains a consideration just like legislation. Then the legal norms of Beschikking are very clear, namely concrete individuals, addressed to

[42] Jimly Asshiddiqie, *Op., Cit*, pp. 10.

certain people and concrete in nature.[43] Based on Law No. 5 of 1986 concerning PTUN, a decision issued by a state administrative official must meet the requirements of being concrete, individual, and final, and has legal consequences for a person or civil legal entity.[44]

5. Decree of the Governor of West Java Number: 443/Kep.337-Hukham/2021 Regarding the Implementation of Restrictions on Coronavirus Disease Emergency Community Activities 2019 (Covid-19) in the Province of West Java. And Instruction of the Governor of West Java Number: 02/Ks.01.01/Satpol.Pp Regarding Enforcement of Violations of the Implementation of Restrictions on Coronavirus Disease Emergency Community Activities 2019 in West Java.

West Java Province issued two legal bases, in the context of handling the Covid-19 pandemic. These legal instruments include (1) Decree of the Governor of West Java Number: 443/Kep.337-Hukham/2021 Regarding the Enforcement of Restrictions on Coronavirus Disease 2019 (Covid-19) Emergency Community Activities in the West Java Province, and (2) Instruction of the Governor of West Java Number: 02/Ks.01.01/Satpol.PP Regarding Enforcement of Violations of Restrictions on Coronavirus Disease 2019 Emergency Community Activities in West Java. These regional legal instruments are in the form of Decrees and Instructions.

The substance of the legal instrument of West Java Province in the form of Decree of the Governor of West Java Number: 443/Kep.337-Hukham/2021 concerning the Implementation of Restrictions on Coronavirus Disease Emergency Community Activities 2019 (Covid-19) in the Province of West Java, which essentially regulates the implementation time and technical implementation of PPKM in West Java, Budget changes for pandemic handling, and revokes Decree of the Governor of West Java Number 443/Kep.306-Hukham/2021 concerning the Tenth Extension of the

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[43] Maria Farida Indrati. S, *Loc-Cit*.

[44] Ahmad Gelora Mahardika, Rizky Saputra, *Op., Cit*, pp. 11.

Implementation of Proportional Large-Scale Social Restrictions in West Java Province in the Context of Handling Coronavirus Disease 2019 (Covid-19). Hukham/2021 concerning the Tenth Extension of the Implementation of Large-Scale Social Restrictions Proportionally in West Java Province in the Context of Handling Coronavirus Disease 2019 (Covid-19); and b. Decree of the Governor of West Java Number 443/Kep.316-Hukham/2021 concerning Amendments to Decree of the Governor of West Java Number 443/Kep.306-Hukham/2021 concerning the Tenth Extension of the Implementation of Large-Scale Social Restrictions Proportionally in West Java Province in the Context of Handling Coronavirus Disease 2019 (Covid-19).

Decree of the Governor of West Java Number: 443/Kep.337-Hukham/2021 Regarding the Implementation of Restrictions on Coronavirus Disease 2019 (Covid-19) Emergency Community Activities in the Province of West Java is included in the category of Beschikking state legal instruments, whose content material has a consideration, the nature of the legal norm is concrete individual. Beschikking can be said to have the nature of concrete norms because, Beschikking means something whose decision content is intended to complement the law or determine the law on a concrete matter.

6. Bali Governor Circular Letter Number 11 of 2021 concerning Restrictions on Community Activities (PPKM) Level 3 Corona Virus Disease 2019 in the new life order in Bali Province.

Bali Governor Circular Letter Number 11 of 2021 concerning Restrictions on Community Activities (PPKM) Level 3 Corona Virus Disease 2019 in the new order of life in Bali Province. Is one form of state regulation, namely *Beleidsregels*. In substance contained in this Bali Governor's Circular Letter, namely, classifying essential activities by limiting the number of community activities, then regulating related to PPKM level 3 funding sourced from the APBD, accelerating the vaccination process, and regulating related to testing, tracing, and treatment. The Bali Governor's Circular Letter also regulates related

to planning to minimize the spread of the Covid-19 virus, by compiling targets for conducting tests on the community in each city district in Bali Province. By examining the substance of the Bali Governor's Circular Letter, it has the nature of an Abstract General legal norm, because the legal norm is intended for the public and the action has a nature that is not yet concrete or still abstract.[45]

Based on the explanation above, we can conclude that not all regions in following up the Instruction of the Minister of Home Affairs related to PPKM use Policy Regulations (*beleidsregel*). As has been explained and elaborated, Decisions are not included in policy regulations (*beleidsregel*), such as Legal Instruments issued by East Java and West Java Provinces which are included in Beschikking Legal Instruments. This means that there are indeed variants of regulations in the regions that regulate PPKM.[46] Some of the policy regulations (*beleidsregel*) above are policy regulations (*beleidsregel*) in the regions, which in their mutant material policy regulations may not contain criminal sanctions, this is regulated in Article 15 of Law No. 12 of 2011 concerning the formation of laws and regulations which explains that regulations that can impose criminal sanctions are only laws and regulations.[47] Although the legal norm of this policy regulation is Individual Concrete, it can have an impact both directly and indirectly on the general public. As explained by Bagir Manan, according to him, policy regulations are aimed at a particular body or person but will indirectly affect the general public.[48] Then related to the process of forming legal instruments of policy regulations from the provinces that have been described above, the regions issue policy regulations in tackling the spread of Covid-19, must pay attention to the conditions stipulated in the Law, must not conflict with statutory

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[45] Maria Farida Indrati. S, *Op., Cit,* pp. 28.

[46] Ahmad Gelora Mahardika dan Rizky Saputra, *Op-Cit*, pp. 8.

[47] Pada Pasal 15 ayat (1) UU Tentang Pembentukan Peraturan Perundang-undangan menjelaskan bahwa "Materi muatan mengenai ketentuan pidana hanya dapat dimuat dalam: a. Undang-Undang; b. Peraturan Daerah Provinsi; atau c. Peraturan Daerah Kabupaten/Kota.

[48] Muhammad Thabrani Mutalib, *Op., Cit*, pp. 160.

regulations, and the existence of a legal vacuum. Therefore, according to the author, the policy regulations issued by these regions are in accordance with the existing conditions.

CONCLUSION

The Instruction of the Minister of Home Affairs is an instruction from the minister to lower officials, not a statutory regulation but a policy regulation. This Instruction of the Minister of Home Affairs does not constitute legislation. The regulation given is not addressed to the public, but to governors and regents/mayors. Law No.12/2011 on the Formation of Legislation also does not mention that ministerial instructions are part of legislation. This ministerial instruction only provides direction/guidance to governors and mayors/regents to make the necessary policies according to the needs of each region, and does not regulate the public.

Ministerial instructions are also known as regulatory official manuscripts in the Minister of Home Affairs Regulation No. 42 of 2016 concerning Office Manuscripts within the Ministry of Home Affairs. As part of the regulatory official script, the ministerial instruction is not binding on the public but is binding on the internal ministry.

This research focused on the implementation of 6 (six) local governments when forming legal instruments as a follow-up to Inmendagri No.15 of 2021. Looking at the form of follow-up of each local government, it turns out that it is quite varied. Four regions that issued legal instruments in their regions used policy regulations, but there were 2 regions that issued legal instruments in the form of Beschikking, namely East Java and West Java Provinces. The central and regional governments have the authority to issue policy regulations, but it should be noted that the formation of policy

regulations must fulfill several conditions. Among them is the existence of a legislative vacuum when there is a concrete situation that must be handled quickly but does not conflict with the applicable laws and regulations. Because policy regulations have a function to fill, complement and develop legal lacunae but remain in the corridor of good governance principles.

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