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Justice, Equity, and Human Rights in the Globalized Era: Towards a Harmonized Legal Framework

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FOREWORD

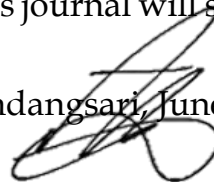
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The editorial of Nurani Hukum presents Volume VII, Issue 1, January-June 2024, under the theme "**Justice, Equity, and Human Rights in the Globalized Era: Towards a Harmonized Legal Framework**". This issue covers a wide range of topics, including Autonomus Weaponary System and International Humanitarian Law; Covid-19; Legal Policy Framework; Mental Health Regulation; and Institutional Effectivity of Rehabilitation;. The articles in this edition originate from **Australia, Hungary, Kenya, Malaysia, Indonesia, and Bangladesh**.

Adam Perger from Hungary explores the use of autonomous weapon systems on Armed Conflict situation. While our correspondent from Indonesia and Kenya, Ampuan et-al, delves into the establishment of Specialized Hospital in the time of Pandemic. Anika et-all, from Bangladesh addressing Analysis toward Bangladesh Mental Health Act. Our Australian and Indonesia contributors Fatkhul et-all discuss Farmers empowerment by the Legal Policy Frameworks. Lastly, this June issues is sum up by Juwita Arsawati et-all from Indonesia and Malaysia delves into the Effectiveness of Medical Rehabilitation for Drug Addicts.

We hope that the articles presented in this journal will serve as a valuable and enlightening resource for all readers.

Sindangsari, June 2024



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Drone Warfare in the Mirror of Human Rights

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ABSTRACT

International humanitarian law is divided into two main "branches": jus in bello and jus ad bellum. The jus ad bellum is the branch of international humanitarian law that deals with the rules that govern the justification of the use of force by states, for example, the question of whether a war is defensible; historically, it was the analysis that formed the basis of the just war theory. Today, Article 51 of the UN Charter reflects a recognized jus ad bellum justification in the form of self-defense; other similar justifications, such as those based on the responsibility to protect and humanitarian intervention, have still not acquired the status of customary international law. The traditional distinction between the two bodies of international humanitarian law entails that warfare, governed by the principles of military necessity, is a distinction between proportionality and humanity (jus in bello), separated from reasons and legal justification (jus ad bellum). However, such distinctions between these two categories of law in armed conflict are increasingly arbitrary and outdated, and the justification of the use of drones in humanitarian law terms further complicates the situation.

Keywords: Drones; Terrorism; Humanitarian Law; Drone Strikes; Military Law

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INTRODUCTION

International humanitarian law is divided into two main "branches": *jus in bello* and *jus ad bellum*. The *jus ad bellum* is the branch of international humanitarian law that deals with the rules that govern the justification of the use of force by states, for example, the question of whether a war is defensible; historically, it was the analysis that formed the basis of the just war theory.

Today, Article 51 of the UN Charter reflects a recognised *jus ad bellum* justification in the form of self-defence; other similar justifications, such as those based on the responsibility to protect and humanitarian intervention, have still not acquired the status of customary international law.

In addition, for a legitimate situation of self-defence to exist, the armed attack must be attributable to the state (the content of which was elaborated by the International Court of Justice in the Nicaragua case), and finally, the response to self-defence must also meet the requirements of necessity and proportionality (and the state is obliged to promptly notify the Security Council of such action).¹ *"Humanitarian law does not, of course, exist in a vacuum, but as a sub-field of international law, which comes into contact not only with other rules of international law, but also with other legal systems."*²

The traditional distinction between the two bodies of international humanitarian law entails that warfare, governed by the principles of military necessity, is a distinction between proportionality and humanity (*jus in bello*), separated from reasons and legal justification (*jus ad bellum*). *"The rules applicable in an armed*

¹ Siska, Katalin, 2010, *The basic questions of international law in the context of the theory and history of international relations: a textbook for public administration managers*, Debrecen: Debreceni University Publishing House, Debrecen, p. 69-82. and Siska, Katalin-Szemesi, Sándor, 2006, *The history of international law*, Debrecen: Kossuth University Publishing House, p. 66-81.

² Ágoston Mohay: Some questions of the limits of application of humanitarian law - from the perspective of European judicial forums, *JURA* 2017/2. p. 134.

conflict already in progress are contained in the ius in bello set of rules."³ However, such distinctions between these two categories of law in armed conflicts are increasingly arbitrary and outdated, and the justification of the use of drones from a humanitarian law perspective further complicates the situation.

I attempt to resolve the conflict arising from this situation in the form of the present paper by applying a fundamentally evaluative research method. As a tentative conclusion, I hypothesize that the use of military drones is fully justifiable from a humanitarian law perspective, and that the use of drones is the most appropriate tool for compliance with the rules of humanitarian law in 21st century warfare. I considered it appropriate to use the evaluative research method, because evaluative research is carried out when some kind of social intervention is taking place or is planned.⁴

The use of military drones is clearly a social intervention that will have certain social effects, whether positive or negative. I structured my thesis in this light, starting with a military law perspective in which I reviewed the foundations of humanitarian law in order to define the conceptual basis, and then analysed the military law situation of drones specifically, thus linking humanitarian law to military drones. I then used a conceptual method to analyse the use of military drones and their compliance with the humanitarian law principles arising from their use.

³ Katalin Siska - Sándor Szemesi: *A nemzetközi jog alapintézményei*, Lícium Art Könyvkiadó Kft., Debrecen, 2011. p. 177.

⁴ Earl Babbie: *The Practice of Social Science Research* (2003) p. 383.

THE FUNDAMENTALS OF HUMANITARIAN LAW

Initially, all armed confrontations were called war, but nowadays, given the nature, quality, spatial manifestation and extent of violence, or the aspects of establishing legal responsibility, 'war' no longer perfectly covers all forms of armed confrontation. The concept of 'armed conflict' emerged in the second half of the twentieth century through a long process of legal development and now serves as a comprehensive umbrella term, which is also preferred in modern international legal terminology. At the same time, it is necessary to note that not all armed conflicts are wars, but all wars are a form of armed conflict.

However, 'armed conflict' is a rather broad concept, covering various manifestations of violence. Armed clashes can be grouped into international and non-international armed clashes on the basis of whether the clash crosses state borders. However, it is important to note that, initially, conflicts within borders were governed exclusively by internal, national law (the reason for which, moreover, goes back to sovereignty); international or inter-state conflicts were governed by international humanitarian law, in fact by the rules of *ius in bello*. This has now changed to the extent that certain non-international conflicts may also be covered by humanitarian law: for example, if the intensity of the internal conflict becomes such that neighboring states treat it as a conflict to be considered as a conflict within the same category as the international conflict, or if it is initiated to assert the right of self-determination.

It also includes liberation movements or, for example, the historical emergence of movements to abolish slavery⁵ or struggles for

⁵ Katalin Siska: Slavery in Islamic law. Has it ended or is it still going on? -Kiskolci Jogi Szemle: Journal of the Faculty of Law and Political Science, University of Miskolc 11: (2016) p. 1.

the rights of minorities.⁶ "*The particular relationship between religion and nationalism - whether their incompatibility or their coexistence - has long been a focus of scholarly interest.*"⁷ Obviously, the historical context is also an obstacle to this kind of development, for example the Turkish millet system. "*The religiously based division was represented by the millet system, whose socio-cultural 'fabric' was determined by linguistic, communal, ethnic and family affiliations in addition to religious aspects, and was in effect created to fuse family and community.*"⁸

The *ius in bello* is in fact the law applicable in war, the set of rules governing wars. The concept should not be confused with the right to go to war, *ius ad bellum*, which is part of the sovereignty of states. In a narrower sense, humanitarian law is a set of humanitarian rules applicable in armed conflicts. In a broader sense, humanitarian law is generally understood to be the law of armed conflict, or *ius in bello*, (Some authors also use the term 'law of war' synonymously, but in our view the law of war is identified with one of the two major branches of humanitarian law, the law of The Hague.)

We distinguish between two distinct branches of humanitarian law, Hague law and Geneva law: the former refers to a number of Hague Conventions and deals with warfare (war), its means and methods, while the latter refers to the more narrowly defined norms of humanitarian law adopted in Geneva. "*The rules of modern international humanitarian law are contained in the Geneva Conventions.*"⁹

⁶ Katalin Siska: The Development of Minority Rights in Turkey, with Special Reference to the Provisions of the Treaty of Lausanne - IUSTUM AEQUUM SALUTARE 12: p. 1. (2016) Available on website: https://ias.jak.ppke.hu/20163sz/11_Siska_IAS_2016_3.pdf (Accessed 21.08.2023.)

⁷ Katalin Siska: Continuity and Change, Islam and Secularism in the Late Ottoman Empire and Young Turkey, JURA 23: p. 1. Available on website: <https://szakikkadatbazis.hu/doc/7565490> (Accessed 20.09.2023).

⁸ Katalin Siska: The dimensions of the Ottoman public administration - Pro Publico Bono: 2017/1 p. 184. Available on website: <https://folyoirat.ludovika.hu/index.php/ppbmk/article/view/1912> (Accessed 19.09.2023).

⁹ Lászlóné Katalin Szűcs Siska: International Law. Universitas-Győr Nonprofit Ltd. Publisher, Győr, 2023. p. 305.

The basic principles of Geneva law are humanity, necessity, proportionality and distinction. International armed conflicts are therefore mainly wars characterised by "combat being fought by armed forces under responsible command, the parties wearing uniforms or distinctive markings which can be recognised at a distance." Typical non-international armed conflicts are civil wars, resistance movements, insurrections and mass uprisings, which are therefore not subject to the rules of humanitarian law, with the exception already mentioned.

Piracy, internal tension and distress are also outside the scope of its scope. As a general rule, these are governed by the internal laws of the state concerned. The armed conflicts are closely linked to the modes of warfare. The mode of warfare is in fact the totality of the forms and methods of employment of armed forces. Modes of warfare include the movement-centred culture of war, the material-centred culture of war, the guerrilla culture of warfare and, according to some authors, terrorism.

It is important to note, however, that there is currently no comprehensive and complete definition of terrorism, and therefore its taxonomical classification is also disputed. In addition to the act itself, terrorism is also defined by the goal to be achieved, the motivation and the quality of the perpetrator. In our contemporary terms, many contemporary wars would be better classified as acts of terrorism, but the main distinction between war and acts of terrorism is that while the aim of war is to weaken the enemy's forces, with civilian casualties being primarily incidental or collateral, the primary aim of terrorism is to carry out attacks against civilians, to destroy, bomb, and cause international repercussions and outrage.

It is also characteristic of terrorism that, despite the global nature of the problem, its eradication is still primarily left to national law. Obviously, the influence of various Islamic and other ideologies is quite strong here, and there are signs of liberalisation and a willingness to align with Western perceptions in Islamic areas. I am

thinking here, for example, of "*Turkey's historic move after the Second World War to oppose communism and Soviet expansionism.*"¹⁰ To crown this policy, Turkey became a member of NATO in 1952, along with Greece. It is important to note, however, that the relationship between church and state in Turkey is still characterised by secularism, which is obviously an obstacle to this development.¹¹

Obviously, when analysing the concept of terrorism, we cannot overlook the concept of citizenship, since identity is a decisive factor in the theoretical approach to terrorism.¹² Terrorism is one of the most typical forms of warfare today. Acts of terrorism are not recognised by the *ius in bello*, terror is illegal and some of its conduct can be considered war crimes. In armed conflicts, acts against civilians and property are generally prohibited, they can only result in collateral damage and must be necessary and proportionate.

Furthermore, the precise definition of combatants and the problems arising from the categorisation of those who are and are not involved in actual war conflicts are still a matter of debate. The notion of combatant has come under increasing attack as insurgent groups and guerrillas have begun to emerge in many hostilities, particularly after World War II. Protocol I attempted to redefine the concept of combatant in the light of modern warfare tactics, but it remained controversial. The distinction between civilians and military personnel remains the basis of the provisions guaranteeing the protection of civilians. Under the 1907 Hague Convention,

¹⁰ Katalin Siska: Reflections on Turkey's Foreign Policy in the 21st Century - JURA 24: p. 428. (2018) Available on website: https://jura.ajk.pte.hu/JURA_2018_1.pdf (Accessed 22.08.2023.)

¹¹ Katalin Siska: Reflections on the Roots of Turkish Secularism - JURA: 22: p. 333. (2016) Available on website: <https://szakikkadatbazis.hu/doc/2242359> (Date of access: 23.08.2023.)

¹² Katalin Siska: The impact of Mustafa Kemal Atatürk on the concept of Turkish identity and citizenship, with special reference to constitutional law - JOG STATE POLITICS: JURAL AND POLITICAL STUDIES JOURNAL 8: p. 71. (2016) Available on website: http://epa.oszk.hu/03000/03010/00001/pdf/EPA03010_jap_2016-01_061-075.pdf (Accessed 16.08.2023)

combatants are defined as soldiers of the army and, under certain conditions, members of militias and popular insurgents.

This clear definition of combatants was undermined by the spread of guerrilla warfare. According to Mao Tse-tung, the guerrilla lived among the population like a fish in the sea, making it difficult to distinguish between combatants and civilians. Civilians should not be targets for military attack. The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict protects cultural objects and buildings, as well as objects necessary for the survival of the civilian population, such as food, livestock and drinking water supplies.

The 1949 Geneva Convention recognises the status of a guerrilla as a combatant, provided that he carries his weapons openly, distinguishes himself from the civilian population, is under responsible command and respects the laws and customs of war. The 1977 Additional Protocol I on the Protection of Victims of International Armed Conflicts relaxed these conditions considerably: the open carrying of weapons was only required during military confrontation or during the build-up to it, i.e. when exposed to the enemy's detection.

The situation is further complicated by the emergence of drone operators which represent a rather hybrid version of the combatant status. Having reviewed the basics of humanitarian law, and in order to have a better overview of the humanitarian problems arising from the drone operator, I considered it important to address the general situation of military drones from a specifically military law perspective, thus linking humanitarian law and the problems arising from the use of drones

THE STATUS OF DRONES IN MILITARY LAW

The United States Federal Aviation Administration (FAA) Modernization Act of 2012 states that a drone is a device consisting of an unmanned or unmanned aircraft and the components necessary for its safe and efficient operation.¹³ Unmanned Aerial Systems ("UAS") are therefore complex structures that are essentially made up of two components. The first is the flying surface itself, which allows three-dimensional movement, and the second comprises the instruments and devices that are mounted on the first element. "*The moving platform, which is the basis of the drones, is the part of the system that can fly remotely or autonomously.*"¹⁴ "

In the former case, a human controls the device from the ground. This type of control is most commonly seen in drones used for combat and recreational purposes. Today, however, it is also possible to pre-program the flight path using a computer on board the UAS or other communication devices. As a result, the system will fly autonomously without external intervention, with human intervention only required in an emergency. *However, full autonomous operation remains to be seen, as science has not yet reached the stage where UAS are capable of making decisions and planning autonomously, so human intervention is still a constant but not necessarily necessary feature of drone operations.*¹⁵

The technologies that make up the second component of unmanned aerial systems can be divided into two groups. In the first group, there is a relatively stable element, which is nothing more than

¹³ FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95. § 331(9).

¹⁴ AIR 160: Interim Operational Approval Guidance 08-01 of the Aviation Safety Unmanned Aircraft Program Office of the FAA on Unmanned Aircraft Systems Operations in U.S. National Airspace System, 13 March 2008. Available on website: <http://www.uadrones.net/civilian/research/acrobat/080313.pdf> (Retrieved 26.05.2023).

¹⁵ Noel Sharkey: Saying 'No!' to Lethal Autonomous Targeting, *Journal of Military Ethics*, 2010.(4) 369-383.

the systems that provide the control and communication links necessary to coordinate the movements of UAS.¹⁶ The second is a variable component consisting of solutions adapted to the function of the drone. *For example, UAS can be equipped with various information gathering technologies such as high-resolution cameras, thermal and wall-viewing or eavesdropping devices, infrared or UV sensors.*¹⁷

Other possible applications include various data processing systems such as facial recognition or other biometric technologies.¹⁸ The drones can also be equipped with radars, GPS and motion trackers to track specific targets.¹⁹ The size, flight range and time of the system as a whole are determined by the flying platform. On this basis, a distinction can be made between small UAS, which are defined as drones that weigh less than 25 kilograms and fly at a height of less than 122 metres.²⁰ *Large UAS are defined as systems that are heavier, have longer flight times and are more expensive, the best known examples being drones for combat purposes.*²¹ What a UAS can be used for is determined by the technologies installed on the flying structure.²²

Today, when the average person hears the term "drone", the first thing that comes to mind is the reconnaissance and strike detection tools used in the US military, but there are now more than

¹⁶ FAA Modernization and Reform Act of 2012, Pub. L.-. No. 112-95. § 331(9).

¹⁷ Jonathan Olivito: Beyond the Fourth Amendment: Limiting Drone Surveillance Through the Constitutional Right to Informational Privacy, *Ohio State Law Journal*, 2013.(4) 677.

¹⁸ Sean Sullivan: Domestic Drone Use and the Mosaic Theory, University of New Mexico School of Law Legal Studies Research Paper Series, Paper No. 2013-02 1.

¹⁹ Sean Sullivan: Domestic Drone Use and the Mosaic Theory, University of New Mexico School of Law Legal Studies Research Paper Series, Paper No. 2013-02 2.

²⁰ GAO-12-981: Report of the U.S. Government Accountability Office on Unmanned Aircraft Systems - Measuring Progress and Addressing Potential Privacy Concerns would Facilitate Integration into the National Airspace System, September 2012. Available on website: <http://www.gao.gov/assets/650/648348.pdf> (Retrieved 27.05.2023)

²¹ GAO-12-981: Report of the U.S. Government Accountability Office on Unmanned Aircraft Systems - Measuring Progress and Addressing Potential Privacy Concerns would Facilitate Integration into the National Airspace System, September 2012. Available on website: <http://www.gao.gov/assets/650/648348.pdf> Retrieved (13.07.2018) 5.

²² Jonathan Olivito: Beyond the Fourth Amendment: Limiting Drone Surveillance Through the Constitutional Right to Informational Privacy, *Ohio State Law Journal*, 2013.(4) 677.

400 different applications for unmanned systems used for non-military purposes. The new devices are small, can be remotely piloted, have excellent manoeuvrability, are quiet and can be equipped with a wide range of devices and sensors. Their uptake has accelerated mainly because they are now available at affordable prices for private users.

One of the main criticisms of current drone strikes in the area of jus ad bellum is whether the right to self-defence can be invoked against a terrorist organisation, i.e. a non-state actor. In my opinion, it can, provided that the terrorist organisation is under the control of the State concerned, or if the State concerned provides shelter and/or support to terrorists, then the acts of that organisation can be attributed to the acts of the State.

The question rightly arises as to what happens if a 'cyber-terrorist' manages to take control of an armed drone - owned or used by the state in question - and uses it to communicate his ideological message or, as the case may be, to start an international conflict, since the victim state will not know that the drone was controlled by a terrorist at the time of the attack. The above example clearly shows that in the context of military operations carried out by remote-controlled or completely unmanned machines, a number of legal (military law, human rights, privacy) and ethical concerns have recently arisen, which have yet to be fully resolved and the questions raised answered in a reassuring manner.

According to some, unmanned aerial vehicles (UAVs), also known as 'drones', are well on the way to becoming 'killer applications', i.e. new technologies that are not only lethal but also completely change the rules of warfare. It is difficult to predict what this turnaround will look like, especially since many experts believe that we are now in the same situation with unmanned systems as we were with the automobile at the beginning of the 20th century."²³

²³ Singer, Peter W. -STAUCH, Günther -BUCK, Christian: Mords -maschinen - Technology Review, Heise Zeitschriften Verlag (May, 2012), pp. 28 -34. - Available on

According to critics, the operators of remote-controlled combat equipment have a reduced sense of responsibility due to the distance from the actual site of deployment,²⁴ the lack of concrete experience of the destruction caused by weapons, the "video - gamification of war"²⁵ makes the decision to use weapons more frivolous.²⁶ The former view is not shared by the crew members flying unmanned aircraft, who express a sense of responsibility and awareness of the real consequences of their decisions.²⁷

In addition to all this, experts also acknowledge that drone operators, although not in immediate physical danger, are subjected to similar or even greater psychological stress and strain during their work than if they were actually on the battlefield, because the aircraft they are controlling is over the target under attack, they are immediately confronted with the "result" and the sight of the destruction during the obligatory battle damage assessment, unlike, for example, soldiers who carry out the mission with "conventional" weapons (guns, tanks, gravity bombs).²⁸

As for the accusation of frivolous killing, Sparrow points out that reducing the distance between combatants does not automatically imply greater adherence to humanitarian principles: citing the examples of Kosovo and Rwanda, he notes that "the most brutal atrocities of modern times have been committed in relatively

website: <http://www.heise.de/tr/artikel/Mords-Maschinen-1544097.html>(Downloaded on 28.05.2023.)

²⁴ Béla Koleszár: Ethical issues of robot warfare, *Military Morality - II: Military Engineer*, Vol. V No. 1 (2010), pp. 266-283.

²⁵ Muarellio, Tracie: Do drones make killing and spying too easy - Available on website: <http://www.postgazette.com/stories/news/world/do-drones-make-killing-spying-too-easy-633606/> (Retrieved from 27.05.2017)

²⁶ Altmann, Jürgen: Preventive Arms Control for Uninhabited Military Vehicles -In: R. Capurro and M. Nagenborg (Eds.), *Ethics and Robotics*, AKA Verlag Heidelberg (2009), pp. 69 - 82.

²⁷ Martin, Matt J. - SASSER, Charles W.: *Predator: The Remote -Control Air War over Iraq and Afghanistan: A Pilot's Story* - Zenith Press (2010) -ISBN: 978-0-760-3896 -4, 310 p.

²⁸ Oudes, Cor,: *Does Unmanned Make Unacceptable? Exploring the Debate on using Drones and Robots in Warfare -IKV Pax Christi* (May 2011) - ISBN: 9789070443672, 39 p.

small areas by men armed with rifles and machetes"²⁹. In addition to the above questions, from a military law perspective, there is a serious question mark over the status of personnel operating unmanned equipment, *i.e.* to what extent can they be considered combatants, legitimate military targets, especially given their physical absence from the area of operations? The current understanding, which is relatively consistent, is that drone operators are legitimate targets in the same way as other members of the armed forces, since they actively contribute to the conduct of military operations, and therefore their person and

their "workplace" (the base where the control centre is located) can be legally challenged. The issue is further complicated by the fact that some countries (*e.g.* the Netherlands) employ civilian personnel, employees of specialised civilian companies, as drone operators, rather than military personnel.³⁰

In conclusion, these persons lose their protected status and become legitimate military targets. Periodically, we also encounter the criticism that the development of drones and other military robots is directly contrary to the *jus ad bellum* requirement, because it encourages politicians to go to war. The main argument is that the fact that the operator(s) remain(s) in a safe environment and the mission is carried out by a machine, makes it easier for politicians to decide to engage in this kind of armed conflict.

*The use of remote-controlled or self-propelled military equipment lowers the barrier to entry into war, as machines reduce the loss of manpower and hence the political cost of going to war.*³¹ Consequently, the use of remote-controlled military devices and robots can lead to an increase

²⁹ Sparrow, Rob: *Robotic Weapons and the Future of War* - In: Jessica Wolfendale and Paolo Tripodi (eds): *New Wars and New Soldiers: Military Ethics in the Contemporary World* - Ashgate Publishing, Ltd. (2011), pp. 117 -133. - ISBN: 9781409401056, 281 p

³⁰ Oudes Wim: *Does Unmanned Make Unacceptable? Exploring the Debate on using Drones and Robots in Warfare* - IKV Pax Christi (May 2011) - ISBN: 9789070443672, 39 p.

³¹ FOUST, Joshua: *Unaccountable Killing Machines: The True Cost of U.S. Drones* - Available on website: <https://www.americansecurityproject.org/the-atlantic-joshua-foust-unaccountable-killing-machines-the-true-cost-of-u-s-drones/> (Retrieved 27.05.2023)

in armed intervention, because decision-makers can order military action in the knowledge that they will suffer little or no loss of life.³²

Altmann also highlights the risk of conflict-exploitation inherent in drones, pointing out that unmanned aircraft are more difficult to detect because of their relatively low altitude and speed, and are therefore easy to use to fly into another country's airspace without permission and carry out precision operations there. Such an operation, if it were to be discovered, would be likely to incur the displeasure of the leadership of the country concerned. The situation would be further complicated if the country concerned were to shoot down the device in self-defence.³³

There are also other views on the subject, according to which some countries (*e.g.* Pakistan) tolerate such operations only because the devices are unmanned and therefore their flight does not constitute a border crossing by foreign soldiers, which they would not otherwise allow.³⁴ In recent years, the importance of drones and the frequency with which they are used has clearly increased, while the rest of the military has relatively decreased.

In conclusion, these persons lose their protected status and become legitimate military targets. Periodically, we also encounter the criticism that the development of drones and other military robots is directly contrary to the *jus ad bellum* requirement, because it encourages politicians to go to war. The main argument is that the fact that the operator(s) remain(s) in a safe environment and the mission is carried out by a machine, makes it easier for politicians to decide to engage in this kind of armed conflict. The *use of remote-controlled or*

³² Lin, Patrick - BEKEY, George - ABNEY, Keith: Autonomous Military Robotics: Risk, Ethics, and Design - CALPOLY, US Department of Navy, Office of Naval Research - Available on website: <https://apps.dtic.mil/sti/citations/ADA534697> (Retrieved 27.05.2023)

³³ Altmann, Jürgen: Preventive Arms Control for Uninhabited Military Vehicles -In: R. Capurro and M. Nagenborg (Eds.), *Ethics and Robotics*, AKA Verlag Heidelberg (2009), pp. 76-77

³⁴ Oudes, Cor -ZWIJNENBURG, Wim: *Does Unmanned Make Unacceptable? Exploring the Debate on using Drones and Robots in Warfare* -IKV Pax Christi (May 2011) - ISBN: 9789070443672, 32 p.

*self-propelled military equipment lowers the barrier to entry into war, as machines reduce the loss of manpower and hence the political cost of going to war.*³⁵

It may follow that the use of remote-controlled military devices and robots could lead to an increase in armed interventions, because decision-makers can order military operations in the knowledge that they will suffer little or no loss of life.³⁶ Altmann also highlights the risk of conflict-exploitation inherent in drones, pointing out that unmanned aircraft are more difficult to detect because of their relatively low altitude and speed, and are therefore easy to use to fly into another country's airspace without permission and carry out precision operations there.

Such an operation, if it were to be discovered, would be likely to incur the displeasure of the leadership of the country concerned. The situation would be further complicated if the country concerned were to shoot down the device in self-defence.³⁷ There are also other views on the subject, according to which some countries (e.g. Pakistan) tolerate such operations only because the devices are unmanned and therefore their flight does not constitute a border crossing by foreign soldiers, which they would not otherwise allow.³⁸

In recent years, the importance of drones and the frequency of their use has clearly increased, while the importance of the rest of the military has relatively decreased. Recognising the advantages of using devices that operate semi- or completely without human

³⁵ FOUST, Joshua: Unaccountable Killing Machines: The True Cost of U.S. Drones - Available on website: <https://www.americansecurityproject.org/the-atlantic-joshua-foust-unaccountable-killing-machines-the-true-cost-of-u-s-drones/> (Retrieved 27.05.2023)

³⁶ Lin, Patrick - BEKEY, George - ABNEY, Keith: Autonomous Military Robotics: Risk, Ethics, and Design - CALPOLY, US Department of Navy, Office of Naval Research - Available on website: <https://apps.dtic.mil/sti/citations/ADA534697> (Retrieved 27.05.2023)

³⁷ Altmann, Jürgen: Preventive Arms Control for Uninhabited Military Vehicles -In: R. Capurro and M. Nagenborg (Eds.), Ethics and Robotics, AKA Verlag Heidelberg (2009), pp. 76-77

³⁸ Oudes, Cor -ZWIJNENBURG, Wim: Does Unmanned Make Unacceptable? Exploring the Debate on using Drones and Robots in Warfare -IKV Pax Christi (May 2011) - ISBN: 9789070443672, 32 p.

control, the world's major military powers took steps years ago to accelerate research and deploy an increasing number of autonomous devices.

The best example of this is the United States of America,³⁹ where in 2005 a committee of experts, citing that unmanned aerial vehicles had already demonstrated their operational applicability and military value in a number of operations, recommended that the integration of UAVs currently in production or under development into military operations should be accelerated and their capabilities fully exploited, for all forces.⁴⁰

The US continues to place a strong emphasis on the integration of autonomous assets into the military. The latest plan, which extends to 2036, calls for the continued use and development of unmanned assets and new technologies for military use. It also calls on the Ministry of Defence to seek the systemisation of devices with a higher degree of autonomy in order to reduce the need for human resources and dependence on full-time broadband communications, as well as to reduce the time spent on decision-making processes.

*However, the document also points out that when considering the autonomy of machinery, it is necessary to take into account the financial possibilities, the operational feasibility, the new technological developments, the various guidelines, public opinion and the disadvantages of autonomy.*⁴¹

The vision for the future of the world's military superpower is very clearly set out in this plan: a seamless integration of different capabilities operating without human control, providing flexible options for all forces, while exploiting the advantages of these assets,

³⁹ Murray, Williamson: *The Making of Strategy: Rulers, States, and War* - Cambridge University Press (1994), p. 465.

⁴⁰ *Autonomous Vehicles in Support of Naval Operations* - Committee on Autonomous Vehicles in Support of Naval Operations, National Research Council National Academies Press (19.04.2005) - Available on website: (Downloaded 27.05.2023)

⁴¹ *Unmanned Systems Integrated Roadmap FY2011 -2036 -USA* Department of Defence, Ref.No. 11-S-3613 - Available on website: <https://apps.dtic.mil/sti/pdfs/ADA589291.pdf> (Downloaded: 2023.05.27.)

including resilience, size, speed, manoeuvrability and reduction of threats to human life.

Systems without human control will interact with human systems and, in parallel, the degree of human control and decision-making over systems without direct human control used by the military will be progressively reduced. In addition to the US's grand vision of robotics, it is worth noting that the British armed forces, despite their use of unmanned aircraft in theatre, are far from ambitious. *According to the UK Ministry of Defence's 2011 Joint Forces Doctrine on the subject, the UK, although at the forefront of technological developments in many areas, has limited experience of operating modern unmanned aircraft capable of performing a given task and little operational analysis is available.*⁴²

The paper highlights that, in the absence of higher level political guidance, all unmanned aircraft systems used by the UK Armed Forces have been procured or leased under the Urgent Operational Requirements procedure, given that these systems have been put in place not on the basis of long-term capability development but because of immediate operational necessity. It is therefore not entirely clear, according to the document, what will happen to these systems after the end of the operation in Afghanistan, after the withdrawal of forces, and which authority will be responsible for developing a comprehensive, overall force guidance on this issue.

*Regardless of future procurements, it will be necessary to determine what future capabilities unmanned aerial vehicles may represent and how their deployment will impact on the organisations that use them.*⁴³ The

⁴² The UK Approach to Unmanned Aircraft Systems, Joint Doctrine Note 2/11 - Ministry of Defence, Development, Concepts and Doctrine Centre (30 March 2011) - Available on website: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/644084/20110505-JDN_2-11_UAS_archived-U.pdf (Retrieved 27.05.2023.)

⁴³ The UK Approach to Unmanned Aircraft Systems, Joint Doctrine Note 2/11 - Ministry of Defence, Development, Concepts and Doctrine Centre (30 March 2011) - Available on website: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/644084/20110505-JDN_2-11_UAS_archived-U.pdf (Retrieved 26.05.2023)

doctrine also points out that if we look at unmanned aircraft as systems, and take into account their ever-expanding range of increasingly modern and therefore much more expensive technical equipment, the value for money is no longer as attractive, at least compared to piloted aircraft.

According to the 'Defence Equipment Plan 2012' published in January 2013, the UK Ministry of Defence intends to spend around £18.5 billion over the next 10 years on developing air combat capabilities, with a particular emphasis on the procurement and development of unmanned aerial assets.⁴⁴

A striking example of the UK's ambition is the UK-France agreement in July 2012 to develop a joint Future Combat Air System. Furthermore, the MoD confirmed in May 2012 that it is in talks with the US Government to collaborate on the X-47B unmanned aerial demonstration system. The UK is also involved in the development of the Neuron Unmanned Combat Air Vehicle, in which several other European states (France, Greece, Italy, Spain, Sweden and Switzerland) are also interested.⁴⁵

THE LEGAL BASIS FOR THE USE OF UNMANNED AIRCRAFT IN ARMED CONFLICTS

The use of unmanned aircraft in armed conflicts is a complex issue that must be examined in the light of international humanitarian law and international instruments, or rather the lack thereof. In the midst of the rapid development of UAV technology, States and

⁴⁴ The Defence Equipment Plan 2012 - Ministry of Defence (31 January 2013) - Available on website: <https://www.gov.uk/government/publications/the-defence-equipment-plan-2012> (Retrieved 27.05.2023)

⁴⁵ Brooke-Holland, Louisa: Unmanned Aerial Vehicles (drones): an introduction - Available on website: <https://www.files.ethz.ch/isn/157096/SN06493.pdf> (Retrieved 28.05.2023)

international organisations are sticking to existing regulations and not seeking to create new legislation governing their use⁴⁶. The concept of "Law should not follow drones, but drones should follow law" is established, stating that the general principles of international humanitarian law apply, which should be used to determine when a drone becomes a combat tool and what the limits of conflict are with its use.

These principles are set out in the Geneva Conventions, a body of law that is fundamental to humanitarian law: the first Geneva Convention of 1864 was concerned with mitigating the effects of war on soldiers, but the most relevant for the purposes of this article are the four Geneva Conventions of 12 August 1949 on the Protection of Victims of War and their Protocols. The UAV as a combat tool can be considered lawful or unlawful depending on the context - most notably the phenomenon of targeted killing, described below, which in military action can be considered a real act of assassination or extrajudicial execution outside armed conflict⁴⁷.

In this case, the existence of an armed conflict within the meaning of Article 2 of the four Geneva Conventions of 1949 would be relevant. International conflicts were also dealt with, but not defined in Article 3, referring to armed conflict in the territory of one of the parties to the Convention which is not international in character. The Conventions did not formulate criteria of intensity or extent of hostilities for the purpose of presuming the existence of an armed conflict.⁴⁸

The mere existence of an armed conflict does not absolutely mean that states have an unlimited possibility to use drones. Article 35(1) of the Geneva Conventions' Additional Protocol I on the

⁴⁶ Bachmann, S.D.: Targeted killings: contemporary challenges, risks and opportunities. *journal of crime & security law*. 18(2), (2013) 259. p.

⁴⁷ International Criminal Tribunal for the former Yugoslavia. *The prosecutor v. Dusko Tadic*. Decision on the defence motion for interlocutory appeal on Jurisdiction. IT-94-1-A (1995)

⁴⁸ Kułaga, Ł: Używanie dronów w celu zwalczania międzynarodowego terroryzmu w świetle "ius in bello." *Zeszyty Prawnicze*. 17(1), (2017) 107. p.

Protection of Victims of International Armed Conflicts prohibits the use of methods of warfare that may cause unnecessary suffering. The principle of distinction must also be respected in relation to the identification of civilians and soldiers, and civilian and military targets - then, under the provisions of Geneva Convention IV, it is prohibited to attack civilians and civilian targets and, as a consequence, to carry out mass attacks that do not distinguish between military and non-military targets.

The principles of proportionality and precaution are equally important. The former requires the prohibition of launching an attack that is likely to cause serious loss of civilian life, injury to civilians, damage to civilian objects, or a combination of these, which would be disproportionate to the concrete and direct military advantage expected.⁴⁹ As regards precautionary measures, compliance with or failure to comply with them may render an attack unlawful if justified under humanitarian law.⁵⁰ These would consist, inter alia, in the certainty that the target is military in nature and that the chosen method of attack would minimise collateral damage to the civilian population.

When assessing whether in a given situation the UAV was used in accordance with the rules in force, we must take into account the criteria mentioned above. Here we cannot forget another aspect, as important as legality - namely, is the use of drones in armed conflicts, even if genuine, moral in the light of humanitarian law? To answer this question, we need to specifically relate the use of military drones to 4 principles of humanitarian law. The 4 principles of humanitarian law are described in this and previous chapters. These principles are: humanity, necessity, proportionality and distinction. For the sake of

⁴⁹ Bucholc, M.: Użycie bezzałogowych aparatów latających w sytuacji konfliktu zbrojnego. Wybrane aspekty z zakresu międzynarodowego prawa humanitarnego. *Polski Rocznik Praw Człowieka i Prawa Humanitarnego*. (2012) 161. p.

⁵⁰ Blanford, N.: Twenty-eight years ago Hezbollah's leader was assassinated, and Israel paid a price. Atlantic Council. Available on website: <https://www.atlanticcouncil.org/blogs/iransource/twenty-eight-yearsago-hezbollahs-leader-was-assassinated-and-israel-paid-a-price/> (2020). (Retrieved 28.05.2023.)

clarity, we will now go through these points, with particular reference to the use of military drones

THE PRINCIPLES OF HUMANITY, NECESSITY, PROPORTIONALITY AND DISTINCTION

The principle of Humanity is a fundamental pillar of international humanitarian law, which includes the regulative objective that certain acts of harm cannot be justified on any grounds, even those that may be considered legitimate in a situation of war. Closely linked to this is the so-called The Martens clause, which is considered a fundamental principle of Geneva law (named after the Russian jurist Fyodor Martens (1845-1909)): until exhaustive rules are drawn up on the laws of war, the population and belligerents are protected by the principles of customary international law of war. As regards the Martens clause, it is still not entirely clear whether it can be considered a principle of the law of war.

Many argue that the demonstration of the principle of humanity cannot be considered a principle of the law of war in itself. *"Rather, it serves as a moral guideline for locating the law of war (including rules on the conduct of hostilities) within international law. It ensures that the law of war does not become a separate system and that the rules and customs of the law of war may be interpreted in conformity with other rules of international law."*⁵¹ On this basis, I believe that the term 'principle of unnecessary suffering' is more appropriate and preferable to the principle of humanity. The use of the latter term is more justified, especially since it is precisely found in Article 35(2) of Additional Protocol No. 1, which states that: *'The use of weapons, munitions and*

⁵¹ Viola Vincze LL.M.: *The legality of the use of lethal autonomous weapon systems in hostilities* - Doctoral Thesis (2019), p. 9. Available on website: https://www.ajk.elte.hu/media/d8/77/0cb6814c7f2bcf8f910a35a019132d99f2f8e9ec616aa537dfb485b39ec0/AJDI_v%C3%A9d%C3%A9s_VinczeViola_t%C3%A9zisek.pdf (Retrieved 28.05.2023.)

*material or methods of warfare which cause unnecessary damage or unnecessary suffering shall be prohibited.*⁵²

A fundamental principle of international humanitarian law is to limit unnecessary suffering and harm to civilians in armed conflict. It is not the drone that is under scrutiny here, but the weapon that will be attached to it. It is important to note that when drones are used in warfare, the rules and regulations of international humanitarian law must be respected. It is therefore necessary to point out that no prohibited weapons (under international humanitarian law or specific treaties governing warfare) may be attached to a drone for the purpose of military operations in armed conflict.

By choosing weapons that are permitted under international humanitarian law and those that do not cause unnecessary injury or unnecessary suffering, we can comply with this principle. It therefore depends on the characteristics of the weapon used and the competence of the persons using it to carry out a given mission. Having reviewed the principle of unnecessary suffering, I thought it logically appropriate to review the principle of necessity.

The principle of necessity is to provide the military with the leeway necessary to achieve military objectives, both to justify the legitimacy of harmful acts against the enemy, such as attacks against the enemy's fighting soldiers, and to restrict such conduct, since unjustified harmful acts are unlawful, for example against the enemy's civilian population, wounded soldiers who are helpless, or attacks against soldiers who surrender.

The principle of military necessity requires combat forces to carry out only those acts that are necessary to achieve legitimate military objectives.⁵³ Beyond necessity, no targeting or attacking is allowed. It permits the destruction of property when the necessities

⁵² Decree-Law No 20 of 1989 promulgating Additional Protocols I and II to the Conventions relative to the Protection of Victims of War, done at Geneva on 12 August 1949

⁵³ R. Anthony Finn: *Developments and Challenges for Autonomous Unmanned Vehicles: a Compendium* (2010.) 172. p.

of war so require.⁵⁴ However, the destruction of property as an end in itself violates international law, since there must be a rational connection between the destruction of property and the defeat of the enemy forces.⁵⁵

During the war between America and the Taliban, US government officials expressed their views on drones as an invaluable tool against Al-Qaeda, the Taliban and other terrorist forces. Thanks to the cutting-edge technology built into today's drones, they offer precise targets for attacks. This gives both operators and advisors enough time to make the right decision on how to proceed with the target. Such technology can significantly reduce the number of violence, deaths and related fatalities against civilians in armed conflicts. In my opinion, this justifies the use of drones from a humanitarian law perspective, based on the principle of necessity. Following an overview of the principle of necessity, the next principle is the principle of proportionality, which follows from the principle of necessity.

The principle of proportionality requires the belligerent to assess the potential damage caused by the planned attack, as the attack must only cause damage that is absolutely necessary and must not exceed the military advantage that the attack would bring. The underlying aim of the proportionality principle is to strike a balance between military and human interests. The proportionality principle seeks to control and limit collateral damage to civilians and their property. Article 35(3) of Additional Protocol I states that: "*The use of methods or means of warfare which are intentionally or likely to cause widespread, lasting and serious damage to the natural environment is prohibited.*"⁵⁶

⁵⁴ R. Anthony Finn: *Developments and Challenges for Autonomous Unmanned Vehicles: a Compendium* (2010.) 173. p.

⁵⁵ R. Anthony Finn: *Developments and Challenges for Autonomous Unmanned Vehicles: a Compendium* (2010.) 174. p.

⁵⁶ Decree-Law No 20 of 1989 promulgating Additional Protocols I and II to the Conventions relative to the Protection of Victims of War, done at Geneva on 12 August 1949

The main aim of the provision is to reduce collateral damage in armed conflict and to make it clear that an unlimited number of means and methods of warfare cannot be used to attack the enemy. The Israeli Supreme Court in *Public Committee against Torture in Israel v. Government of Israel*⁵⁷ ruled that "*A civilian directly engaged in hostilities cannot be attacked if less harmful means can be used. In our domestic law, this rule is required by the principle of proportionality. Indeed, the military means chosen must be those which cause the least damage to the human rights of the person injured. Thus, if a terrorist who is directly involved in hostilities can be arrested, interrogated and brought to justice, these means must be used*".⁵⁸

Weaponised drones offer the possibility of using less destructive weapons and gaining greater transparency and control over firing decisions. The principle of proportionality will apply even if a legitimate target is targeted. Various factors must be taken into account, such as control of the target, choice of weapon, timing of the attack.

By using drones, operators can minimise collateral damage in armed conflict by taking all the above factors into account and applying the necessary principles. Thus, given the right circumstances, the use of military drones is compatible with the principle of proportionality. However, one of the most complex issues with regard to the use of military drones is the principle of distinction itself. How can a distinction between targets be made, is it possible at all, and is it justifiable from a humanitarian law perspective?

The principle of distinction is a principle involving multiple obligations to make a clear distinction between combatants and noncombatants, between combatants in uniform or with distinctive markings, between combatants and neutral actors (e.g. *UN peacekeeping forces, aid agencies*), between combatants and non-

⁵⁷ *Public Committee against Torture in Israel v. Government of Israel* (2006) HCJ 769/02 (Supreme Court of Israel).

⁵⁸ *Public Committee against Torture in Israel v. Government of Israel* (2006) HCJ 769/02 (Supreme Court of Israel).

combatants, between other protected persons. The distinction principle states that in armed conflict a clear distinction must be made between combatants and protected persons, civilians and military objects.

Article 48 of Additional Protocol 1 to the Geneva Convention states that "*In order to ensure respect for and protection of civilians and civilian property, the Parties to the conflict shall at all times distinguish between civilians and combatants and between civilian property and military targets and shall therefore only engage in hostilities against military targets.*"⁵⁹ Technology is now so advanced that drones are equipped with precision-guided munitions and advanced imaging technologies. This allows operators to identify individuals' faces very clearly, and thus distinguish them as legitimate targets or protected persons.

The use of armed drones has been favoured by the US in the fight against terrorism because of their ability to provide high-bandwidth satellite communications, sensing technologies and full motion imagery. This means that, objectively speaking, drones are capable of meeting the principle of distinction not only in theory but also in practice, given their technical capabilities.

⁵⁹ Decree-Law No 20 of 1989 promulgating Additional Protocols I and II to the Conventions relative to the Protection of Victims of War, done at Geneva on 12 August 1949

CONCLUSION

In this study I have tried to justify the use of military drones from a humanitarian law perspective. Drones, beyond altering the ability of parties to comply with the laws of war, affect the delicate balance between the principles of necessity and humanity, and force us to reconsider assumptions about the permissibility of collateral damage. The possibility of collateral damage has always been taken into account, not only because of the large number of deaths that have occurred, but also because of the tacit understanding that a trade-off must be made between the safety of the attacker and that of civilians living near military targets. Nevertheless, with the continued existence of technological asymmetry, one might expect the laws of war themselves (or the "laws of drone use" as something separate) to evolve along asymmetrical lines. This is why I felt it was justified to undertake research that sought to apply a very broad area of law - humanitarian law - to a specific social or military tool, military drones. My research has shown that my hypothesis has been confirmed, *i.e.* that the use of military drones can be justified from a humanitarian law perspective, provided that the right circumstances are given

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Navigating The Pandemic: Social-Legal Approaches for Establishing a Specialized Infectious Disease Hospital

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ABSTRACT

In accordance with Government Regulation "Perpres No. 52 of 2020," the construction of a Special Infection Hospital (Rumah Sakit Khusus Infeksi/RSKI) was completed, and the BMN administration was transferred to the Ministry of Defense. Currently, the RSKI functions as an emergency clinic dedicated to treating COVID-19 patients explicitly. Once the pandemic is declared over, the RSKI will serve as a medical clinic for maintenance purposes. This study aims to review the legal approaches involved in establishing the RSKI and identify the obstacles faced by Batam City in reducing the number of COVID-19 victims. To achieve this, socio-legal research was conducted, which involved collecting primary data through in-depth interviews with stakeholders and gathering secondary data through library research. All collected data were qualitatively analyzed. The findings indicate that the establishment of the RSKI is in accordance with Law Number 44 of 2009 on Hospital. However, Batam City encounters several challenges in reducing COVID-19 cases, including the low vaccination rate among the population and a lack of health facilities, infrastructure, and resources at the Galang Island Special Hospital for the RSKI.

Keywords: *Construction, Special Hospital for Infection, Health Service, Batam City.*



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INTRODUCTION

In early 2020, the world was taken aback by the emergence of the COVID-19 virus in China's Wuhan Province.¹ The global community swiftly turned its attention to this new infectious disease, and on January 30, the World Health Organization (WHO) declared COVID-19 a public health emergency of international concern.² The rapid spread of COVID-19 across borders occurred in a relatively short span of time.³ In response to the potential spread of the pandemic, many countries, regardless of whether they had identified cases or not, implemented various policies to prepare for possible outbreaks.⁴

These measures included expanding prevention campaigns, establishing healthcare facilities, developing protocols for handling cases, and disseminating reliable public information, all of which began as early as 2020.⁵ However, a different situation unfolded in Indonesia, where public officials disregarded the threat posed by the pandemic, leading to a lack of urgency in implementing preventive policies.⁶

President Joko Widodo (Jokowi) has issued a new regulation concerning the construction of observation and shelter facilities on

¹ Marco Ciotti et al., "The COVID-19 Pandemic," *Critical Reviews in Clinical Laboratory Sciences* 57, no. 6 (August 2020): 365–88, <https://doi.org/10.1080/10408363.2020.1783198>.

² Muhyiddin, "Covid-19, New Normal Dan Perencanaan Pembangunan Di Indonesia," *The Indonesian Journal of Development Planning* 4, no. 2 (2020): 240–52, <https://doi.org/http://dx.doi.org/10.36574/jpp.v4i2.118>.

³ Riyanti Djalante et al., "Review and Analysis of Current Responses to COVID-19 in Indonesia: Period of January to March 2020," *Progress in Disaster Science* 6 (2020), <https://doi.org/https://doi.org/10.1016%2Fj.pdisas.2020.100091>.

⁴ Verina Ruth Krisnandika, Darlin Aulia, and Luluul Jannah, "Dampak Pandemi Covid-19 Terhadap Pengangguran Di Indonesia," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 5, no. 4 (2021): 720–29, <https://doi.org/http://dx.doi.org/10.58258/jisip.v5i4.2229>.

⁵ Siti Setiati and Muhammad Khifzhon Azwar, "COVID-19 and Indonesia," *Acta Medica Indonesiana* 52, no. 1 (2020): 84–89.

⁶ Susan Olivia, John Gibson, and Rus'an Nasrudin, "Indonesia in the Time of Covid-19," *Bulletin of Indonesian Economic Studies* 56, no. 2 (2020): 143–74, <https://doi.org/https://doi.org/10.1080/00074918.2020.1798581>.

Galang Island, Riau Islands, as part of the fight against COVID-19 and other emerging infectious diseases.⁷ This regulation acknowledges the continuous increase in the spread of COVID-19 and its devastating impact, classifying it as a pandemic. It is outlined in Presidential Regulation (Perpres) Number 52 of 2020, which specifically addresses the construction of Observation and Shelter Facilities on Galang Island to combat COVID-19 and other emerging infectious diseases.

Hospitals are crucial health service institutions that form an integral part of the healthcare system, characterized by complex organization and features.⁸ The construction of a Special Infection Hospital (Rumah Sakit Khusus Infeksi/RSKI) on Galang Island, Batam, was initiated to proactively respond to the ongoing Covid-19 pandemic in Indonesia.⁹

This initiative is based on Presidential Regulation Number 52 of 2020, which focuses on the construction of observation and shelter facilities to combat Corona Virus Disease 2019 (Covid-19) and other emerging infectious diseases on Galang Island, Batam, in the Riau Islands Province.¹⁰ Currently, the RSKI operates as a hospital dedicated to managing Covid-19 patients with mild to moderate symptoms.¹¹ The Secretary General of the Ministry of Defense highlighted the significant role played by the Indonesian National

⁷ Chandra Gian Asmara, "Jokowi Terbitkan Perpres RS Khusus Covid-19 Di Pulau Galang," CNBC Indonesia, 2020.

⁸ Adelia Hartika, Mutiara Fitridiani, and Masduki Asbari, "Analisis Penerapan ISO 9001:2015 Di Rumah Sakit: Sebuah Narrative Literature Review," *Journal of Information Systems and Management (JISMA)* 2, no. 3 (2023): 16–24, <https://doi.org/https://doi.org/10.4444/jisma.v2i3.308>.

⁹ Ari Binsar Sihombing and Margaretha Hanita, "Pembangunan Infrastruktur Hinterland Di Kota Batam Dalam Perspektif Ketahanan Nasional," *Innovative: Journal of Social Science Research* 3, no. 2 (2023): 13608–27, <https://doi.org/https://doi.org/10.31004/innovative.v3i2.1969>.

¹⁰ Fransiskus Irwan Widjaja et al., "STT REAL Batam Peduli: Mendukung Program Pemerintah Melalui Pemberian Masker Di Rumah Sakit Demi Memutuskan Mata Rantai Penyebaran Covid-19," *Real Coster : Jurnal Pengabdian Kepada Masyarakat* 3, no. 2 (2020): 39–45, <https://doi.org/https://doi.org/10.53547/rcj.v3i2.126>.

¹¹ Kementerian Pertahanan Republik Indonesia, "Sekjen Kemhan Pimpin Rapat Bahas Pengelolaan RSKI Pulau Galang," Kementerian Pertahanan Republik Indonesia, 2021.

Armed Forces (TNI) in handling the Covid-19 crisis, including their involvement in ongoing vaccination efforts. To combat Covid-19, the TNI has established three operational command posts (Kogasgabpad), namely Wisma Athletes, Indrapura Hospital in Surabaya, and Galang Island Hospital in Batam. These Kogasgabpad operations are carried out under the guidance of the TNI Commander.¹²

In accordance with Presidential Decree Number 52 of 2020, the management of the Special Infection Hospital (RSKI) was transferred to the Ministry of Defense upon its completion. To facilitate this process, the Ministry of Defense established a Research and Verification Team responsible for conducting a comprehensive review of the necessary documentation. On December 30, 2020, the Minister of Defense officially confirmed the ministry's willingness to accept the transfer of status.

Following the transfer, the Ministry of Defense assumed responsibility for the management of the RSKI. Throughout the Covid-19 pandemic, the RSKI functioned as a specialized hospital dedicated to the treatment of COVID-19 patients. Upon the declaration of the pandemic's end, the RSKI transitioned to operating as a hospital primarily serving defense-related purposes.

The construction of the hospital facilities was divided into three distinct zones. Zone A encompasses various supporting buildings, including mess facilities for officers, doctors, and nurses, sterilization buildings, a pharmacy building, nutrition facilities, laundry facilities, a warehouse, and a power house. Zone B comprises shelters and supporting facilities such as isolation rooms, observation rooms, laboratories, sterilization rooms, general waste treatment areas, a central medical gas facility, corpse handling installations, helicopter pads, and utility zones. Lastly, Zone C is designated for future development by utilizing reserved land reserves.

¹² *Ibid.*

From April 2021 to May 1, 2021, a total of 352 individuals were registered as patients at the Special Hospital for Infection (RSKI) on Galang Island. Out of these, 69 patients were discharged and instructed to self-isolate at home. In response to the COVID-19 pandemic, it is crucial to provide necessary and critical support to healthcare workers, ensuring they have the essential information, procedures, and tools to work safely and effectively. Medical personnel play a pivotal role in responding to the COVID-19 virus and serve as the backbone of a country's defense in limiting or preventing the spread of the disease.

Working on the frontline, healthcare workers deliver vital services to individuals suspected or confirmed to have COVID-19, often in challenging circumstances.¹³ These dedicated professionals face an increased risk of contracting the virus while striving to protect the broader community. They may encounter dangers such as psychological stress, fatigue, mental exhaustion, or even stigma.¹⁴ The World Health Organization (WHO) acknowledges the tremendous task and responsibility borne by healthcare facility personnel and emphasizes the importance of safeguarding their well-being. Yet, when the pandemic is declared over, the RSKI will serve as a medical clinic for maintenance purposes.

Based on the background, this study aims to review the legal approaches involved in establishing the RSKI and identify the obstacles faced by Batam City in reducing the number of COVID-19 victims. Accordingly, it poses the following questions: 1) How is the implementation of government policy regulations in the construction of a Special Hospital for Infection (RSKI) on Galang Island based on Presidential Regulation No. 52 of 2020 regarding the Construction of

¹³ Gerardus Gegen and Aris Prio Agus Santoso, "Perlindungan Hukum Tenaga Kesehatan Di Masa Pandemi Covid-19," *Qistie: Jurnal Ilmu Hukum* 14, no. 2 (2021): 28-42, <https://doi.org/https://dx.doi.org/10.31942/jqi.v14i2.5589>.

¹⁴ Aziz Yogo Hanggoro et al., "Dampak Psikologis Pandemi Covid-19 Pada Tenaga Kesehatan: A Studi Cross-Sectional Di Kota Pontianak," *Jurnal Kesehatan Masyarakat Indonesia*, 2020, <https://doi.org/10.26714/jkmi.15.2.2020.13-18>.

Observation and Shelter Facilities in Countering Corona Virus Disease 2019 (COVID-19)? 2) What are obstacles and challenges in the government's policy of constructing a Special Infection Hospital (RSKI) on Galang Island?

HARMONIZATION OF PERPRES NUMBER 52 OF 2020 CONCERNING THE CONSTRUCTION OF A SPECIAL INFECTION HOSPITAL AND LAW NUMBER 44 OF 2009 CONCERNING HOSPITAL

A. Requirements for Hospital Establishment Based on Law Number 44 of 2009 concerning Hospital

Health, being an essential aspect of welfare and human rights, is a responsibility that the State must fulfill in line with the aspirations of the Indonesian nation, as stated in the Preamble to the Constitution of the Republic of Indonesia and Pancasila. The State is obligated to make every possible effort to enhance public health, guided by the principles of non-discrimination, participation, and protection. This implies that the development of Indonesia's human resources must contribute to the nation's resilience, competitiveness, and overall progress.¹⁵ In order to promote national development and improve public health, it is necessary to establish effective healthcare facilities.

Hospitals are required to meet certain criteria related to location, infrastructure, building structure, human resources, pharmacy services, and equipment. The establishment of hospitals can be carried out by the government, local authorities, or private entities. If

¹⁵ Bunga Agustina, "Kewenangan Pemerintah Dalam Perlindungan Hukum Pelayanan Kesehatan Tradisional Ditinjau Dari Undang-Undang Republik Indonesia Nomor 36 Tahun 2009 Tentang Kesehatan," *Jurnal Wawasan Yuridika* 32, no. 1 (2015): 82-98, <https://doi.org/http://dx.doi.org/10.25072/jwy.v32i1.91>.

the government or regional governments establish hospitals, they must be in the form of Technical Implementing Units under the jurisdiction of relevant health agencies, specific governmental bodies, or regional technical institutions.

The management of these hospitals should be overseen by either a Public Service Agency or a Regional Public Service Agency, in accordance with the provisions of the applicable legislation. On the other hand, private sector hospitals must be registered as legal entities solely engaged in the provision of healthcare services. This means that a hospital's scope of activities should be limited to the healthcare sector and should not involve any other field of business. In essence, Article 7 of the law stipulates that private sector hospitals must be registered as legal entities exclusively involved in the healthcare sector. This implies that the hospital's operations should be focused solely on healthcare services and should not be mixed with any other business activities.¹⁶

B. Batam City Government's Policy in Handling Covid-19: Establishing a Special Infection Hospital (RSKI) on Galang Island

The outbreak of the Covid-19 virus has caused a multitude of problems in Indonesia, encompassing health, economic, social, cultural, security, and even governance aspects. Specifically concerning the government, challenges have arisen in terms of administration, particularly with regard to the relationship between the central government and regional governments in addressing the spread of Covid-19, particularly in decentralized health matters. Here are the policies implemented by the Batam Regional Government in response to Covid-19.

The issues emerged when President Joko Widodo selected Natuna Island as a quarantine location for 238 Indonesian citizens (WNI) who were evacuated from Wuhan City, in an effort to contain

¹⁶ Habib Adjie, *Meneropong Khazanah Notaris Dan PPAT Indonesia: (Kumpulan Tulisan Tentang Notaris Dan PPAT)* (Bandung: Citra Aditya Bakti, 2013).

the spread of Covid-19. This decision sparked protests by the residents of Natuna on February 1, 2020.¹⁷ In response, the Natuna Regency Government issued Circular (SE) of the Natuna Regional Secretary Number 8000/DISDIK/46/2000 on February 2, 2020, which mandated the suspension of teaching and learning activities in Natuna Regency from February 3-17, 2020. However, this circular was later revoked following the issuance of the Director General of Regional Autonomy's Circular Number T.422.3/666/OTDA, which ordered the resumption of school activities for post-quarantine students from Wuhan.

Another issue arose when President Joko Widodo announced on March 2, 2020, that two Indonesian citizens residing in the country had tested positive for Covid-19, without disclosing the patients' identities. However, shortly thereafter, the Mayor of Depok revealed the patients' personal information, including their names and addresses, which caused harm to the patients as their private data became public knowledge.¹⁸

The different approaches taken by government officials at both the central and regional levels in disseminating information to the public regarding Covid-19 in Indonesia highlight the absence of a centralized communication channel. This lack of responsiveness by the central government in addressing the presence of Covid-19 in Indonesia has resulted in the proliferation of confusing news from both the central and local governments, leading to various negative reactions within the community. Actions such as panic buying, hoarding essential goods, and stockpiling masks and disinfectants require immediate government intervention.¹⁹

Moreover, several regions have implemented lockdown policies or regional quarantines of varying scales. On March 16, 2020, the

¹⁷ Raphael Hamiko, "Kewenangan Dinas Kesehatan Provinsi Sumatera Barat Dalam Urusan Pemerintah Bidang Kesehatan Menurut Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintah Daerah" (Universitas Bung Hatta, 2020).

¹⁸ *Ibid.*

¹⁹ *Ibid.*, P. 13.

President emphasized in a video broadcast by the Presidential Secretariat that the authority to implement lockdown measures, whether on a national or regional level, lies solely with the central government and should not be undertaken by regional governments. Furthermore, there have been conflicting policies regarding restrictions on the use of online motorcycle taxi (ojol) transportation services.²⁰ These disparate reactions from the central and regional governments have sparked a debate regarding the actual authority in handling Covid-19 affairs. Thus, coordination between the central and regional governments is necessary to address the lack of uniformity in response to this pandemic.

Considering that Covid-19 is classified as a pandemic, it qualifies as an extraordinary public health event that poses risks across regions and countries. Consequently, the applicable provisions refer to Law Number 6 of 2018 concerning Health Quarantine. Drawing upon the development theory utilized in this study, it can be asserted that the establishment of the Special Infection Hospital (RSKI) on Galang Island aligns with Presidential Regulation No. 52 of 2020, which pertains to the construction of observation and shelter facilities to combat the Covid-19 outbreak or any other emerging infectious diseases on Galang Island in Batam City, Riau Islands Province. The President has entrusted the Ministry of Public Works and Public Housing (PUPR) with the responsibility of constructing observation and shelter facilities along with the necessary infrastructure, facilities, and public utilities on Galang Island to effectively combat Covid-19 or other emerging infectious diseases.

²⁰ Minister of Transportation of the Republic of Indonesia, "Rule of Minister of Transportation Number 18 of 2020," 2020., <http://www.dephub.go.id/>

OBSTACLES AND CHALLENGES IN THE GOVERNMENT'S POLICY OF CONSTRUCTING A SPECIAL INFECTION HOSPITAL (RSKI) ON GALANG ISLAND

A. Central Government Policy on Repatriation of Indonesian Migrant Workers through Batam City Entry

The information and analysis below are a flashback to events during the COVID-19 outbreak. It is crucial to present this to highlight the challenges faced by stakeholders in implementing health regulations and protocols for COVID-19 in Batam City.

On Friday, May 15, 2021, the Ministry of Health issued a circular letter outlining procedures for the return of Indonesian citizens and the entry of foreigners through all entry points in Indonesia, in an effort to mitigate the outbreak of the coronavirus. The circular was issued following the return of hundreds of thousands of migrant workers to Indonesia. The head of the Indonesian Migrant Workers Protection Agency (BP2MI) reported that approximately 126,742 Indonesian migrant workers had returned to Indonesia via land, sea, or air transportation.

Unfortunately, some of them were not tested for Covid-19 upon arrival, despite President Joko Widodo's warning about the potential for a second wave of infections caused by their return. Upon arrival, Indonesian citizens and Indonesian Red Cross (PMI) workers only undergo basic health checks, such as temperature checks and heart rate assessments.²¹

According to the Ministry of Health's circular, individuals arriving in Indonesia are required to follow health quarantine

²¹ Kedutaan Besar Republik Indonesia Paramaribo Republik Suriname Merangkap Republik Kooperatif Guyana dan Caricom, "Informasi Protokol Kesehatan Bagi WNI Dan WNA Yang Akan Ke Indonesia (Surat Edaran No. 8 Tahun 2021 Terbaru)," Kedutaan Besar Republik Indonesia Paramaribo Republik Suriname Merangkap Republik Kooperatif Guyana dan Caricom, 2021.

protocols and undergo additional examinations, including interviews and tests such as rapid tests or polymerase chain reaction (PCR) tests. Every Indonesian citizen is provided with an English health certificate issued by a health facility in their country of origin, which is valid for a maximum of seven days from the date of issuance.

During an interview with Mr. Alex, an employee at Galang Island Hospital, he explained the repatriation procedure for Indonesian migrant workers: "The documents of the repatriated workers are validated by the Port Health Office (KKP) doctors at the port, airport, and land border crossings. Even if they test negative for the coronavirus, they still undergo additional health checks. If no diseases are found, the Port Health Office (KKP) officer will issue a health permit and health alert card to the individual concerned." He further added: "After clearing the Port Health Office (KKP), if these individuals wish to continue their journey to their respective hometowns, they are required to obtain a travel document from the local Covid-19 Handling Task Force.

The health permit issued by the Port Health Office (KKP) is also provided to the local Neighborhood Association (RT) and Community Association (RW) so that the local community health center (*puskesmas*) can monitor them during their self-isolation at home. If an Indonesian citizen arrives in Indonesia without a health certificate, the Port Health Office (KKP) will conduct health checks such as rapid tests or PCR tests. While awaiting the test results, the Indonesian citizen will be kept in a temporary quarantine area. If the PCR test results are positive, they will be referred to an emergency hospital or a designated referral hospital in the local area".

B. Inadequate Enforcement of Local Government Laws in Dealing with Crowds in Public Places

In response to the need for stricter adherence to health protocols, the government introduced Presidential Instruction Number 6 of 2020, titled "Improvement of Discipline and Law

Enforcement of Health Protocols in the Prevention and Control of Corona Virus 2019." These instructions are designed to enhance the legal framework for combating COVID-19 and exhibit characteristics that align well with the demands of the situation.

Unlike regular legislation, presidential instructions, often referred to as "policy rules" or "*beleidsregels*," serve as policy guidelines rather than formal laws. They provide directions and guidance for the implementation of tasks and responsibilities related to handling the pandemic.²²

The issuance of Presidential Instruction Number 6 of 2020 is deemed suitable for addressing the challenges posed by the pandemic for three primary reasons, as highlighted by Bagir Manan. Firstly, it supports the need for rapid societal change, encouraging the administration to play a more prominent role in shaping laws and regulations.²³ Secondly, it establishes a clear mandate for the Governors, Regents, and Mayors, as the instruction is directed towards these authorities.

Finally, it emphasizes the collective effort required from all segments of society to enhance discipline and enforce health protocols in the prevention and control of COVID-19.²⁴ To aid in this endeavor, the TNI Commander and Police Chief are instructed to provide support to the Governors, Regents, and Mayors by utilizing their authority to supervise protocol compliance, intensify patrols, and engage in community development initiatives aimed at preventing and controlling COVID-19.²⁵

Mr. Alex stressed the crucial role of Governors, Regents, and Mayors in extensively promoting the adoption of health protocols for the prevention and control of COVID-19. They are expected to engage

²² Tri Wahyuni, "Efektivitas Peraturan Kepala Daerah Tentang Peningkatan Disiplin Dan Penegakan Hukum Protokol Kesehatan Di Lingkungan Pemerintah Daerah," *Jurnal Administrasi Publik* 16, no. 2 (2020): 167-83, <https://doi.org/https://doi.org/10.52316/jap.v16i2.52>.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

the community, religious leaders, traditional leaders, community leaders, and other relevant stakeholders while also formulating and implementing governor/regent/mayor regulations.

One of the articles in the Presidential Instruction highlights the obligation to create such regulations, which should include provisions like mandatory compliance with health protocols for individuals, business actors, managers, organizers, and those responsible for public facilities. Additionally, these regulations by regional heads must specify sanctions for violations of health protocols in public places and facilities, committed by individuals, business actors, managers, organizers, or those in charge. Responding promptly to the Presidential Instruction, the local government swiftly issued a Regulation on the Enforcement of Health Protocols.

C. Lack of Public Awareness of Health Protocols

The global outbreak of COVID-19 caused by the SARS-CoV-2 virus has created a sense of unease worldwide. This pandemic has affected not only Indonesia but also numerous countries around the globe. Consequently, the World Health Organization (WHO) declared COVID-19 a pandemic and called for urgent international action to break the chain of transmission.

The rapid spread of this disease is evident through the increasing number of cases and deaths. From February 2020 to July 2020, the number of cases continued to rise in Indonesia, particularly in the City of DKI Jakarta, illustrating that Indonesia is still grappling with COVID-19. The lack of public compliance with government-mandated COVID-19 health regulations and protocols can be attributed to cognitive biases, which are systematic errors in thinking that influence individuals' decisions and judgments. This noncompliance is becoming increasingly prevalent in all provinces of Indonesia. Despite the delayed response in handling this COVID-19

situation, the government must take various measures to address this issue.²⁶

Adherence to health protocols is crucial during a pandemic. Suni (2020) also outlined that COVID-19 health protocols encompass the prevention, detection, and response phases. Buana and Suni's viewpoint is agreed upon, emphasizing the significance of health protocols as we enter the "new normal" era following COVID-19. Both the government and the community play pivotal roles in reducing further transmission.

The Indonesian Ministry of Health (2020) has also issued guidelines on preparedness for dealing with the spread of COVID-19. Individual preventive measures during the prevention phase include wearing masks, gloves, and using hand sanitizers or disinfectants; washing hands with soap; avoiding touching the face; refraining from shaking hands; avoiding crowded places or gatherings; refraining from touching objects or surfaces in public areas; avoiding the use of public transportation; maintaining a minimum distance of two meters from others when outdoors; and promptly visiting the nearest health facilities if experiencing symptoms of illness.²⁷

It is obvious that many people remain "stubborn" during this COVID-19 pandemic era. These individuals require specific education and understanding of COVID-19, including its mode of transmission, preventive measures, the associated risks and dangers, and the high probability of transmitting the virus to others. It is crucial to discourage "stubborn" behavior such as venturing outside without wearing masks, which increases the risk of infection. It is advisable to minimize leaving the house in order to reduce interactions with other individuals. If it is necessary to go out, it is essential to adhere to

²⁶ Rafi Ramadhani Elgaputra et al., "Implementasi Sosialisasi COVID-19 Dalam Upaya Meningkatkan Kesadaran Masyarakat Terhadap Protokol Kesehatan Di Kota Jakarta," *Jurnal Layanan Masyarakat (Journal of Public Services)* 4, no. 2 (2020): 423-33, <https://doi.org/https://doi.org/10.20473/jlm.v4i2.2020.423-433>.

²⁷ *Ibid.*

health protocols, such as maintaining physical distance, regularly washing hands or using hand sanitizers, and wearing masks.

D. Many People have not Received the COVID-19 Vaccination

The escalating COVID-19 pandemic has significantly impacted society's social, economic, and psychological well-being. It has disrupted public community activities, crippled the economy, and caused psychological disorders. Consequently, this situation has directly contributed to an increase in crime rates, necessitating additional efforts from the police. As Indonesia strives towards a "new normal," the role of the National Police becomes crucial. Despite the government's efforts to mitigate the impact of the pandemic, these measures have not proven effective enough. The government has emphasized that COVID-19 vaccination is mandatory for the Indonesian population and is regulated by law.

During an interview, Mr. Alex further highlighted the obligation to receive the COVID-19 vaccination, which is stipulated in Law Number 4 of 1984 concerning epidemic outbreaks. The widespread issue of the COVID-19 coronavirus has instilled public concern, given its potential for causing fatalities. Consequently, the regulations and policies established by the government have a significant impact on all sectors, including the economy and social life. Recent reports indicate that approximately 50 million people are at risk of losing their jobs due to the repercussions of the COVID-19 pandemic. The potential rise in unemployment is likely to lead to further social problems. Additionally, the pandemic has eroded trust and led to suspicion among individuals, including those within our social circles or whom we encounter. To address this, education initiatives on vaccine injection, organized by the Binmas unit, are crucial in raising awareness and promoting better health practices for individuals and their families.

E. Lack of Health Facilities, Facilities, and Infrastructure at the Special Hospital for Infection (RSKI) on Galang

In order to prevent indirect morbidity and mortality, as well as the acute deterioration of chronic diseases due to interrupted services, countries must prioritize essential health services during the acute phase of the COVID-19 pandemic. High-priority service categories include:

- 1) Essential prevention and treatment services for infectious diseases, including immunization.
- 2) Reproductive health services, including care during pregnancy and childbirth.
- 3) Core services for vulnerable groups, such as infants and the elderly.
- 4) Provision of medicines, supplies, and support from healthcare workers for the management of chronic diseases, including mental health disorders.
- 5) Facility-based critical care.
- 6) Management of emergency health disorders and acute presentations requiring timely intervention.
- 7) Support services, such as diagnostic imaging, laboratory services, and blood bank services.²⁸

Based on the observation, the caseload of COVID-19 and the related pressure on the healthcare system begin to decrease, it is necessary to restart various services that were previously suspended. The decision to safely resume these services will depend on the specific circumstances and the community's situation. For instance, the initiation of cancer treatment must carefully consider the benefits of early intervention and the associated risks of immunosuppression. In many places, the temporary suspension of certain health services has resulted in a significant backlog of much-needed care. Prevention programs, including screening and immunizations, may require follow-up campaigns to address missed opportunities.

²⁸ World Health Organization, *Maintaining Essential Health Services: Operational Guidance for the COVID-19 Context* (Geneva: World Health Organization, 2020).

The temporary halt of surgical services, which were initially deemed elective procedures, can quickly transition into urgent needs. However, resuming surgery services requires a well-planned and coordinated strategy due to the demand for healthcare personnel, close contacts, and the associated material resources such as operating tables and complete personal protective equipment (PPE). Planning should take into account the potential increase in the number of requests and the urgency of health services compared to the previous baseline.

Furthermore, it is essential to address the lack of health facilities, facilities, and infrastructure at the Special Hospital for Infection (RSKI) on Galang Island. Adequate resources are crucial to provide comprehensive healthcare services, including the management of infectious diseases like COVID-19. Investing in and improving the health infrastructure on Galang Island will enhance the capacity to respond effectively to public health emergencies and ensure the provision of quality care to patients in need.

F. Post COVID-19 Pandemic Status of Infrastructure at the Special Hospital for Infection (RSKI) on Galang Island

In short, the establishment of RSKI was initiated in early March 2020 when COVID-19 entered Indonesia. The National Disaster Mitigation Agency (BNPB), through the COVID-19 Handling Task Force at that time, along with other relevant agencies, decided to establish a hospital specifically dedicated to treating COVID-19 patients. This was particularly crucial for Indonesian citizens abroad who needed repatriation due to the pandemic.²⁹

RSKI Galang was the first hospital built to handle COVID-19 patients. Since its inception on April 6, 2022, RSKI Galang had treated

²⁹ BatamNow, "BNPB Serahkan Status Penggunaan BMN RSKI Pulau Galang Ke Kementerian Pertahanan," BatamNow, 2022.

over 21,000 patients. As of May 2022, there had been no COVID-19 patients admitted to the hospital.³⁰

Due to a decrease in COVID-19 cases at RSKI Galang, the National Disaster Mitigation Agency (*Badan Nasional Penanggulangan Bencana/BNPB*) transferred the state property (*Barang Milik Negara/BMN*) usage status of the Special Infection Hospital (RSKI) on Galang Island to Kodam I Bukit Barisan, Ministry of Defense (Kemenhan). The status transition was marked by the signing of the handover and acceptance report (*Berita Acara Serah Terima/BAST*) for state property (BMN) at RSKI Galang. Lilik Kurniawan, representing the Ministry of Public Works and People's Housing, Batam Authority, officially handed over the BMN to the Ministry of Defense through Kodam I Bukit Barisan on December 22, 2022. The military unit received assets such as land, buildings, equipment, and machinery.³¹ The transfer of RSKI Galang was in accordance with Presidential Regulation No.52 of 2020 concerning the Construction of Observation and Shelter Facilities in Combating Covid-19 on Galang Island, Batam City.³²

³⁰ Theophilus Yanuarto, "Meski Pasien Tidak Ada, RSKI Covid Pulau Galang Tetap Siaga," Badan Nasional Penanggulangan Bencana, 2022.

³¹ Fachri Audhia Hafiez, "Alih Status, Pengelolaan RSKI Pulau Galang Diserahkan Ke Kemenhan," medcom.id, 2022.

³² BatamNow, "BNPB Serahkan Status Penggunaan BMN RSKI Pulau Galang Ke Kementerian Pertahanan."

CONCLUSION

The establishment of hospitals is regulated by Law Number 44 of 2009, which outlines the requirements for obtaining an Establishment Permit. These requirements include meeting location, building, infrastructure, human resources, pharmacy, and medical equipment standards. Hospitals are also granted legal protection and responsibilities under this law, which include financing protection, recording and reporting protection, licensing for establishment, guidance and supervision, and legal sanctions for violations. The process of utilizing Camp Vietnam as an emergency hospital for the Covid-19 outbreak can be initiated by the local government after submitting a new application for building permits. This process involves technical and administrative stages to transfer the building's function.

However, there are several obstacles and challenges faced in the government's policy of constructing a Special Infection Hospital (RSKI) on Galang Island. Firstly, the repatriation of Indonesian Migrant Workers (TKI) and Indonesian Migrant Workers (PMI) through the Batam City Entrance presents challenges due to the need to establish procedures for their return and the emergence of new variants of COVID-19, such as the variant from India. Secondly, the local government's enforcement of laws in dealing with crowds in public places is not yet maximized, which contributes to the inadequate control of health protocols. Thirdly, there is a lack of public awareness regarding health protocols, leading to low compliance among the population. Furthermore, a significant number of people have not yet received the COVID-19 vaccination, posing a challenge to achieving herd immunity and reducing the transmission of the virus. Lastly, there is a lack of health facilities, facilities, and infrastructure at the Special Hospital for Infection (RSKI) on Galang Island, which hampers the capacity to provide comprehensive

healthcare services, particularly in managing infectious diseases like COVID-19.

Addressing these challenges requires concerted efforts from the government, local authorities, healthcare providers, and the community. Strengthening law enforcement, intensifying public awareness campaigns, expanding vaccination programs, and investing in the necessary health facilities and infrastructure are crucial steps towards effectively managing the COVID-19 pandemic and ensuring the provision of quality healthcare services.

Since COVID-19 cases at RSKI Galang was declined, the National Disaster Mitigation Agency (BNPB) handed over and transferred the usage status of State Property at the RSKI on Galang Island to Kodam I Bukit Barisan, Ministry of Defense on December 22, 2022.

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Protection and Empowerment of Farmers: Legal Policy Framework Beyond Farmer Insurance

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ABSTRACT

The welfare paradigm for the community is always related to the policy model that will be issued by the government and local governments. Legal policy is an instrument in an effort to provide justice, legal certainty and benefits for the community. Indonesia as an agrarian country needs protection for the development of the farming system for farmers by providing welfare guarantees for farmers. This is inseparable from the legal instruments that must be owned by the state in order to encourage concrete protection to farmers in the event of crop failure. Law of the Republic of Indonesia No. 19 of 2013 on the Protection and Empowerment of Farmers is a basic instrument in an effort to provide protection to farmers, especially on farmer insurance and the existence of the Minister of Agriculture Regulation No. 40 of 2015 on the Facilitation of Agricultural Insurance is a derivative of the protection of farmers. But the current problem is needed to strengthen the understanding of farmers to be part of the legal policy efforts of farmers in order to provide protection to farmers. This research uses a qualitative method with a normative approach and analyzes in depth the existing conditions.

Keywords: Policy, Law, Insurance and Farmers

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INTRODUCTION

Food security exists when all people at all times have physical, social and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life (Declaration of the World Summit on Food Security, 2009).

¹ Pancasila and the 1945 Constitution of the Republic of Indonesia mandate that the State has the responsibility to protect the entire Indonesian nation and promote public welfare, educate the nation's life and realize social justice for all Indonesian people. In the fifth principle of Pancasila and the preamble of the 1945 Constitution of the Republic of Indonesia, it is clearly stated that social justice for all Indonesian people is the basis of one of the nation's development philosophies, so that every Indonesian citizen is entitled to welfare. Therefore, every Indonesian citizen is entitled and obliged according to their ability to participate in business development to improve welfare, especially in the field of Agriculture.

In line with the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia, one of the objectives of Agricultural development is directed at improving the welfare of Farmers. Farmers have contributed significantly to agricultural development and rural economic development. Farmers as actors of agricultural development need to be given protection and empowerment to support the fulfilment of food needs which are the basic rights of everyone in order to realize food sovereignty, food independence and food security in a sustainable manner.

In organizing agricultural development, farmers have a central role and make a major contribution². The main actors of agricultural

¹ Margret Vidar, *Soil and agriculture governance and food security*, *Soil Security* 6 (2022), p. 3. <https://doi.org/10.1016/j.soisec.2021.100027>

² Porth, Lysa and Porth, Lysa and Tan, Ken Seng and Zhu, Wenjun, *A Relational Data Matching Model for Enhancing Individual Loss Experience: An Example from Crop Insurance* (July 24, 2019). *North American Actuarial Journal*, 23(4), 551-572., Available at SSRN: <https://ssrn.com/abstract=2784735> or <http://dx.doi.org/10.2139/ssrn.2784735>

development are farmers, who generally operate on a small scale, with an average farm size of less than 0.5 hectares, and some farmers do not even own their own farmland or are called tenant farmers, or even farm laborers. Farmers generally have a weak position in obtaining production inputs, farm business financing, and market access.

Government policies that have been pursued are generally limited to solving the problem of capital shortages. Various (subsidized) credit schemes have been pursued and various improvements have been made on an ongoing basis. Some of these problems have been solved. But it is also undeniable that the scarcity of capital to apply more productive technologies is still a routine problem faced by most farmers. To solve the problem of the absence of effective protection, the strategy that has been pursued is indirect and ad hoc. To illustrate, for farmers who experience a crop failure³, the policy is to provide free seeds, irrigation pumps, or loan forgiveness. However helpful this may be, it does not constitute a systematic and systemic protection system. Meanwhile, the informal protection system based on local wisdom, which is generally an integral part of the social safety net traditionally developed by farming communities, is currently increasingly less effective. This is because its pillars are increasingly fragile, eroded by modernization.⁴

As mandated by the law, the government must take an important role in the development of agricultural insurance⁵ as a form

³ Osgood, Daniel and Powell, Bristol and Diro, Rahel and Farah, Carlos and Enenkel, Markus and Brown, Molly E and Husak, Gregory and Blakeley, S. Lucille and Hoffman, Laura and McCarty, Jessica, Farmer Perception, Recollection, and Remote Sensing in Weather Index Insurance for Agriculture in the Developing World: An Ethiopia Case Study (August 31, 2018). Available at SSRN: <https://ssrn.com/abstract=3242142> or <http://dx.doi.org/10.2139/ssrn.3242142>

⁴ Andi Amran Sulaiman et.al. *Asuransi Pengayom Petani Pembelajaran dan Arah Pengembangan*, Jakarta: Penerbit IAARD PRESS Badan Penelitian dan Pengembangan Pertanian 2018, p. 4.

⁵ Baumgärtner, Stefan and Quaas, Martin F., *Agro-Biodiversity as Natural Insurance and the Development of Financial Insurance Markets* (September 1, 2008). *AGROBIODIVERSITY, CONSERVATION AND ECONOMIC DEVELOPMENT*,

of protection for farmers. In a market mechanism with economic principles that prioritize profits, farmers often do not receive protection. This is where the government plays a role, from policy-making to operational support in the field⁶, to protect farmers. For implementation in the field, the government needs to anticipate various obstacles that arise. One that needs to be considered is systemic risk, which is the risk arising from the failure of the agricultural sector, causing disruption to other sectors. The impact of losses from these risks can be substantial, justifying the need for the government to directly control agricultural insurance. The social purpose of agricultural insurance is to ensure a level of economic security for all agricultural producers⁷. In particular, those involved in most subsystems of agricultural production. ⁸

Law No. 19 of 2013 on Farmer Protection and Empowerment regulates agricultural insurance as one of the instruments to protect farmers. The Ministry of Agriculture has piloted an indemnity-based agricultural insurance program for rice production (AUTP) since 2011. Considering the RPJMN 2020-2024, it is requested to review the pilot experience of AUTP rice insurance scheme and learn from other countries' experiences to reform the current agricultural insurance scheme to make it more sustainable in the future.

Against this backdrop, the Government of Indonesia, represented by the Ministry of National Development Planning/National Development Planning Agency (BAPPENAS), Ministry of Agriculture, Ministry of Finance, Meteorology

Routledge, A. Kontoleon, U. Pascual, M. Smale, eds., pp. 293-317, 2008, Available at SSRN: <https://ssrn.com/abstract=1013549> or <http://dx.doi.org/10.2139/ssrn.1013549>

⁶ Bhattacharya, Sanjukta, Access to Crop Insurance as a Vital Risk Management Tool in Indian Agriculture: Addressing Challenges and Ensuring Future Promise for Better Solution (February 19, 2012). Available at SSRN: <https://ssrn.com/abstract=2007903> or <http://dx.doi.org/10.2139/ssrn.2007903>

⁷ Mahul, Olivier and Verma, Niraj and Clarke, Daniel, Improving Farmers' Access to Agricultural Insurance in India (March 1, 2012). World Bank Policy Research Working Paper No. 5987, Available at SSRN: <https://ssrn.com/abstract=2016752>

⁸ Andi Amran Sulaiman et.al. *Ibid.*, p. 17.

Climatology and Geophysics Agency (BMKG), PT Asuransi Jasa Indonesia (*Jasindo*) (Program Implementing Agency), and Japan International Cooperation Agency (JICA) embarked on the Capacity Building Project for Agricultural Insurance Implementation in the Republic of Indonesia.

The 5-year project started in October 2017 and aims to enhance the capacity of key ministries in promoting the implementation of sustainable agricultural insurance in Indonesia. The Agro Insurance team was asked to provide recommendations to the Government of Indonesia to improve the existing insurance program or/and launch a new insurance program, based on the concept of yield index insurance to generate better insurance coverage for wet rice in the period 2020-2024.

The Indonesian Ministry of Agriculture has been piloting an indemnity-based agricultural insurance program for paddy rice production (AOTP) since 2015. During the National Medium-Term Development Plan (RPJMN) 2015-2019, MOA expanded the pilot activities to 23 rice-producing provinces, with an annual target of 1 million hectares of insured paddy fields. Despite its limited coverage, the AOTP program has achieved some success in eliminating the financial impact for farmers affected by several hazards through insurance payments and increasing the willingness to pay of AOTP beneficiaries.⁹

⁹Ian Shynkarenko, et. al, *Survei Skema Asuransi Pertanian Berkelanjutan Di Indonesia*, Penerbit: Kementerian Perencanaan Pembangunan Nasional / Badan Perencanaan Pembangunan Nasional (BAPPENAS) dan Japan International Cooperation Agency (JICA), 2019, p. 1

LEGAL POLICY ON FARMER INSURANCE

Farmer Protection and Empowerment includes planning, Farmer Protection, Farmer Empowerment, financing and funding, supervision, and community participation, which are organized based on the principles of sovereignty, independence, usefulness, togetherness, integration, openness, efficiency-justice, and sustainability. Forms of policies that can be provided to protect the interests of Farmers include regulation of imports of Agricultural Commodities¹⁰ in accordance with the harvest season and/or domestic consumption needs; provision of Agricultural production facilities that are on time, of the right quality, and at affordable prices for Farmers, as well as subsidies for production facilities; determination of import duty rates for Agricultural Commodities, as well as determination of the place of entry of Agricultural Commodities from abroad in customs areas.

In addition, there is also the establishment of Farming Business areas based on the conditions and potential of natural resources, human resources, and artificial resources; facilitation of Agricultural Insurance to protect Farmers from crop failure losses due to natural disasters, outbreaks of infectious animal diseases, climate change; and/or other types of risks determined by the Minister; and can provide compensation assistance for crop failure due to extraordinary events in accordance with the financial capacity of the state. In general, agricultural productivity is as follows:

¹⁰ Marzen, Chad G. and Ballard, Grant, Climate Change and Federal Crop Insurance (October 2, 2015). Boston College Environmental Affairs Law Review, Volume 43, Issue 2, pgs. 387-410 (2015), Available at SSRN: <https://ssrn.com/abstract=2668426>

TABLE I Agricultural Productivity 2021-2022
(Central Bureau of Statistics)¹¹

Province	Harvest Area, Production and Paddy Productivity (as per Province)					
	Harvested Area		Productivity		Production (ton)	
	2021	2022	2021	2022	2021	2022
Aceh	297058.38	271750.20	55.03	55.55	1634639.60	1509456.00
Sumatera Utara	385405.00	411462.10	52.00	50.76	2004142.51	2088584.00
Sumatera Barat	272391.95	271883.10	48.36	50.52	1317209.38	1373532.00
Riau	53062.35	51054.04	40.98	41.83	217458.87	213557.20
Jambi	64412.26	60539.59	46.29	45.88	298149.25	277743.80
Sumatera Selatan	496241.65	513378.20	51.44	54.06	2552443.19	2775069.00
Bengkulu	55704.69	57151.84	48.67	49.27	271117.19	281610.10
Lampung	489573.23	518256.10	50.77	51.87	2485452.78	2688160.00
Kep. Bangka Belitung	18278.27	15107.80	38.57	40.66	70496.25	61425.07
Kep. Riau	270.16	179.48	31.65	28.24	855.01	506.91
DKI Jakarta	559.97	477.25	58.03	48.98	3249.47	2337.77
Jawa Barat	1604109.31	1662404.00	56.81	56.75	9113573.08	9433723.00
Jawa Tengah	1696712.36	1688670.00	56.69	55.41	9618656.81	9356445.00
Di Yogyakarta	107506.16	110927.20	51.77	50.64	556531.03	561699.50
Jawa Timur	1747481.20	1693211.00	56.02	56.26	9789587.67	9526516.00
Banten	318248.46	337240.70	50.38	53.04	1603247.00	1788583.00
Bali	105201.31	112320.60	58.83	60.59	618910.81	680601.60
Nusa Tenggara Barat	276211.88	270092.90	51.39	53.79	1419559.84	1452945.00
Nusa Tenggara Timur	174900.07	183092.00	41.85	41.29	731877.74	756049.90
Kalimantan Barat	223165.74	241478.60	31.90	30.28	711898.01	731225.80
Kalimantan Tengah	125870.05	108226.80	30.28	31.78	381189.55	343918.80
Kalimantan Selatan	254263.59	214908.90	39.97	38.13	1016313.55	819419.20

¹¹ Area of Harvest, Production, and Productivity of Rice According to Provinces based on data from the Central Statistics Agency experienced significant development in 2021 and 2022, so that the productivity of farmers is quite high and the government must encourage farmers through strategic policies, so that farmers participate in farmer insurance.

Kalimantan Timur	66269.46	64970.01	36.92	36.85	244677.96	239425.30
Kalimantan Utara	8880.83	8604.19	33.74	35.49	29967.31	30533.59
Sulawesi Utara	59182.52	58195.56	39.35	41.88	232884.76	243730.30
Sulawesi Tengah	182186.62	168993.20	47.59	44.05	867012.77	744408.70
Sulawesi Selatan	985158.23	1038084.00	51.67	51.64	5090637.23	5360169.00
Sulawesi Tenggara	127517.29	118258.80	41.57	40.50	530029.08	478958.00
Gorontalo	48713.50	46823.47	48.12	51.29	234392.86	240134.50
Sulawesi Barat	59763.18	69323.95	52.05	50.99	311072.46	353513.30
Maluku	28319.75	23987.82	41.24	38.60	116803.67	92601.06
Maluku Utara	7781.96	6416.45	36.05	38.16	28050.80	24486.03
Papua Barat	6414.94	5460.59	41.98	43.89	26926.93	23963.92
Papua	64984.90	49741.91	44.05	38.99	286279.80	193943.50
Indonesia	10411801.22	10452672.00	52.26	52.38	54415294.22	54748977.00

In addition to Farmer Protection policies, Empowerment efforts also have an important role in achieving better Farmer welfare¹². Empowerment is carried out to advance and develop the mindset of Farmers, improve Farming Business, and grow and strengthen Farmer Institutions to be able to be independent and highly competitive in Farming business. Some activities that are expected to stimulate Farmers to be more empowered¹³ include education and training, counseling and mentoring, development of systems and facilities for marketing Agricultural products; prioritization of domestic Agricultural products to meet national food needs; consolidation and guarantee of Agricultural land area; provision of

¹² Kumari, Mrinali and Singh, Krishna M. and Mishra, Rewati and Sinha, Dhruv and Ahmad, Nasim, Role of Socio-Economic Variables on Adoption of Crop Insurance Schemes (October 13, 2017). Available at SSRN: <https://ssrn.com/abstract=3052120> or <http://dx.doi.org/10.2139/ssrn.3052120>

¹³ Bozzi, Claudio, Dilan Thampapillai, Claudio Bozzi, Vivi Tan, and Anne Matthew. "Insurance." Chapter. In *Australian Commercial Law*, 297-344. Cambridge: Cambridge University Press, 2015.

financing and capital facilities; easy access to science, technology, and information; and strengthening Farmer Institutions.

The targets of Farmer Protection and Empowerment are Farmers, especially tenant Farmers with a maximum area of 2 (two) hectares (not owning land whose main livelihood is conducting Farming Business); Farmers who own land and conduct food crop cultivation business on a maximum area of 2 (two) hectares; Small-scale horticultural farmers, planters, or breeders in accordance with statutory provisions.

Efforts to protect and empower farmers have not been supported by comprehensive, systemic, and holistic laws and regulations, thus providing less assurance of legal certainty and justice for farmers and business actors in agriculture. The existing laws are still partial and have not regulated the Protection and Empowerment efforts clearly, firmly, and completely. This, among others, can be seen in:

- 1) Law No. 5/1960 on the Basic Regulation of Agrarian Principles;
- 2) Law No. 56 PRP of 1960 on the Determination of Agricultural Land Area;
- 3) Law Number 12 of 1992 concerning Plant Cultivation System;
- 4) Law Number 7 of 1994 Concerning the Ratification of the Agreement Establishing the World Trade Organization;
- 5) Law Number 18 of 2004 concerning Plantations;
- 6) Law No. 16 of 2006 on Agriculture, Fisheries and Forestry Extension System;
- 7) Law No. 20 of 2008 on Micro, Small and Medium Enterprises;
- 8) Law No. 18 of 2009 on Animal Husbandry and Animal Health;
- 9) Law No. 41 of 2009 on the Protection of Sustainable Food Agricultural Land;
- 10) Law No. 13 of 2010 on Horticulture; and
- 11) Law No. 18/2012 on Food.

Forms of policies¹⁴ that can be provided to protect the interests of Farmers include the regulation of imports of Agricultural Commodities in accordance with the harvest season and/or domestic consumption needs¹⁵; the provision of Agricultural production facilities that are on time, of the right quality, and at affordable prices for Farmers, as well as subsidies for production facilities; the determination of import duty rates for Agricultural Commodities, and the determination of the place of entry of Agricultural Commodities from abroad in the customs area.

In addition, there is also the establishment of Farming Business areas based on the conditions and potential of natural resources, human resources, and artificial resources; facilitation of Agricultural Insurance to protect Farmers from crop failure losses due to natural disasters, outbreaks of infectious animal diseases, climate change; and/or other types of risks determined by the Minister; and can provide compensation assistance for crop failure¹⁶ due to extraordinary events in accordance with the financial capacity of the state.

Based on Article 48, the Government and Regional Governments in accordance with their authority shall empower farmers through the development of marketing systems and facilities for agricultural products. The development of marketing systems and facilities is organized as follows:

¹⁴ Lin, Jolene, and Jacqueline Peel. "The Farmer or the Hero Litigator?: Modes of Climate Litigation in the Global South." Chapter. In *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action*, edited by César Rodríguez-Garavito, 187–205. *Globalization and Human Rights*. Cambridge: Cambridge University Press, 2022.

¹⁵ Dudek, Daniel J., and P. Geoffrey Allen. "Estimating Crop Yield Insurance Premium Rates." *Journal of the Northeastern Agricultural Economics Council* 13, no. 1 (1984): 119–27. <https://doi.org/10.1017/S0163548400004179>.

¹⁶ "Royal Farmers' Insurance Company." *The Assurance Magazine* 1, no. 3 (1851): 250–250. <https://doi.org/10.1017/S2046164X00055976>.

- 1) Realizing agricultural product markets that meet food safety, sanitation, and public order standards;
- 2) Realizing agribusiness and sub-agribusiness terminals to market agricultural products;
- 3) Realizing supporting facilities for agricultural product markets;
- 4) Facilitating the development of agricultural product markets owned and/or managed by farmer groups, farmer group associations, cooperatives, and/or other farmer economic institutions in the production areas of agricultural commodities;
- 5) Limiting modern markets that are not owned and/or not cooperating with farmer groups, farmer group associations, cooperatives, and/or other farmer economic institutions in the production areas of agricultural commodities;
- 6) Developing farmer business partnership patterns that are mutually needy, trusting, strengthening, and profitable;
- 7) Developing a marketing and promotion system for agricultural products;
- 8) Developing an auction market
- 9) Providing market information; and
- 10) Developing hedging.

In the agricultural insurance agreement there are the parties who sign the agreement are insurance companies and farmers/groups of peasants. The insurance company as the insured party is the BUMN insurance company designated by the government namely Jasindo, whereas the liable party is a farmer who joins the peasant group to become a participant in agricultural insurance. The deal between the parties is poured into the agricultural insurance policy.¹⁷ Farmer protection and empowerment policies also play an important role in achieving better farmer welfare.

¹⁷ Zahry Vandawati, et.al, *Perjanjian Asuransi Pertanian Pada Program Ketahanan Pangan Oleh Pemerintah*, Jurnal Hukum & Pembangunan 49 No. 3, 2019, p. 604. DOI: 10.21143/jhp.vol49.no3.2189

The purpose of empowerment is to advance and develop farmers' thinking, develop agricultural businesses, and grow and strengthen farmers' institutions to be independent and competitive in agricultural businesses. A number of activities are expected to empower farmers, including training, extension and guidance, as well as the development of agricultural systems and marketing opportunities; prioritizing domestic agricultural products to meet national food needs; strengthening and securing agricultural land; providing financing and capital arrangements; easy access to science, technology and information; and strengthening farmer institutions.

IMPLEMENTATION LEGAL POLICY FOR FARMER INSURANCE MODEL

The agricultural sector is one of the sectors that plays an important role in the national economy, one of which is as a supplier of food to the people. The sources of risk that affect production come from weather changes, pest attacks and diseases.¹⁸ The Ministry of Agriculture's efforts to achieve food self-sufficiency targets have become a determination that must be achieved. In this regard, starting in 2015, the Government implemented rice self-sufficiency with a rice production target for 2021 reaching 63.5 million tons.

Businesses in the agricultural sector, especially rice farming, are faced with the risk of uncertainty as a result of the negative impacts of climate change that is detrimental to farmers. To overcome the losses of farmers, the Government helps provide farming protection in the form of Agricultural Insurance, as stated in Law No. 19 of 2013 concerning Farmer Protection and Empowerment, which has been

¹⁸ Luh Wiweka Laksmiyunita Dewi and I Ketut Suamba, *Manfaat Asuransi Usahatani Padi dalam Menanggulangi Risiko Usahatani Krama Subak di Kecamatan Penebel Kabupaten Tabanan Jurnal Agribisnis dan Agrowisata*, Vol. 9, No. 2, Juli 2020, p. 221-222.

followed up with the issuance of Minister of Agriculture Regulation No. 40 of 2015 concerning Agricultural Insurance Facilitation.

Agricultural Insurance is very important for farmers to protect their farms. Agricultural Insurance is a transfer of risk that can provide compensation for farm losses so that the sustainability of the farm can be guaranteed. Agricultural Insurance is a form of risk management where the participation of a large number of farmers generates a lot of funds to reserve compensation payments for farmers affected by disasters. Through the Rice Farming Insurance Program (AUTP), guarantees can be given against losses due to crop damage caused by floods, droughts, and attacks by pests and plant diseases or plant pest organisms (OPT). With AUTP, farmers can file a claim (demand) to obtain compensation so that they are able to carry out or continue their farming activities because they already have working capital obtained, namely compensation for the farming risks they experience. With regard to the above, the Ministry of Agriculture will continue to implement the AUTP program in 2021 and provide Premium Assistance to participating farmers.¹⁹

Regulation of the Minister of Agriculture of the Republic of Indonesia No. 40/Permentan/SR.230/7/2015 on Agricultural Insurance Facilitation that Article 4 Insurance companies implementing agricultural insurance must have an agricultural insurance product license authorized by the Financial Services Authority (OJK). Agricultural Insurance is carried out to protect Farmers from losses due to crop failure:

- 1) Natural Disaster;
- 2) Attack of Plant Disturbing Organisms;
- 3) Outbreak of Infectious Animal Diseases
- 4) Impact of Climate Change; and/or
- 5) Other Types of Risks.

¹⁹ Keputusan Menteri Pertanian Republik Indonesia Nomor :01/Kpts/SR.230/B/01/2021 TANGGAL : 04 Januari 2021 Pedoman Bantuan Premi Asuransi Usahatani Padi

- 6) Self-Help Insurance Pattern Includes:
- 7) Self-Help or Independent;
- 8) Partnership or Cooperation; And
- 9) Banking.

In order to carry out the authority exercised to maintain the continuity of agriculture, the farmer insurance program is an effort to maintain the continuity of agriculture.

TABLE II Provincial and District Government Authorities

Provincial Government Authority	District Government Authority
<p style="text-align: center;">Article 13</p> <p>(1) Ease of registration as referred to in Article 9 letter a is carried out through data collection/inventory of Farmer prospective insurance participants by the district/city Service Office.</p> <p>(2) The results of the inventory as referred to in paragraph (1) by the district / city Office are verified and then submitted to the provincial Office to propose the determination of insurance participants.</p> <p>(3) The provincial Service Office has received the proposal as referred to in paragraph (2) to determine the prospective recipients and propose to the Ministry of Agriculture through the Directorate General.</p> <p>(4) The filling out of the registration form for prospective insurance participants is accompanied by officers of the district/city Service Office.</p> <p>(5) Verification of prospective recipients is carried out in stages by regencies/cities, provinces and the center.</p>	<p style="text-align: center;">Article 14</p> <p>(1) Ease of access to insurance companies as referred to in article 9 letter b is carried out by the district / city Service by:</p> <p>encouraging understanding and benefits of agricultural insurance participation; bringing together Farmers who are prospective agricultural insurance participants with insurance companies; and encouraging the formation of agricultural insurance binding.</p> <p>(2) Data collection or inventory as referred to in article 13 is financed.</p>

The State Budget (APBN) is carried out in stages at the proposal of the regent/mayor to the governor, and then submitted to the Minister. Socialization of the insurance program to Farmers and insurance companies is carried out by the Directorate General, provincial offices, and/or district/city offices.

Based on Article 17, the requirements for Farmers participating in agricultural insurance who receive premium assistance as referred to in Article 9 letter d are as follows:

- 1) Food crop tenant farmers who do not own farmland and cultivate a maximum area of 2 (two) hectares;
- 2) Farmers who own land and carry out food crop cultivation business on a maximum area of 2 (two) hectares; and/or
- 3) Small-scale horticultural farmers, planters, or breeders in accordance with the provisions of laws and regulations.
- 4) Based on Article 21, the implementation stage of agricultural insurance is carried out:
- 5) Nomination of Prospective Participant Candidates (CPCL) from the District/City Office;
- 6) Socialization of insurance to prospective participants
- 7) Feasibility assessment of the object of insurance
- 8) Registration as a participant by filling out the registration form and paying the premium;
- 9) Issuance of an insurance policy is carried out after registration and premiums are received from farmers; and
- 10) Submission of Claims is made after the Farmer reports damage or loss according to the results of the inspection and gets approval from the insurance company.

Indonesia is an agricultural country where around 28.79% of the Indonesian population works in the agricultural sector as their main occupation. Indonesia is also a country rich in natural resources because it is a tropical country, but because it has a tropical climate, this can also cause crop failure in the agricultural sector. Flooding in

the rainy season, drought in the dry season, apart from being caused by seasonal changes, the potential for crop failure can also be caused by pest attacks, plant disruptors, and diseases. When the business fails, it is not only the farmers who lose money, the community can also be affected. The number of failed crops triggers price increases and scarcity of goods. That is why the government needs to step in to reduce the risk of crop failure. Agriculture is a sector that deserves more attention, this is then the basis for the issuance of Agricultural Insurance for farmers to protect their businesses. Participation in the Agricultural Insurance program provides an alternative funding scheme that will protect participants so that they can re-finance agricultural businesses in the following season in the event of crop production failure.²⁰

The Ministry of Agriculture's efforts to achieve food self-sufficiency targets have become a determination that must be achieved. In this regard, starting in 2015, the Government implemented rice self-sufficiency with a rice production target for 2021 reaching 63.5 million tons. Businesses in the agricultural sector, especially rice farming, are faced with the risk of uncertainty as a result of the negative impacts of climate change that are detrimental to farmers.

To overcome the losses of farmers, the Government helps provide farming protection in the form of Agricultural Insurance, as stipulated in Law No. 19 of 2013 on Farmer Protection and Empowerment, which has been followed up with the issuance of Minister of Agriculture Regulation No. 40 of 2015 on Agricultural Insurance Facilitation. Agricultural Insurance is very important for farmers to protect their farms. Agricultural Insurance is a transfer of risk that can provide compensation for farm losses so that the sustainability of the farm can be guaranteed.

²⁰ *Asuransi Pertanian Sejahterakan Petani Kini Dan Nanti*, dikases melalui <https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/10525>

Agricultural Insurance is a form of risk management where the participation of a large number of farmers generates a lot of funds for reserves to pay compensation for farmers affected by disasters. Through the Rice Farming Business Insurance (AUTP) program, guarantees can be given against losses due to crop damage caused by floods, droughts, and attacks by pests and plant diseases or plant pest organisms (OPT). With AUTP, farmers can file a claim (demand) to obtain compensation so that they are able to carry out or continue their farming activities because they already have working capital obtained, namely compensation for the farming risks they experience. With regard to the above, the Ministry of Agriculture will continue to implement the AUTP program in 2022 and provide Premium Assistance to participating farmers.²¹

The agricultural sector is unique compared to other insurance markets in that many forms of agricultural risk are highly correlated among insured farms. For example, commodity price risk affects most farms simultaneously. When the price of a commodity is low, prices are generally low for all producers of that commodity. A downward trend in the price of one agricultural commodity often coincides with a similar downturn for many other commodity prices.

While some natural disasters such as cold or hail are generally localized, others such as droughts and floods can spread and impact the production of many insured farmers at the same time. Agricultural production is highly technical and specialized, susceptible to weather, pests and diseases, impacted by the international trading environment, and dependent on the management techniques employed by each individual producer (e.g. seed bed preparation, seeding, fertilizer application, and use of hybrid seeds, water and manure management, etc.). The underwriting provisions and loss adjustment techniques are unique

²¹ Keputusan Menteri Pertanian Republik Indonesia Nomor : 01/Kpts/SR.210/B/01/2022 Tentang Pedoman Bantuan Premi Asuransi Usahatani Padi

to the agricultural industry and are not easily adapted from other insurance markets.²²

These unique aspects of agricultural risk impact the way the insurance industry views its participation in this market, which can be due to a variety of factors, including the following:²³

- 1) The nature of risk in the agricultural sector and the need for capacity to bear widespread and accumulated losses;
- 2) The role of the public sector in risk management in the agricultural industry, both in a planned manner and in ad hoc assistance;
- 3) The ability to secure adequate and consistent premium income over time commensurate with risk exposure; and
- 4) The ability to spread risk outward, to the reinsurance industry, to reduce risk exposure.

This modern development encourages people to think about how to meet the needs of life more effectively and efficiently. Everyone has the right to obtain protection for themselves, family, property, and protection from the threat of damage or loss. Public awareness of the importance of protection for various kinds of risks that occur and befall themselves at any time is one of the causes of the high number of insurance users. This is an advantage for insurance companies that provide insurance services and products because there will be a wider market share that can be processed and used as a sales target for insurance companies.²⁴

In addition to acting as a subsidizer of agricultural insurance premium payments, Law No. 19 of 2013 Concerning the Protection and Empowerment of Farmers also specifically mandates that both central and regional governments participate as insurance companies

²² Ian Shynkarenko, et.al, *Op. Cit*, p.1.

²³ Ian Shynkarenko, et.al, *Op. Cit*. p. 1

²⁴ Zahry Vandawati, et.al, *Perjanjian Asuransi Pertanian Pada Program Ketahanan Pangan Oleh Pemerintah*, *Jurnal Hukum & Pembangunan* 49 No. 3 (2019), p. 593. DOI: <http://dx.doi.org/10.21143/jhp.vol49.no3.2189>

in the event of crop failure losses. Article 37 paragraph (1) of Law No. 19 of 2013 Concerning the Protection and Empowerment of Farmers explains that the Government and Regional Governments in accordance with their authority are obliged to protect farming businesses carried out by farmers as referred to in Article 12 paragraph (2) in the form of agricultural insurance.

So that in the case of crop failure losses in Article 37 paragraph (2) of Law Number 19 of 2013 concerning Protection and Empowerment of Farmers, namely due to natural disasters, attacks of plant disrupting organisms, climate change and other types of risks, the government is mandated to provide protection to farmers who experience losses. Insurance policies are generally limited or controlled by the provisions of the Civil Code or *Burgelijk Wetboek* as follows:²⁵

Article 1337 BW "a causa is forbidden, if the causa is prohibited by law or contrary to morals or public order". Article 1338 paragraph (3) BW "all agreements made by parties must be carried out in good faith" Article 1339 BW "agreements are not only binding for things that are expressly stated in them, but also for everything that by the nature of the agreement is required by decency, custom, or law".

The above provisions explain that to determine the clauses or terms in a standard agreement can apply and bind the parties, the benchmarks are the law, morals, public order, decency and custom and good faith. The insurer as the party who accepts the transfer of risk, which means binding himself to compensate if the agreed risk occurs a fact of loss or loss. The obligation to compensate for this loss makes the insurance company entitled to receive premiums from the insured, especially because as an insurance company premium are needed for the healthy running of the company.²⁶ The objectives of

²⁵ Zahry Vandawati, et.al, *Ibid.*, p 596.

²⁶ Zahry Vandawati, et.al, *Ibid.*, p. 596.

the agricultural insurance program can be divided into several target groups, as follows: ²⁷

a. The target group for farmers are:

- 1) Make farmers aware of the risk of crop failure or business failure.
- 2) livestock farming.
- 3) Encourage farmers to increase their skills and improve
- 4) farm business management.
- 5) Reduce farmers' dependence on capital from other parties and help farmers provide production costs or capital.
- 6) other parties and help farmers provide production costs or capital for their
- 7) livestock business.
- 8) Increase farmers' income from the success of their agricultural/
- 9) livestock business on an ongoing basis.

b. The target groups for local governments are:

- 1) Increase the awareness and responsibility of local government officials about the importance of anticipating agricultural business risks in their area.
- 2) Help provide facilities and access to capital for farmers if they experience agricultural business risks or crop failure/livestock business failure.
- 3) Assist regional economic development through the insurance business branch.
- 4) Improve the success of agricultural/livestock businesses, as well as regional food security and safety.
- 5) Open up new employment opportunities.

c. For the target group of insurance companies:

²⁷ Sahat, M. Pasaribu, *Penerapan Asuransi usahatani Padi di Indonesia: Alternatif Skenario Melindungi Petani dan Usahatani*, <http://www.litbang.pertanian.go.id/berita/one/1539/>. Diakses pada tanggal 27 Mei 2017. Dalam Zahry Vandawati, et.al, *Ibid.*, 596.

- 1) Open new business branch opportunities in the form of agricultural business risk protection with farmers/ranchers as customers.
- 2) Improve the ability of insurance company employees in risk coverage management in the agricultural sector.
- 3) Improve the insurance business climate regionally.
- 4) Encourage the increase of insurance business activities with an agricultural base
- 5) that can create new jobs.

The various risks faced by the agricultural sector can have an impact on the stability of farmers' income. Therefore, one of the important challenges of the agricultural sector is how to increase the income of farmers who mostly own less than 0.5 ha of land per capita. In this context, the state through the government is expected to be present to provide protection and empowerment to farmers who play a role in the development of the agricultural sector in order to realize food sovereignty, food independence and food security in a sustainable manner. One form of protection for farmers' income or welfare is agricultural insurance.²⁸

In general, based on article 7 paragraph (2) of Law of the Republic of Indonesia Number 19 of 2013 concerning Protection and Empowerment of Farmers, that the Farmer Protection Strategy is carried out through:

- 1) Agricultural production infrastructure and facilities
- 2) Business certainty
- 3) Price of agricultural commodities
- 4) Elimination of high-cost economic practices;
- 5) Compensation for crop failure due to extraordinary events;
- 6) Early warning system and handling of climate change impacts; and

²⁸ Praptono Djuned, *Analisis Asuransi Pertanian Di Indonesia: Konsep, Tantangan Dan Prospek*, Jurnal Borneo Administrator/Volume 12/No. 1/2016, p. 11.

7) Agricultural Insurance.

Sustainable agricultural development has been promoted worldwide, as stated in the goals of the United Nations Sustainable Development Goals. The main principle of this goal is to increase production while preserving the ecosystem through environmentally friendly agricultural practices.²⁹ Since the 1950s, agriculture has been considered a relatively underdeveloped sector as its main focus has been on the production of raw materials using traditional methods employed by small family farms in rural areas.³⁰ Therefore, the provisions of these laws and regulations encourage the strengthening of farmers.

²⁹ Tomy Perdana, et.al, *Circular supply chain governance for sustainable fresh agricultural products: Minimizing food loss and utilizing agricultural waste*, Sustainable Production and Consumption 41 (2023), p. 391. <https://doi.org/10.1016/j.spc.2023.09.001>

³⁰ Can ATI K, *Horizontal intervention, sectoral challenges: Evaluating the data act's impact on agricultural data access puzzle in the emerging digital agriculture sector*, Computer Law & Security Review Volume 51, November 2023, p. 3. <https://doi.org/10.1016/j.clsr.2023.105861>

CONCLUSION

Agriculture is one of the drivers of the community's economy as an agrarian region. Developments in the agricultural sector encourage the growth of the business climate. The rice production target for 2021 reaches 63.5 million tons. This is an effort to achieve food self-sufficiency in Indonesia. With programs owned by the community, the biggest hope is the legal policy factor of farmer protection to achieve welfare for farmers, especially through farm insurance. Law of the Republic of Indonesia Number 19 of 2013 concerning Protection and Empowerment of Farmers, encourages the existence of farmers and the existence of agriculture in Indonesia to be sustainable. In addition, through the Regulation of the Minister of Agriculture No. 40 of 2015 concerning Facilitation of Agricultural Insurance is a derivative of the protection of farmers, it is hoped that community farming can be protected and the community actively participates in the farming program in Indonesia

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Type: **Research Article**



An Analysis of the Mental Health Act, 2018 of Bangladesh: The Relationship between International Treaties and State Laws

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ABSTRACT

Every nation deals with distinct challenges, and deciding how to address or accept them can be complex. Mental health problems are particularly significant among these challenges. Despite increasing global awareness of mental health issues, there remains a notable lack of discussion about the immediate and long-term physical and emotional impacts experienced by individuals with mental health conditions. In Bangladesh, these issues are increasingly prevalent in families, communities, and workplaces, contributing to rising discrimination against people with mental disorders and making it challenging for them to protect their rights in society. The UDHR, ICCPR, ICESCR and CRPD, which advocates for mental health protections, questions how well domestic laws such as the Bangladesh Mental Health Act 2018 meet international standards. Efforts are underway to fully comply with this law, which, like any legislation, has both strengths and weaknesses. Consequently, this paper critically examines both perspectives, focusing on Bangladesh's current struggles to ensure the rights of those affected by mental health issues. The authors assess the broader implications of the Bangladesh Health Act 2018, scrutinizing its objectives, implementation strategies, and its effectiveness in addressing mental health concerns to ensure equitable treatment and uphold the essential legal rights within the country.

Keywords: *Mental health issues, Mental disable people's human Rights, Strong State policy, Mental Health Review Tribunal.*



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INTRODUCTION

Despite infrastructure improvements over the years, population growth and infection rates continue. Currently, the budget allocated for mental health management in Bangladesh is very low, only 0.44 percent. There is only one postgraduate institution in Dhaka, the National Institute of Mental Health (NIMH), and a psychiatric hospital in Pabna.¹ There have been allegations of malpractice and wrongful treatment against mental health care providers and physicians. According to a survey, only 16 percent of patients go directly to professional mental health care, the rest of the patients rely on exorcisms, tantra-mantra.²

In rural areas, the delay in seeking treatment after mental health problems ranges from three months to several years, and in urban areas the average delay is 10 weeks. Lack of awareness about the seriousness of the problem and unavailability of services are the main reasons for this delay. Access to services has become more difficult in the coronavirus situation. Even in developed countries, 35-55 percent of patients suffering from severe mental illness do not receive proper care.³ On the other hand, considering the miserable condition of mental health in Bangladesh can be stated as: 18% people of total population are suffering from different mental distresses and 49% of suicide victims were between 20 and 35 years of age. Moreover, we have only 270 psychiatrists been available to treat 22.5 million people that are inadequate.⁴

¹ Faruq Alam et al., "Stressors and Mental Health in Bangladesh: Current Situation and Future Hopes," *BJPsych International* 18, no. 4 (2021): 91-94, <https://doi.org/10.1192/bji.2020.57>.

² Turya Nicholas Mandal Hossain Mohammad Omar Khayyam, Mrinmoy Samddar, "Physical Health Review of Mental Health Management in Bangladesh and Prospects of Telecare," *Bonikbarta*, July 2024, https://bonikbarta.net/home/news_description/270491/.

³ Md. Kamrul Hasan and Zaziratul Zannat, "Mental Health Challenges in Bangladesh and the Way Forwards," *Annals of Medicine and Surgery*, 2022, <https://doi.org/10.1016/j.amsu.2022.104342>.

⁴ Hasan and Zannat.

Although more implementation is required for improvement, the recent replacement of Bangladesh's Lunacy Act 1912 with the Mental Health Act 2018 is a positive step in resolving legal inadequacies pertaining to mental health.⁵ The current state of affairs in Bangladesh highlights the lack of legislation addressing the infringement of patients' rights during the treatment of mental illness, especially in difficult social settings. Additional law is required to protect the rights of those who do not come into the disability category, even if the Disability Rights and Protections Act of 2013 recognizes the rights of those with mental disabilities.⁶ Effective social reintegration is further hampered by the absence of comprehensive laws governing patient confidentiality and the acceptance of community-based treatment. In order to protect the fundamental rights protected by Bangladesh's Constitution, it is imperative that the criminal justice system take into account the mental health of mentally ill people.⁷

An important legislative provision that is being adopted in many different countries across the world is the recognition of the mental health of women and children who are victims of abuse within their homes and other forms of violence. However, in other situations, this clause might discourage psychiatrists from doing essential assessments and treatments, preventing patients from receiving mental health services because they are afraid of facing legal consequences. This is a legitimate concern, especially for a nation where it is easy to fabricate certificates, which might have major consequences for guardianship, property rights, inheritance, custody, criminal responsibility, and other related issues.⁸

⁵ Lunacy ACT 1912 has been repealed by Mental health Act, 2018

⁶ Disability Rights and Protections Act 2013, in this act is mentioned all equal rights to every citizen including fundamental basic human rights.

⁷ Richard M. Duffy and Brendan D. Kelly, "The Right to Mental Healthcare: India Moves Forward," *British Journal of Psychiatry* 214, no. 2 (2019): 59-60, <https://doi.org/10.1192/bjp.2018.250>; Erin Nelson* and this, "Alberta's Mental Health Review Panels: Accountable, Transparent Adjudicator," no. July (2020): 1-23.

⁸ Cohen Avital Alfandari, Magnezi Racheli, and Weinstein Orly, "Review and Analysis of Mental Health Reforms in Several Countries: Implementation, Comparison

METHOD

It would be a *thematic*⁹ and *doctrinal*¹⁰ research. A logical framework shall be developed on the basis of various ways of data analysis such as frequency distribution, the statutes, news and cases shall be studied, factor analysis and other statistical tools of analysis. In this sort of research work data collection is pretty important, due to that I'd like to critically analyze the study relevant sources and data. In order to give complete shape to the study, a range of research methods would be used: review of primary and secondary sources, literature, books, journal, relevant public records, research papers, available statistical data or reports published in both indigenous and extraneous scope; analysis of both prior existing (complementary and concentrated) legal instruments on mental health and case law (if any) relating to concerned issues in Bangladesh; besides that concerned International documents, conventions.

UNDERSTANDING MENTAL HEALTH

Mental health encompasses social, emotional, and psychological well-being, influencing our thoughts, feelings, and responses, as well as our stress management, interpersonal relationships, and decision-making. Each life stage, from childhood to adulthood, plays a vital role in mental health. If individuals

and Future Challenges," *Annals of Psychiatry and Treatment* 4, no. 1 (2020): 013–024, <https://doi.org/10.17352/apt.000015>; Akinyinka Omigbodun Syed A K Shifat Ahmed, Motunrayo Ajisola, Kehkashan Azeem, Pauline Bakibinga, Yen-Fu Chen © Nazratun Nayeem Choudhury, Olufunke Fayeun, Frances Griffiths Bronwyn Harris 5 Peter Kibe Ric hard J Lilford, "Impact of the Societal Response to COVID-19 on Access to Healthcare for Non-COVID-19 Health Issues in Slum Communities of Bangladesh, Kenya, Nigeria and Pakistan: Results of Pre-COVID and COVID-19 Lockdown Stakeholder Engagements," *BMJ Global Health*, 2020, <https://doi.org/doi:10.1136/bmjgh-2020-003042>.

⁹*Thematic analysis* is a method of analyzing qualitative data. It emphasizes identifying, analyzing, and interpreting patterns of meaning (or "themes") within qualitative data

¹⁰*Doctrinal research* asks what the law is in a particular case and is concerned with the analysis of the legal doctrine and how it was developed and applied.

experience mental health issues, these may have lasting effects on their cognition, mood, and behavior throughout their lives. Section 2, Subsections (15, 16) of the Mental Health Act 2018 in Bangladesh define "mental illness" as a form of mental disease excluding drug addiction and mental retardation, as determined by the responsible Medical Officer. "Mental disorder" is defined as a clinically recognized set of symptoms or behaviors, including mental retardation and drug addiction, which interfere with an individual's normal life and are associated with various physical and mental conditions, as stated by the law.¹¹ The World Health Organization (WHO) in 1948 emphasized the critical factors of mental health.^{12 13}

International Legal Instruments on the Right to Mental Health

International legal instruments on the right to mental health based on mental disabled people: Some of International and universal instruments that is basically focused on the right to mental health for individuals with mental disabilities such as:

Universal Declaration of Human Rights, UDHR (1948): Article 25 of the Universal Declaration of Human Rights asserts that everyone has the right to a standard of living adequate for the health and well-being of themselves and their families, including essential necessities like food, clothing, housing, and medical care, as well as access to essential social services. Furthermore, the article emphasizes the right to security in the event of unemployment or sickness.¹⁴ On the other hand, the International Covenant on Economic, Social and Cultural Rights, "ICESCR " (1966) under Article 12 mentioned, recognized by the States Parties the right of everyone to enjoy the

¹¹ Mental Health Act ,2018, Bangladesh sec 2Sub section 15,16

¹² World Health Organization,1948

¹³ World health Organization, "Comprehensive Mental Health Action Plan," 2021; Amar Shah, "Is the Mental Health Review Tribunal Inherently Unfair to Patients?," *Psychiatry, Psychology and Law* 17, no. 1 (2010): 25-31, <https://doi.org/10.1080/13218710903092133>.

¹⁴ Universal Declaration of Human Rights, UDHR (1948) In Article 25

maximum standard of physical and mental health rights for their betterment.

This highlights the commitment to ensuring not just physical health but also mental well-being, emphasizing the importance of mental health as an integral part of overall health and well-being. It underscores the obligation of governments to promote and protect the mental health of their citizens as a fundamental human right. The general comment no 14 of ICESCR¹⁵ mentioned in 34 of legal obligations that, it emphasizes the need to adhere to best practices and international standards, including those outlined in the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. This serves as a commitment to ensuring that individuals with mental illnesses receive appropriate and ethical treatment, respecting their rights and dignity.¹⁶¹⁷

Moreover, Article 5(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹⁸ implies that the right to public health, medical care, social security, and social services should be provided without discrimination based on race,

¹⁵ Article 12,14 International Covenant on Economic, Social and Cultural Rights, "ICESCR" (1966)

¹⁶ Office of the High Commissioner for Human Rights, "CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)," *Adopted at the Twenty-Second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4)*, vol. 2000, 2000, <https://www.ohchr.org/Documents/Issues/Women/WRGS/Health/GC14.pdf>.

¹⁷ General comment 14(34) of ICESCR, "In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum-seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women's health status and needs. Furthermore, obligations to respect include a state's obligation to refrain from prohibiting or impeding traditional preventive care, healing practices and medicines, from marketing unsafe drugs and from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness or the prevention and control of communicable diseases". <https://www.refworld.org/pdfid/4538838d0.pdf>, <https://www.degruyter.com/document/doi/10.9783/9780812205381.359/html?lang=en>

¹⁸ Article 5(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

color, descent, or national or ethnic origin. This includes individuals with mental disabilities, as they should not face any discrimination in accessing these essential services. The provision underscores the importance of ensuring that individuals with mental disabilities, regardless of their racial or ethnic background, have equal access to public health services, medical care, social security, and social services.

On the contrary, in accordance with Article 7 of the International Covenant on Civil and Political Rights (ICCPR) 1966¹⁹ prohibits the use of torture or cruel, inhuman, or degrading treatment or punishment under any circumstances. This provision is relevant to individuals with mental disabilities as it emphasizes the need to protect them from any form of abuse or mistreatment, whether in medical settings, care facilities, or within the criminal justice system. This article underscores the obligation of states to ensure that individuals with mental disabilities are treated with dignity and respect, and that their rights to humane treatment are upheld. In general comment no. 20²⁰ it serves as a crucial safeguard against any form of discrimination, neglect, or abuse that individuals with mental disabilities might be vulnerable to, reaffirming the principle of their inherent dignity and the importance of protecting their well-being.²¹²²

Convention on the Rights of Persons with Disabilities (CRPD), 2006: The Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006, contains several articles directly relevant to

¹⁹ International Covenant on Civil and Political Rights (ICCPR) 1966, Article 7

²⁰ Duffy and Kelly, "The Right to Mental Healthcare: India Moves Forward."

²¹ pp. 171 - 217 Human Rights Committee's Monitoring of ICCPR Rights, "A Commentary on the International Covenant on Civil and Political Rights The UN," Cambridge University Press, 2020, <https://doi.org/DOI:https://doi.org/10.1017/9781108689458.010>.

²² General comment 20 mentioned, "In the view of the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end." <https://www.refworld.org/docid/453883fb0.html>

the rights of individuals with mental illnesses. Some of the key articles include: Article 12²³ also added the general comment no 12²⁴ emphasizes the right of individuals with mental illnesses to enjoy legal capacity on an equal basis with others, promoting their autonomy and decision-making in all aspects of life, including medical treatment and care.²⁵ Article 25 highlights the right of individuals with disabilities, including those with mental illnesses, to attain the highest standard of health without discrimination. It emphasizes the importance of ensuring access to necessary health services, including mental health care and rehabilitation. This article 26 underscores the right of individuals with disabilities, including those with mental illnesses, to access rehabilitation services and support that enable them to achieve maximum independence and participation in all aspects of life. These articles within the CRPD emphasize the importance of protecting the rights of individuals with mental illnesses, ensuring their equal treatment, access to health services, and support for their full participation in society.²⁶

World Health Organization (WHO), 1948 and mental health action plan 2020-2030: On April 7, 1948, the United Nations. Officially formed the World Health Organization (WHO) as a specialized organization. Although its early focus was on more general global health issues, the WHO has now emerged as a major force in advancing study, advocacy, and awareness of mental health²⁷. It has

²³ Stephen P. Marks et al., "12 - Mental Health and Human Rights from Part III - Contemporary Issues in Psychology and Human Rights," *Cambridge University Press*, 2020, 183–96, <https://doi.org/https://doi.org/10.1017/9781108348607.013>.

²⁴ Ellionior flynn Anna arstien kersaleke, "The General Comment on Article 12 of the Convention on the Rights of Persons with Disabilities: A Roadmap for Equality before the Law," *The International Journal of Human Rights*, 2015, 1–20, <https://doi.org/http://dx.doi.org/10.1080/13642987.2015.1107052>.

²⁵ CRPD/C/GC/1, "United Nations 1 Convention on the Rights of Persons with Disabilities" (n.d.), http://foundationnet.info/wp-content/uploads/2016/02/UNCRPD_General_Comment_Engl.pdf.

²⁶ Article 12, 25 and 26 of The Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

²⁷ Organization, "Comprehensive Mental Health Action Plan."

taken a leading role in developing policies, programs, and initiatives to address the problems that people with mental illness experience across all around the world. The WHO has made a substantial contribution to bettering the awareness and management of mental illnesses as well as decreasing the negative perceptions attached to them through a wide range of initiatives, research, and collaborations.

WHO has developed several action plans and guidelines aimed at improving mental health services and reducing the stigma associated with mental disabilities. In order to improve mental health and well-being, avert mental illness, and guarantee the provision of quality care for people with mental impairments, the Comprehensive Mental Health Action Plan (2013-2030) is a strategic framework that includes specific targets and activities.²⁸The importance of a comprehensive approach to mental well-being, including multiple facets covering knowledge, safeguarding, treatment, and support, is probably emphasized by this plan.

This Action plan has six motions to improve and a maximum target of reducing mental health issues. For this reason, it probably targets the unique difficulties that people with mental disorders encounter, seeking to give them all-inclusive, and integrated support services. Initiatives aimed at removing negative perceptions, boosting accessibility to mental health services, encouraging community-based treatment, and preserving the rights and dignity of people with mental disabilities may fall under this category. The strategy is essential in promoting the rights and wellbeing of people with mental disabilities and creating a welcoming and encouraging environment for their medical care.

Declaration of the Rights of persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, 1992: Mental health difficulties are not particularly covered in the 1992 Declaration of the Rights of Persons Belonging to National or Ethnic, Religious, and

²⁸ World health Organization, *Mental Health Action Plan*, 2021.

Linguistic Minorities. However, those with mental health disorders who are members of minority groups may inadvertently benefit from its overriding ideals of equality for all, respect for culture, and protection of minority rights. The right of people from minority populations for enjoying their own culture, practicing their own religion, and speaking their own language is emphasized in Articles (1-9). Although it does not specifically address mental health issues, it does encourage an inclusive and non-discriminatory workplace, which can be essential in supporting people who are also members of minority communities and have mental health challenges. The values emphasized in the declaration stress the significance of respecting the rights and dignity of all people, particularly those in minority groups who have mental health difficulties.²⁹

Enclosed are the chart listing binding³⁰ and non-binding³¹ international instruments of human rights related to mental health Act, 2018 in Bangladesh which are given below:

TABLE I Binding and non-binding International Legal Instrument

Binding	non-Binding
Convention on the Rights of Persons with Disabilities (CRPD) (2006)	UN Declaration of Human Rights (1948)
	UN Declaration on the Rights of Mentally Retarded Persons (1971)
International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)	UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991)
	UN Standard Rules for Equalization of Opportunities for Persons with Disabilities (1993)

²⁹ Article (1-9) of Declaration of the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities.1992

³⁰ M. Tasdik Hasan et al., "The Current State of Mental Healthcare in Bangladesh: Part 1 - an Updated Country Profile," *BJPsych International* 18, no. 4 (2021): 78-82, <https://doi.org/10.1192/bji.2021.41>.

³¹ Clara A .Arena Ventura, "International Law, Mental Health And Human Rights," *Center For Civil And Human Rights*, 2014.

Convention on the Rights of the Child (CRC) (1989)	General Comments 5 (1996) and 14 (2000) of the International Covenant on Economic Social and Cultural Rights
	WHO's Mental Health Care Law: ten basic principles (1996)
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)	WHO Guidelines for the Promotion of Human Rights of Persons with Mental Disorders (1996)
	Declaration of Madrid (1996)
International Covenant on Civil and Political Rights (ICCPR) (1966)	UN Resolution 2000/51
	WHO Quality Rights Initiative (2012)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984)	UN General Assembly Resolution 46/119 (1991)
	The Ljubljana Charter on Reforming Mental Health (1996)
	World Psychiatric Association's Madrid Declaration on Ethical Standards for Psychiatric Practice (1996, revised 2011)
	WHO Mental Health Action Plan 2013-2020
	WHO MH GAP (Mental Health Gap Action Programme) (2008)
	Declaration of the Rights of persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, 1992

Domestic (Bangladeshi) laws on the right of mental health based on mental disabled people:

The origin of Bangladesh Lunacy Act, 1912 and how it became the Mental Health Act, 2018 Of Bangladesh: The Lunacy Act, 1912 for Bangladesh, which was then part of British India which was enacted during the British colonial period. This Act basically produced British colonial legislation and policies to regulate the treatment and care of individuals who were considered to have mental illnesses. It was part of a broader legal framework that governed various aspects of colonial administration, together with healthcare, social welfare, and the management of individuals with mental disabilities. The Lunacy Act of 1912 provided procedures for the detention, care, and legal

management of individuals deemed to be "lunatics"; it means unsound mind.

It included provisions for inquests and medical certificates to determine the mental state of individuals and to facilitate their fair treatment and duty of care.³² So, it's important to understand that the term "lunacy" used in the Act was a historical and now outdated term called mental illness. The Act showed the understanding and attitudes toward mental health dominant during the colonial era.

Since Bangladesh achieved independence in 1971, it has passed significant legal reforms and changes in the field of mental health. The Lunacy Act of 1912 has been replaced or amended by more modern legislation, including the Mental Health Act of 2018, which has modern principles of mental care and human rights.³³

The Constitution of the People's Republic of Bangladesh, 1972: There are no particular clauses addressing mental health only in the Bangladesh Constitution. It does, however, contain broader concepts of the rights and welfare of every person that may be pertinent to mental health. The right to life and personal liberty is protected by Article 32 of the Constitution. Despite not mentioning it specifically, this clause can be seen to cover the right to mental health and access to mental health care. Then, equal protection under the law is guaranteed by Article 27 of the Constitution, every citizen in Bangladesh has entitled the equal protections before the law.

So, every citizen means it's not only included the common people's right but also it included the mentally disabilities rights. Finally, Article 15 of the Constitution recognizes the government's duty to protect citizens' physical and mental health as parts of comprehensive medical treatment. So, these constitutional clauses imply that as part of comprehensive medical care, the government has a duty to protect the physical and mental health of its citizens. The right to life and personal liberty, equal protection under the law, and

³² The lunacy Act,1912

³³ Lunacy Act 1912

protection of health are just a few of the more general provisions in the Bangladesh Constitution that can be interpreted to cover the rights and well-being of people with mental health problems or disabilities. They establish the foundation for making sure that the government upholds the rights and welfare of everyone, including people who have mental health issues.³⁴

National Mental Health Strategic Plan 2020-2030: Bangladesh's National Mental Health Strategic Plan 2020-2030 aspires to create an all-encompassing framework that fosters mental health, prevents and treats mental illness, and guarantees people's lifetime rehabilitation. The strategy emphasizes the significance of easily available services in nearby areas by using a community-oriented mental health model and a human based on rights strategy.

It also emphasizes the necessity of increasing current government programs in the fields of health and other pertinent areas. In addition, the plan also places a focus on important issues including equity, equality between men and women, empowerment as ourselves, social and family support, resource augmenting, and the participation of people with mental illness and their cares in the planning process. By emphasizing these aspects, the strategic plan not only addresses issues related to mental health but also advances the Sustainable Development Goals (SDGs) and the more general goal of providing universal healthcare to all individuals.³⁵

National Health policy 2011: The requirements of people with mental illnesses are significantly addressed by the National Health Policy of 2011. The strategy shows an obligation to improve mental healthcare services and accessibility for people in need by including nine specific targets intended in order to encourage mental health issues. Additionally, the national health policy's effective and organized distribution of the healthcare budget guarantees that funds

³⁴ The Constitution of the People's Republic of Bangladesh, 1972

³⁵ Government of the republic of Bangladesh, "National Mental Health Strategic Plan" (Dhaka, Bangladesh, 2020).

are directed towards improving mental health services, providing greater support and treatment for people with mental disorders.³⁶

The Disability Rights and Protection Act of 2013: Bangladesh is a comprehensive law aimed at protecting and promoting the rights of persons with disabilities, including those with mental disabilities. While it covers various aspects of disability rights, it includes provisions related to mental health and the rights of individuals with mental disabilities. It consists of 44 Articles. In Article (5-15) mentioned about different types of disabilities. Here are some key points from the Disability Rights and Protection Act of 2013 related to mental health. According to the Act, it is illegal to discriminate against people who have a disability, including a mental illness, in all facets of life, including in work, education, and service access. It emphasizes inclusivity and equal opportunity. Moreover, it acknowledges that people with disabilities, including those who have mental disabilities, have the same rights to receive healthcare services as everyone else. Services for mental health are included here.³⁷

THE MENTAL HEALTH ACT OF 2018

The Bangladeshi Mental Health Act of 2018 is very pertinent to resolving the difficulties brought on by mental diseases. The Act recognizes the significance of full guidance for those affected by mental diseases by attempting to respect the dignity of people with mental health concerns, ensuring their access to treatment, preserving their property rights, and supporting their recovery. The provisions of the Act 31 sections are essential in regulating and overseeing a variety of areas of mental health care, including the coordination, growth, and expansion of government efforts. The Mental Health Act

³⁶ Government of the republic of Bangladesh, "National Health Policy" (Dhaka, Bangladesh, 2012).

³⁷ The Disability Rights and Protection Act of 2013

of 2018 shows the government's commitment to modernizing mental health treatment, expanding support networks, and establishing a far better and effective system for managing mental diseases by replacing the antiquated Lunacy Act of 1912 in Bangladesh.³⁸

The positive aspects of Mental Health Act, 2018 of Bangladesh: The World Health Organization (WHO) is more concerned about mental health. It appears to be developing quickly these days. It has frequently been used as an initiator for crime, and frequently, criminals commit crimes while taking advantage of the mental health of others. Criminals take advantage of those who are miserable and fixated on. What is happening around them? Moreover, the mentally disabled people do not commit any crimes out of their own free will, but they occasionally find themselves in trouble even when acting in good faith.

In some cases, unlicensed mental hospitals have even resulted in the deaths of innocent people who were treated there. Since the independence of Bangladesh, the entire country was in need of a novel legislation in this regard and therefore, in these past years the government of People's Republic of Bangladesh adopted a new law called Mental Health Act, 2018, to prevent all citizens from these kinds of difficult conditions. It is the first Act to safeguard the rights and guarantee fair justice for people with mental disabilities. Finally, the good news is that, The Lunacy Act of 1912 was repealed and replaced with this new legislation. The newly revised law has shown a lot of new advantageous characteristics³⁹

Through the enactments of the 2018 Mental Health Act, continuous policy creation, and the extensive National Strategic Plan created with input from experts and people with lived experience, Bangladesh has demonstrated a substantial commitment to developing mental health. The Mental Health Act's fundamental

³⁸ MHA, 2018

³⁹ WHO, 1948, MHA ACT 2018

principles center on maintaining the dignity of people with mental health issues, offering them the medical care they require, protecting their rights to property, and assisting in their rehabilitation.⁴⁰

Moreover, The Mental Health Act of Bangladesh, which consists of 31 Sections⁴¹ It is in charge of overseeing the development, regulation, and coordination of issues relating to mental health, including governmental obligations. The National Mental Health Policy 2021, which is about to be approved, intends to create a complete structure for action and coordination that is in line with local knowledge and practices and incorporates global and regional perspectives that are customized to the particular circumstances of Bangladesh. According to this Mental Health Act, 2018 of Bangladesh, it comes with an advantage to protect the mentally people's rights.

So, in section 2 explained that, the Mental Health Act, 2018, 2(14) defines 'Drug addiction' as the detrimental physical and mental changes stemming from regular substance use or sudden cessation of intake. Section 2(15) clarifies 'Mental illness' as a form of mental disease distinct from drug addiction and mental retardation, as determined by the overseeing Medical Officer.

Additionally, section 2(16) defines 'Mental disorder' as any clinically recognized symptom or behavior, including mental retardation and drug addiction, which affects an individual's physical and mental well-being, hindering their regular life. Lastly, section 2(17) specifies a 'Psychiatrist' as a doctor those who are obtaining a Master's degree in Psychiatry from a government-recognized institution, registered by the BMDC⁴²

⁴⁰ Mehadi Hasan, "An Analysis on the Mental Health Act 2018," *The Daily Stars*, February 2021.

⁴¹ Mental health Act, 2018 Of Bangladesh

⁴² Dean A Shepherd Johan Wiklund, Isabella Hatak, Holger Patzelt, "Mental Disorders in the Entrepreneurship Context: When Being Different Can Be an Advantage," *Academy of Management Perspectives* 32, no. 2 (2018), <https://doi.org/https://doi.org/10.5465/amp.2017.0063>; and Susan L. Ettner Sarah A. Friedman, a Francisca Azocar, Haiyong Xu, "The Mental Health Parity and Addiction Equity Act (MHPAEA) Evaluation Study: Did Parity Differentially Affect SUD and Mental

Now, we can understand that these sections define the actual meaning of those who are mentally suffering and also focus on those who expertise those who are actually psychiatrists to identify them, whether he/she is mentally disabled or not. So, it shows us the positive aspects.

Besides, in Section 7 of the Mental Health Act states that the government is required to approve the establishment of mental hospitals at various locations with separate departments or units within medical college hospitals or district hospitals for the treatment and management of mental illness patients. Each psychiatric hospital or unit should have separate arrangements for the treatment of drug-addicted and under-trial or sentenced psychiatric patients, as well as specially designed arrangements for adolescent psychiatric patients. Additionally, specific procedures and supervision related to the determination and supervision of mental hospitals are prescribed by the relevant rules. In this section it helps the mentally disabled people who are drug addicted. So, this section helps to get rid of these situations to become a normal human being.

Furthermore, In Bangladesh's incident occurred many times ago. Which Oishi was a murderer of her parents? But when we look into the fact that Oishi was a drug addicted person and also as a mentally traumatized. But the court verdict that she was accused and she got life imprisonment instead of death penalty. Because she was a drug addicted person. But she did the occurrence intentionally so the court decided to punish her because she was checked who is a mental disabled expert.

So, this section basically focused on protecting the innocent mentally disabled people who are victimized by the mental health hospitals and also punished the accused person those who did the offense intentionally. So, this case was followed by the judicial decision On the other hand in section 12 mentioned the voluntary

Health Benefits Offered by Behavioral Healthcare 'Carve-Out' and 'Carve-In' Plans?," *Drug Alcohol Depends.*, 2018, <https://doi.org/doi:10.1016/j.drugalcdep.2018.06.008>.

treatment which states Consent is required for the admission of adult patients⁴³

Within 24 hours of receiving the application, the responsible medical officer must assess the mental health of the applicant and make a decision based on the prescribed form. Voluntarily admitted patients retain the right to accept discharge or refuse treatment. The in-charge medical officer must inform voluntarily admitted patients about the possibility of a change in their admission status and the potential impact on their rights to discharge or refuse treatment. The Mental Health Review and Monitoring Committee is responsible for evaluating the reasons for patient admission and reviewing the tenure every fifteen days, with a more frequent review of every seven days for minors.

In section 14 mentions the involuntary treatment because of this application itself or consent of the patient's a guardian relative, local jurisdictional law enforcement official, or the physician in charge, using the required form, may be used to begin the admissions procedure for an unwilling patient. According to the length of the admission varies depending on the facts and the recommendations that, they provided urgent care for a maximum of 72 hours, care or evaluation for a maximum of 28 days, treatment or assessment up to 60 days, following therapy up to 120 days, and then every 180 days after that, with the possibility of additional extensions depending on the patient's treatment requirements.

The responsible medical officer must notify the patient's guardian or relative about the potential changes in the patient's admission status or their right to accept discharge or refuse treatment. Prior to admitting an unwilling patient for immediate and prolonged treatment, the responsible medical officer, psychiatrist, or the Mental Health Review and Monitoring Committee must assess the patient's illness severity, tendency of attacks, medication reluctance, suicidal

⁴³ Bari Dhali, "From Murder to Religion ; How Is Oishee Spending Her Days in Jail," *Dhaka Tribune*, 2021.

tendencies, inclination to wander, and the potential risks to the patient's health, safety, and public safety⁴⁴

So, these two Sections, 12 and 14 emphasized, the Mental Health Act of Bangladesh, 2018, significantly contributes to protecting the rights of mentally disabled individuals. Section 12 ensures that adult patients have the right to provide consent for their admission and treatment, with the option to refuse treatment if they are voluntarily admitted. Additionally, the section highlights the importance of regular review to ensure the well-being and rights of the patients.⁴⁵

In addition to, section 14, the Act emphasizes the need to balance the rights of mentally ill individuals with the necessity of providing necessary treatment, outlining a structured process for involuntary patient admission that takes into account the patient's welfare and safety. This serves to protect the rights of both the mentally disabled individuals and the public.

As stated in Section 15, the procedure for admitting mental patients accused of criminal offenses generally involves the steps you mentioned, such that a reception order, issued by the magistrate, serves as the legal basis for admitting the patient to a mental health facility. This order recognizes the need for psychiatric evaluation and treatment due to the individual's mental state related to the alleged criminal offense. Moreover, while acceptance of admission orders and related matters are governed by rules and regulations established in particular jurisdictions, these rules outline admission criteria and provide guidance on the procedures to be followed during the evaluation and treatment of such patients.

If a person commits a criminal offense and if that person is mentally ill, then until such time as his intention and motive can be proved by examination, the magistrate shall order reception and he shall be admitted to a mental hospital and shall be protected under

⁴⁴ * Moin Ghani, "Right to Liberty," *Ain o Salish Kendra (ASK) A Legal Aid & Human Rights Organisation*, 2006, <https://www.askbd.org/ask/right-liberty/%0A%0A>.

⁴⁵ MHA ACT,2018 SEC 12,14,15

the Mental Health Act, 2018. His case goes on when he recovers. So, it's another positive sides to protect mentally disabled people. ⁴⁶

According to section 17 mentions, the local government representative in charge of the relevant area is responsible for transferring individuals suffering from mental illness, without having any guardian, relative, or known address, to the nearest Government Mental Hospital Superintendent.

If there are grounds to suspect that an individual is afflicted with a mental illness and poses a danger due to this condition, the local police officer has the authority to detain the person and send them to the closest mental hospital for appropriate assessment and treatment. These regulations emphasize the roles of the local government and law enforcement in ensuring the appropriate care and safety of individuals affected by mental illness, especially those without proper guardianship or who may pose a risk to themselves or others.

When observing patients with mental imbalance, they can be divided into two groups. The first group are those who are mentally unbalanced; but they have homes and guardians. They hang out all day. He returns home at night. The second group is the mentally unstable class who have no residence and have or have no relatives. Very helpless this class of unbalanced mental patients wanders everywhere. He eats on the streets, on the roads, sleeps wherever he gets a chance at the station.

Wherever there is an opportunity, he responds to the call of nature. If they are sick, they lie on the street, there is no one to look after them. Many even died on the streets. For this reason, In section 18 and 19 mentioned that, to establish a rehabilitation center for mentally disabled people. In this section emphasized that, when the mentally person is in mental health hospitals and got the clearance certificates from the doctors after that he/she is getting recover as a

⁴⁶ Caroline Bersch, "The State of Mental Health in Bangladesh," *The Borgen Project*, 2021

normal human being but they do not have any guardian, relatives to stay with them, then the government transferring them in the rehabilitation center through Directorate of Social Services.

It's called post recovery transfer center. Furthermore, these rehabilitation centers aimed at facilitating the rehabilitation of individuals suffering from mental illness must be established and operated with the prior approval of the Government. This requirement ensures that the rights of persons with mental illness are protected and upheld during the rehabilitation process. So, not Only government hospitals but also some non-governmental institutions have been provided the treatment. The National Institute of Mental health and hospital which is based on mental disabled people.⁴⁷

On the other hand, there are rehabilitation centers which deal with mentally disabled people. Such as: Ahsania Hena Ahmed Care Center, Niramoy hospital, white swan Foundation rehabilitation center, shradda rehabilitation, Addiction Management & Integrated Care (AMIC) and so on. So, this Rehabilitation centers ambitions are to provide treatment to the mentally disabled people and also those who are affected the drug issues. so all of this organizations helping out how to recovery the mental health disabilities and also reduced the mental health issues in our country.

So, it shows position sides again.⁴⁸ Section 20 provides the scope for judicial inquiry regarding mental status. It allows relatives or guardians of the affected person to comment in court on a person's mental illness. If this application is granted, the court directs a responsible medical officer to ascertain the mental incapacity of the accused and compels him to submit the report within a prescribed period.

⁴⁷ Kamrun Nahar Koly et al., "Mental Health and Community-Based Rehabilitation: A Qualitative Description of the Experiences and Perspectives of Service Users and Carers in Bangladesh," *Community Mental Health Journal* 58, no. 1 (2022): 52-66, <https://doi.org/10.1007/s10597-021-00790-0>.

⁴⁸ Koly et al.

Furthermore, the provision outlined in this section facilitates a judicial investigation into an individual's mental condition. It empowers the relatives or guardians of the affected person to present their perspectives in court concerning the individual's mental illness. If the application is approved, the court does by suo moto or instructs a competent medical officer to determine the mental incapacity of the accused and mandates the submission of a report within a specified time frame. This process ensures fair consideration of mental health issues within legal proceedings and promotes the protection of the rights and well-being of individuals with mental illness. so it's once again showing the bright side.

On the other hand, Section 21 implies, the parenting and guardianship of people with mental illnesses are covered by this Act. It specifies that, in the absence of any other applicable laws, the mentally ill person's parent or mother shall serve as their guardian. If the parents are unable to care for the child, the court will appoint an appropriate guardian to play a role as a receiver after taking the child's welfare into account.

The law will specify the guardian's obligations, and if they are not met or there is reason to believe they have been neglected, the local police officer or public representative is required to notify the magistrate in writing. One positive aspect of this Act is that it prioritizes the well-being of mentally ill individuals by outlining clear procedures for parenting and guardianship. Specifically, in the absence of other relevant laws, the Act designates the mentally ill person's parent or mother as the primary guardian.

However, if the parents are unable to fulfill this role, the court appoints a suitable guardian after carefully considering the individual's welfare. Moreover, the Act mandates the definition of the guardian's responsibilities, and any potential neglect is required to be reported in writing to the magistrate by the local police officer or public representative. This framework aims to safeguard the rights

and interests of mentally disabled individuals within the legal system.⁴⁹

Procedures for maintaining the property of those with mental illnesses are outlined in Section 22 of the statute. It states that the medical officer must alert a person's guardian or relative of the possibility of property loss if they are unable to handle their possessions owing to mental impairment. The medical officer is compelled to Ask the court to appoint a manager to look after the property if the guardian or relative pauses to take action.

The court must appoint an administrator for a maximum term of three years in situations when the person's parents are deceased and it is proven that the person is incapable of managing their property. Within six months of accepting the position, the appointed manager must provide the court with a thorough report on the assets and obligations of a mentally-ill person. The individual's financial condition, including all assets and obligations, must be fully outlined in this report.

We can say that, one significant positive aspect of these regulations is the legal protection they provide for the property and financial well-being of mentally disabled individuals. By mandating that the medical officer notifies the concerned guardian or relative about the potential risks to the individual's property, the law ensures that necessary precautions are taken to safeguard their assets.

The provision for the appointment of a manager or administrator by the court in cases of inaction by the guardian further ensures the responsible management of the individual's property. Additionally, the requirement for a detailed report within six months of assuming responsibility helps in maintaining transparency and accountability, thereby protecting the rights and interests of mentally disabled individuals. This framework strives to ensure fair treatment

⁴⁹ Hasan *et al.*, "The Current State of Mental Healthcare in Bangladesh: Part 1 - an Updated Country Profile."

and prevent the exploitation of the property of those suffering from mental illnesses.

On the other hand, another major positive side is that, Section 25 of the statute empowers the Government, under sections 9 and 10, to designate one or more mobile courts in specified conditions or areas as per the regulations. This power is granted despite any contradictory provisions within the Act. The utilization of this authority is subject to the guidelines outlined in the Mobile Courts Act, 2009.

This provision shows us, this mobile court is dealing with petty cases. So, this Mobile court is actually utilized when in Section 9 and 10 which describes Section 9 of the statute enables the government to conduct various actions concerning the inspection, search, and seizure of mental hospitals. It permits the government to enter, inspect, and seize relevant materials related to the treatment of patients.

However, any information pertaining to a patient's condition should not be disclosed to the public without the explicit permission of the patient or their guardian. The section also authorizes the government to issue orders for compliance with necessary conditions and to take necessary actions, such as the immediate suspension of the license of a private mental hospital if its services are detrimental to public health or do not meet required standards. In such cases, the managing authority of the private hospital must promptly transfer the patients under treatment to another facility with adequate medical provisions. The detailed procedures for inspection, search, and seizure are further defined by the rules.

On the contrary, Section 10 of the statute deals with the power to impose fines related to the operation of mental hospitals. It stipulates that any individual operating a mental hospital without a license may be fined up to five lakh takas after being given a fair chance to present their case. For repeat offenses, the fine may extend up to twenty lakh takas. Additionally, the government reserves the

right to order the immediate cessation of all activities at the hospital and seize its assets.

Furthermore, if a mental health professional knowingly provides services at an unlicensed mental hospital, they may be fined up to one lakh taka. Any fines collected under this section are to be deposited in the Government Treasury. The procedures for imposing penalties and the appeals process fall under the notion of the rules as specified.

As we know that, we know that mobile courts try petty or small cases. So, when they considered the mental health hospitals in terms of Sections 9 and 10, the Mobile Court imposed fines which were mentioned in Section 10. But an unlicensed or licensed mental hospital or unlicensed or unlicensed hospital gives false certificates stating that if he/she is mentally disabled person but he/she is a sane person. If he commits this intentionally wrongful act, then the criminal case under Section 23. Since, mentions that this offense is non-cognizable, complex billable. So, these criminal cases go to court.⁵⁰

SCRUTINIZING THE EXISTENTIAL GAPS WITHIN MENTAL HEALTH ACT, 2018 OF BANGLADESH

According to the data, there are still difficulties in successfully treating mental health concerns in Bangladesh, despite the country having made significant progress by ratifying the UNCRPD and

⁵⁰ Syed A K Shifat Ahmed, Motunrayo Ajisola , Kehkashan Azeem, Pauline Bakibinga , Yen-Fu Chen © Nazratun Nayeem Choudhury, ¹ Olufunke Fayehun, Frances Griffiths Bronwyn Harris 5 Peter Kibe Ric hard J Lilford, "Impact of the Societal Response to COVID-19 on Access to Healthcare for Non-COVID-19 Health Issues in Slum Communities of Bangladesh, Kenya, Nigeria and Pakistan: Results of Pre-COVID and COVID-19 Lockdown Stakeholder Engagements"; Agumasie Semahegn and Bezatu Mengistie, "Domestic Violence against Women and Associated Factors in Ethiopia; Systematic Review," *Reproductive Health* 12, no. 1 (2015), <https://doi.org/10.1186/s12978-015-0072-1>.

adopting the Mental Health Act of 2018 into effect.⁵¹ In Bangladesh, mental health disorders still affect 16.8% of adults and 13.6% of children, for a total prevalence of 21.5 percent, according to the National Mental Health Survey of Bangladesh 2018-2019.⁵² The lack of awareness and stigma around mental health remain major barriers to providing sufficient care for people with mental health illnesses, even after the National Mental Health Policy was introduced in 2022. The restrictions or inadequacies in the Mental Health Act of 2018's protection of the rights and wellbeing of persons who are afflicted with mental diseases may be cited as one of the law's deficiencies.⁵³

In this Act, we can observe that it has been written by a lot of researchers. Such as, they are talking about the legal rights, the economic burdens, rehabilitations, then there is not adequate training center for protecting the mentally disabled people's rights, and also the budget which is allocated. 0.5% for health care. But when we can see the Act that, in section 2 which is basically, general definitions. It doesn't contain the actual mentally disabled people's definitions. What is mental illness, different types of illness or disabilities? It doesn't exemplify it.

As we know that everyone is born free and there are three moral obligations which are i) respect ii) protect and iii) fulfill. So, the relationship between health and human rights is deeply intertwined. Health is a fundamental human right, and everyone has the right to the highest attainable standard of physical and mental health. This includes ensuring access to non-discriminatory, timely, and affordable healthcare. Availability, accessibility, acceptability and quality of health services are ensured by respecting human rights. In addition, human rights protection addresses the underlying determinants of health, such as clean water, nutritious food and safe

⁵¹ United Nations Convention on the According to, Rights of Persons with Disabilities (UNCRPD), 2006

⁵² Hasan et al., "The Current State of Mental Healthcare in Bangladesh: Part 1 - an Updated Country Profile."

⁵³ Fatema zahra ahshan Raisa, "Reshaping Mental Health Legislation in Bangladesh," *The Daily Stars*, September 15, 2023.

housing. Promoting human rights improves health outcomes and health equity, and it is essential to hold governments accountable for meeting these obligations.⁵⁴

Moreover, in sector 6 of MHA, 2018⁵⁵ mentioned the rights of mentally disabled persons in a nutshell. But when we look at the other countries Mental Health Act such as India, they mentioned it with clarifications. In addition to, Section 6 of MHA 2018, stated that, the rights of patients to health, property, dignity, education etc. shall be ensured and this shall be done by making rules. In the absence of such regulations, important concerns such as privacy and accountability as well as the fundamental human rights of persons with mental disabilities have not been elaborated. The WHO-AIMS report on Bangladesh's mental health system noted that there is no human rights review commission in Bangladesh to monitor regular violations of the human rights of people with mental illness. It would not be wrong to say that people with mental illness face discrimination in every aspect of life including food, housing, healthcare and education. Additionally, while the Act mentions community support and rehabilitation, it lacks a robust long-term review process and community allowances.⁵⁶

The fact that the Mental Health Act of 2018 is the newest but goes lacking in addressing people's human rights when they have a mental illness is another cause for concern. In every aspect of life, including access to food, shelter, healthcare, and education, people with mental health disorders constantly experience human rights abuses and discrimination. In the case laws, *Kalandiar Kabir v. Bangladesh and others* (54 DLR 258),⁵⁷ the court recognized that those

⁵⁴ Mustafa Nowshin, "Violation of Right to Liberty by Involuntary Mental Health Treatment in Bangladesh: A Legal Analysis on Mental Health Act, 2018," *EWU Institutional Repository*, 2023, <http://dspace.ewubd.edu:8080/handle/123456789/4021%0A>.

⁵⁵ Shajedur Rahman Shawon, "New Mental Health Act in Bangladesh," *The Lancet Psychiatry* 6, no. 3 (2019): 199, [https://doi.org/10.1016/S2215-0366\(19\)30028-8](https://doi.org/10.1016/S2215-0366(19)30028-8).

⁵⁶ Eport On, "Mental Health System Ministry of Health," *Health (San Francisco)*, 1882.

⁵⁷ afsana ferdous Mimi, "Mental Health Act, 2018: Vagueness of Provision and Untold Suggesting of the Practice," *Tudies, Society Fpr Critical Legal*, 2020.

who suffer from mental illness frequently endure cruel and inhumane treatment. Most frequently, this led to a direct violation of the right to life. But these essential human rights for people with mental disabilities were not included in the new Act. So, in this MHA, 2018, we should focus on each and every legal right which has been already mentioned in the previous chapter. It basically talks about the India Mental health Act, 2017 which is giving us a good example to utilize these rights. Because they have the equal rights as us.⁵⁸

As part of Bangladesh, the Mental Health Act of 2018 defines the provision for the enforcement of fines under Section 10. This section gives the government has the right to punish anyone who conducts a mental hospital without a license or otherwise breaches the Act's provisions or any rules enacted in accordance with them. For a first offense, the fine shouldn't be more than five lakh takas, and for any consecutive violations of the same kind, it shouldn't be more than twenty lakh takas. This clause emphasizes the significance of preserving the highest standards in the field of mental healthcare while working to ensure that people follow the regulations established in the Act and prevent any unauthorized conduct at mental health facilities. But when we look into our previous incident, ASP Anisur Karim Murad occurred in Mind Aid Hospital. But this hospital wasn't a government approved hospital. So, the ASP Anisur Karim was intentionally murdered by the hospital ⁵⁹. Does it really cover up the limited or imposed fine which is 5 to 20 lakhs taka? Where is the right to life and Human rights violations? This limited fine can ensure ASP Anisur Karim and their family to give them proper justice? So, the power to impose money is not adequate in my point of view.

In addition, when we talk about the ASP Anisur Karim murdered cases, the following important factors are emphasized in

⁵⁸ Anika Nower Suvra, "Legal Remedies Malpractice with Mental Patients," *The New Nation*, 2020, <https://ep.thedailynewnation.com/2020/12/01/index.php>.

⁵⁹ Ahmadul Hassan, "ASP Murder in Hospital: Adabor Police Charges 4 Owners, PBI Acquits Them," *English Prothom Alo*, May 2023.

Section 12 of the Mental Health Act of 2018, which describes the process for voluntary admission. Adult patients must provide their permission before being admitted. The responsible medical officer is required to assess the applicant's mental health within 24 hours of receiving the application and then make a decision using the established procedure and form.

The application for voluntary admission shall not be taken into consideration if the responsible medical official determines that the patient falls under the definition of involuntary admission. The duration of the patients' stay and the appropriateness of their admission must be evaluated by the Mental Health Review and Monitoring Committee. This review happens every fifteen days for adult individuals, but just once every seven days for children. But when we look into the cases, it didn't maintain the voluntary treatment. The ASP went there for mentally treatment but because of the negligence of the hospital's treatment he died. So, in this section 12 and 14 which is mentioned the voluntary and involuntary is not forcible in nature. So, we should focus and bring the mandatory provision based on the Advance directive in this MHA, 2018. Why is it important and how does it work? All of these issues were explained earlier in the previous chapter.⁶⁰ .For this India Mental Health Act, 2017 is the best example for better understanding.

On the other hand, Sections 11 to 15 of the MHA,2018 of Bangladesh outline the procedures for admitting individuals with mental illness to treatment facilities. These sections detail the criteria and steps involved in the voluntary or involuntary admission process, ensuring that individuals receive necessary care and support for their mental health conditions. However, these sections do not cover two critical aspects related to emergency situations¹. This refers to the legal authority to temporarily hold a person who poses an immediate danger to themselves or others due to their mental health condition. In emergency situations, where a person attempts to leave or refuses

⁶⁰ Baroness Hale of Richm, "Mental Capacity and Mental Health," 2005, 17-19.

necessary treatment, procedures may allow for their temporary detention to prevent harm.

Sometimes, medical practitioners face situations where obtaining consent from the patient or their guardian for necessary treatment is not possible. Emergency powers may grant medical professionals the authority to administer urgent treatment or take necessary actions to protect the patient's well-being or that of others, even without explicit consent. These emergency provisions are crucial for addressing urgent mental health crises and ensuring timely intervention when individuals are unable or unwilling to consent to treatment. While sections 11 to 15 focus on admission processes, the Act likely includes separate provisions or sections that detail these emergency procedures to safeguard individuals and manage critical mental health situations effectively.⁶¹

On the contrary, in the Mental Health Act, 2018 mentioned about court procedure and punishment these are: The MHA of the 2018 Section 23 specifies the consequences for certain infractions. These include paying fraudulent certificates of mental illness, failing to manage the care or assets of those with mental illnesses, and facilitating a violation of the Act or its rules, as well as penalties and imprisonment. Penalties might include everything from penalties up to a certain amount to time served in jail.

Moreover, The Mental Health Act of the 2018 Section 24 lays out the processes for dealing with convictions for crimes, trials, and related issues. It states that offenses under Section 23 must be tried by the magistrate and that no magistrate may take cognizance of such offenses unless the government or another authorized officer submits a written report in support of it. These offenses are non-cognizable, compoundable, and bail able, and the legal actions relating to them must follow the Code of Criminal Procedure. The Magistrate also has the power to impose the fine specified in Section 23 of MHA, 2018 in

⁶¹ Sadia Tanjam Hasan, "Envisioning a Mentally Healthy Bangladesh," *Dhaka Tribune*, July 2024

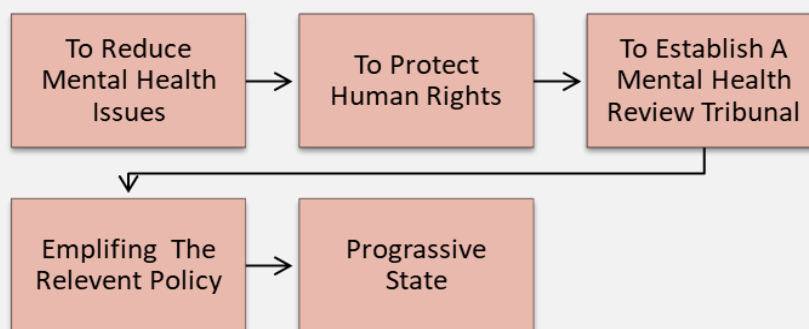
Bangladesh. Besides, the government is able to perform its authority under sections 9 and 10 of the Mental Health Act of 2018 by using Section 25 of the Mobile Courts Act, 2009 of Bangladesh. This means, if a mental hospital is doing illegal work on the mentally challenged without a license, then they can be fined for illegal activities under the Mobile Courts Act, 2009. So, the Mobile Courts deal with petty cases. So, we can hardly say that, if any mentally disabled people died unjust treatment for the doctors, they will get less punishment. So, mentally disabled people's rights have been violated in this scenario.

So, when we see the ASP Anisur Karim's case, still the case position is trial stages not even pre- or post-trial stages. So, when this cases and other cases those who suffered as like as ASP Anisur Karim, they get the Justice in future in long time with long run. Elsewhere, Mobile court is basically focused on very petty or small cause cases. So, the right to life violations with human dignity is not a small cause at all. So, in Bangladesh established a Mental Health Review Tribunal helps to protect and ensure proper justice of the mentally disabled people. So that, if this tribunal established in Bangladesh, they mentally disabled people get the Justice within short time in the future, because of our courts are very much packed full of civil and Criminal litigations. so it's very difficult to continue the medical litigation in the same court. So, we have to focus another Mental Health Review Tribunal to give them fair treatment. Establishment of Mental health review tribunal: There are a lot of countries who have adopted mental health review tribunal in their Mental Health act. UK is one of them. The UK mental Health Act, 2007 is the best example. The land mark case was, *R (East London and the City Mental Health NHS Trust) v Mental Health Review Tribunal (IH as Interested Party) [2001] EWCA Civ 1110*⁶² stated that, the appeal by the East London and the City Mental Health NHS Trust was dismissed. The Court upheld the decision of the Mental Health Review Tribunal to discharge IH,

⁶² R A J Prithivi and Jatin Patil, "Mental Health Laws in India," *International Journal of Health Sciences*, no. May (2022): 9775-86, <https://doi.org/10.53730/ijhs.v6ns1.7288>.

affirming the Tribunal's role in ensuring that detention under the Mental Health Act is justified and lawful. So, the case is often referenced in legal discussions and further cases involving the interpretation of the Mental Health Act 1983 and the role of review tribunals in such matters.⁶³

Figure 1.0 *Becoming a Development State to Ensure This Policy for Mental Disable People*



So, in my point of view, there is a major gap between the real scenario of mental health issues in Bangladesh vs Recently enacted Mental Health Act, 2018 of Bangladesh. In our country, our society cannot be aware of mental disabilities. They literally do not bother about it. Because they believe in superstitions. In fact, in our society, how many people have knowledge about the enacted Mental Health Act, 2018 of Bangladesh, it's a big question. Now-a-days our society thinks that they are unnecessary people for our country or that they should fix it on their own because it is their problem. Such thinking does not change the mindset of people in the society.

That is why in our society mentally disabled people are neglected, isolated and discriminated against for every right and lag behind but still they are fighting. So, it is our duty to accept them as human beings and take the backward society forward. Because, if we

⁶³ Simon Lawton-Smith, "Briefing: Mental Health Act 2007 - Simon Lawton-Smith - The King's Fund, December 2008," *The King's Fund*, 2008.

do not help them, the mentally retarded in the backward society cannot move forward for their improvement in the future but will fall further behind. So, this entire social overview needs to be changed to improve their mental health. We know, "Every human being is born with the right to be born free". So we and society should change the mentality of every person for mentally disabled people, so that they can recover earlier and lead an adequate life.

The Mental Health Act, 2018 of Bangladesh is not exhaustive in nature so there are some drawbacks which have been explained. The government should take the necessary steps to look forward to them.

Mental health is affecting not only in Bangladesh but also in various countries such as: India, Japan, USA, UK *etc.* So, it's one of the major concerns in around the world. As our previous discussion based on previous chapter which has been mentioned about the beneficial role and deficiency of Mental Health Act, 2018 of Bangladesh. Furthermore, the absence of a dedicated mental health authority and inadequate mental health services for the mentally challenged further compound the challenges in accessing mental health services in Bangladesh. So, it can say that there are some findings, recommendations which have been raised here.⁶⁴

Lack of awareness, lack of accountability, social discriminations and social customs; an inadequate availability of mental health care services; lack of education based on mental health issues⁶⁵; domestic abuse ⁶⁶. Mental illness is well known because these victims are neglected and their rights are repeatedly violated. So, based on these

⁶⁴ Eshrat Sharmin, "Contextualizing Mental Health in Bangladesh: The Youth Perspective," *The Daily Star*, 2022, <https://www.thedailystar.net/opinion/views/news/contextualising-mental-health-bangladesh-the-youth-perspective-3073396%3E%0A%0A>.

⁶⁵ Md Manirul Islam, Nasim Jahan, and Md Delwar Hossain, "Violence against Women and Mental Disorder: A Qualitative Study in Bangladesh," *Tropical Medicine and Health* 46, no. 1 (2018): 1–12, <https://doi.org/10.1186/s41182-018-0085-x>.

⁶⁶ Claudia Garcia-Moreno et al., "WHO Multi-Country Study on Women 's Health and Domestic Initial Results on Prevalence," *Who* 151, no. 1 (2005): 277–83, <http://www.cabdirect.org/abstracts/20063002089.html>.

issues there are some recommendations to protect their rights from unfair treatment.

Bangladesh faces a critical shortage of psychiatrists and psychologists, with only limited professionals available for a population of over 164.9 million. Most are concentrated in tertiary care institutions, leaving other areas underserved. A multi-sectoral approach is needed to educate the public and improve mental health treatment.

Urban and rural areas lack professional psychiatrists and psychologists. The WHO-recognized Mental Health Gap Action Program trains local doctors and nurses to identify and treat common mental disorders in these areas.⁶⁷ Expanding funding and resources for the mental health sector is essential to reach more people, improve treatment options, provide better facilities, educate more experts, and conduct more research.

Establishing a specialized mental health review tribunal with qualified judges and mental health experts in Bangladesh is suggested to handle mental health-related concerns, including job eligibility for individuals with mental health conditions. Integrating mental health services into primary healthcare facilities ensures timely and efficient care, improving overall health outcomes and reducing barriers to accessing mental health services.

Care and support centers offering various treatments and community support initiatives can aid rehabilitation, reduce stigma, and improve the well-being of individuals with mental health issues. The Mental Health Act and Policy acknowledge the human rights of individuals with mental health conditions but lack a comprehensive list of rights and remedies for violations. A robust framework is needed to explicitly outline these rights and ensure effective measures for addressing violations. Improved implementation, enforcement, monitoring, and assessment are crucial to safeguard the rights of

⁶⁷ <https://www.who.int/publications/i/item/9789241596206>

individuals with mental health conditions and uphold the intended protections in practice.

CONCLUSION

The Mental Health Act, 2018 in Bangladesh, established post-liberation war in 1971, aims to protect individuals with mental disabilities. However, it is not exhaustive and lacks specific human rights perspectives. While it improves on the outdated Lunacy Act, 1912, the Act still has deficiencies and does not fully adhere to international standards. Consequently, mentally disabled individuals often do not receive fair treatment or justice. The government should revise the Act to make it more comprehensive and take steps to raise awareness about mental health. Strong laws, sanctions, and public education are necessary to eliminate stigma and protect the rights of those with mental health issues. Additionally, the government should address wrongful treatment in mental health hospitals to safeguard the rights and lives of mentally disabled people.⁶⁸

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⁶⁸ Kristina Stern and David Hewitt, "Re-Admission under the Mental Health Act Following Discharge by a Mental Health Review Tribunal," *International Journal of Mental Health and Capacity Law*, no. 7 (2014): 169, <https://doi.org/10.19164/ijmhcl.v0i7.358>; Lady Hale, "Is It Time for yet Another Mental Health Act? Royal College of Psychiatrists Annual Conference, Birmingham Lady Hale President of The Supreme Court," no. June (2018): 1-15; Pooja Sharma, Ankita Singh, and Dipanjan Bhattacharjee, "Human Rights of People with Mental Illness: Provisions Made in Mental Healthcare Act 2017," *Indian Journal of Psychiatric Social Work* 11, no. 2 PG-1-8 (2020): 1-8, <https://doi.org/10.29120/IJPSW.2020.v11.i2.209>.

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Assessing Institutional Effectiveness of Medical Rehabilitation Programs for Drug Addicts by the National Narcotics Agency

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ABSTRACT

Narcotics abuse is a very complicated matter in Indonesia, even become alert and dangerous. The government's effort to deal with drug addicts is to provide medical rehabilitation and social rehabilitation. The purpose of this study was to find out and analyze related to the provision of rehabilitation for narcotics addicts at the Badung Regency National Narcotics Agency. The research method that the writer uses is the empirical legal research method through the fact approach and the statute approach. The primary data source that the writer uses is interviews, while secondary data is in the form of laws and regulations, journals, and books. The author's research location is the Badung Regency National Narcotics Agency. The implementation of rehabilitation by National Narcotics Agency is an ongoing rehabilitation that is divided into two stages, namely the rehabilitation and post-rehabilitation processes. The functions and benefits of rehabilitation for narcotics addicts are recovery, productivity, and social functioning. However, facilities, and infrastructure are still not effective because National Narcotics Agency in every regency has not a special place for inpatient care and detoxification tools to medical rehabilitation.

Keywords: *Narcotics; Rehabilitation; Addicts.*



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INTRODUCTION

The problem of narcotics abuse is a very complicated matter in Indonesia. The rapid distribution of narcotics accompanied by low prices makes it easy to obtain various groups such as teenagers, adults, and children. Drugs are narcotics, psychotropics, and other dangerous addictive substances. The word narcotics comes from the Greek "narkos" which means to cause paralysis or loss of feeling. Based on Article 1 paragraph (1) of Law No. 35/2009 concerning Narcotics, defines narcotics, namely substances or drugs made from plants or not plants, both synthetic and semisynthetic, causing a decrease or change, loss of feeling, pain, and can cause dependence. The increasingly widespread abuse and illicit trafficking of narcotics cannot be separated from the characteristics of the object, namely that it is addictive (addictive) which is dangerous for health, its use is not for treatment and it is used illegally.

In the era of globalization accompanied by the rapid development of science and technology, narcotics crimes are transnational in nature and are carried out using sophisticated methods or technology.¹ Previously, Indonesia was only a country of transit or traffic for the sale of dark narcotics, due to its very strategic geographical location, now it has turned into a producing country.²

Head of BNN RI Komjen. Police Petrus Reinhard Golose in a press conference on the performance achievements of the Republic of Indonesia's National Narcotics Agency in 2021 Wednesday, December 29, 2021, said that there had been an increase in drug abuse of 0.15% from the results of the 2021 drug abuse survey conducted by the National Narcotics Agency (BNN), the Central Bureau of Statistics

¹ Gusti Ayu Novira Santi, Ni Putu Rai Yuliantini, and Dewa Gede Sudika Mangku, "Perlindungan Hukum Terhadap Korban Tindak Pidana Penyalahgunaan Narkotika Di Kabupaten Buleleng," *Komunitas Yustisia* 2, no. 3 (2019): 216–26, <https://ejournal.undiksha.ac.id/index.php/jatayu/article/view/28786>.

² I Gede Santika and I Nyoman Surata, "Peran Satuan Narkoba Kepolisian Resor Buleleng Dalam Penegakan Hukum Terhadap Pelaku Tindak Pidana Narkotika Di Kabupaten Buleleng," *Kertha Widya Jurnal Hukum* 7, no. 2 (2019): 107–20.

and the National Research and Innovation Agency. Currently, Indonesia's narcotics-prone areas are still quite high, one of which is the Province of Bali. Based on data from ban.go.id in Bali there are 33 (thirty-three) areas prone to narcotics with alert and danger status. Among these areas, there are 3 (three) areas with hazard status, namely Seminyak Village, Kedonganan Village, and Kuta Village, all of which are in Badung Regency.³

Badung Regency is one of the areas that received an intervention to clean it from the distribution and abuse of narcotics. As a tourism destination area with lots of nightlife venues, Badung Regency is a potential sales target for drug transactions. Based on the National Narcotics Agency, Bali Province is one of the top 5 (five) drug users in Indonesia, and Badung Regency is an area highly threatened by drugs in Bali Province.⁴ In line with this, the Badung Regent Regulation Number 2/2022 concerning the Prevention and Eradication of Narcotics Abuse and Illicit Trafficking was issued.

Efforts that have been implemented by the government to overcome narcotics abuse are providing rehabilitation. As already regulated in Regulation of the Minister of Law and Human Rights of the Republic of Indonesia No. 12/2017 concerning the Implementation of Narcotics Rehabilitation Services for Prisoners and Community Fostered Citizens that narcotics rehabilitation must be given to narcotics abusers, to restore the individual's function to normal. This is in line with the development of modern criminal law, where punishment is directed at a humanitarian approach that always pays attention to humanity as a whole human being and is entitled to

³ Humas BNN, "BNN RI Rangkul Stakeholder Untuk Tangani Kawasan Rawan Narkoba Di Pulau Dewata," [BNN.go.id](https://bnn.go.id/bnn-ri-rangkul-stakeholder-untuk-tangani-kawasan-rawan/), 2022, <https://bnn.go.id/bnn-ri-rangkul-stakeholder-untuk-tangani-kawasan-rawan/>.

⁴ Made Agus Sugianto, "Peluang Dan Tantangan Mewujudkan Desa Bersih Narkoba Di Kabupaten Badung," *Jurnal Litbang Sukowati: Media Penelitian Dan Pengembangan* 5, no. 1 (2021): 141-49, <https://doi.org/10.32630/sukowati.v5i1.269>.

receive humane treatment, directed at rehabilitation, re-education, re-socialization, social adaptation, and social reintegration.⁵

Law no. 35/2009 Concerning Narcotics implements a double-track system in the system of sanctions. It is known because the Narcotics Law regulates both sanctions simultaneously, namely criminal sanctions and action sanctions. Criminal sanctions for narcotics crimes are contained in Articles 111 to 144 and 147 of the Narcotics Law, namely the death penalty, imprisonment, confinement, and fines. Meanwhile, the sanction for action in the Narcotics Law is rehabilitation as stated in Chapter IX Article 53 to Article 56 of the Narcotics Law. More specifically stated in Article 54, narcotics addicts and victims of narcotics abuse are required to attend medical rehabilitation and social rehabilitation.⁶

The essence of the double-track system for narcotics abuse is one of the solutions to reduce the number of narcotics users. This is seen from two different perspectives, and the imposition of multiple sanctions is an effort to enforce the law. Criminal sanctions provide a deterrent effect for narcotics users, while action sanctions in the form of rehabilitation are used to treat and foster narcotics addicts so they can recover from dependence so they no longer use narcotics.⁷

BNN has the absolute authority to provide rehabilitation for narcotics addicts based on the Regulation of the Head of BNN No. 11/2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions. BNN is an institution whose position is under the president or non-ministerial and regional whose performance covers the entire Unitary State of the Republic of

⁵ N.N.J. Arsawati, "The Urgency of Judicial Supervision To Juvenile Offender in The," *South East Asia Journal of Contemporary Bussines, Economics and Law* 14, no. 5 (2017): 1-7.

⁶ Dwi Wiharyangti, "Implementasi Sanksi Pidana Dan Sanksi Tindakan Dalam Kebijakan Hukum Pidana Di Indonesia," *Pandecta* 6, no. 1 (2011): 79-85, <https://journal.unnes.ac.id/nju/index.php/pandecta/article/view/2326>.

⁷ Arif Dharmawan, Otto Yudianto, and Yovita Arie. Mangesti, "Double Track System in Criminal Sanction Against Narcotics Abuse," *Ius Positum (Journal of Law Theory and Law Enforcement)* 1, no. 3 (2022): 31-44.

Indonesia. So with that to work optimally, BNN has delegations in each city, district, or province. To reduce the total number of narcotics abusers, the National Narcotics Agency launches prevention and eradication efforts, besides that, the National Narcotics Agency also must provide rehabilitation for narcotics addicts.⁸

A narcotics addict is a narcotics user who finds it difficult to break away from narcotics, psychotropics, or other addictive substances, physically and psychologically.⁹ Rehabilitation is an action taken to be able to treat a narcotics addict so that he can be free from dependence on using narcotics. Narcotics addicts are considered sick people who need treatment and rehabilitation so that they can return to normal and can carry out their social functions in people's lives.¹⁰

Providing pure rehabilitation is only indicated for a narcotics addict, while narcotics abusers can be subject to criminal sanctions in the form of imprisonment. This is based on the different definitions of the two listed in Article 1 point 13 of Law No. 35/2009 Concerning Narcotics that narcotics addicts are people who use or abuse narcotics and are in a state of dependence on narcotics, both physically and psychologically. Whereas Article 1 number 15 it explains that abusers are "people who use narcotics without rights or against the law". By this explanation, it can be concluded that there is a difference, that is, a person is said to be an addict when he is already in a state of

⁸ Isti Rachmah Agustina Ambarwati, "Efektivitas Program Rehabilitasi Badab Narkotika Nasional Pada Pecandu Narkoba Di Provinsi Sumatera Selatan" (Universitas Sriwijaya, 2021), https://repository.unsri.ac.id/51851/3/RAMA_13201_10011181722006_0009067602_01_frontend_ref.pdf.

⁹ Yuliana Yuli W and Atik Winanti, "Upaya Rehabilitasi Terhadap Pecandu Narkotika Dalam Perspektif Hukum Pidana," *ADIL: Jurnal Hukum* 10, no. 1 (2019): 136-49, <https://doi.org/10.33476/ajl.v10i1.1069>.

¹⁰ Sutarto Sutarto, "Penerapan Rehabilitasi Medis Dan Rehabilitasi Sosial Terhadap Korban Penyalahgunaan Narkotika Ditinjau Dari Teori Pemidanaan Relatif," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 115-35, <https://doi.org/10.51749/jphi.v2i1.18>.

dependence on narcotics, while an abuser uses narcotics unlawfully and is not in a state of dependence such as dealers or couriers.¹¹

Table 1.1

Data on the Number of Narcotics Users Who Completed Rehabilitation

No.	Year	Rehabilitation Complete	Refer to Asylum (RSJ Bangli)	Drop Out	Refer to Badoka Makassar
1.	2019	19	6	20	1
2.	2020	23	2	3	-
3.	2021	16	2	4	-

Source: Division of Rehabilitation of the National Narcotics Agency, Badung Regency.

This data was obtained based on activity reports carried out by the Badung Regency National Narcotics Agency which was further deepened through an interview process with related parties. Based on the data the author obtained from the BNN Rehabilitation Bid. Badung Regency shows that in 2019 the number of narcotics users who have completed their rehabilitation is 19 (nineteen), people, then in 2020 it will increase to 23 (twenty-three) people, and in 2021 it will decrease to 16 (six) twelve) people. Some drug users are required to be referred to the Bangli Mental Hospital (RSJ) because they require hospitalization. It can be seen that in 2019, 20 (twenty) narcotics users dropped out (DO) because they did not complete the rehabilitation program at the clinic provided by the Badung District National Narcotics Agency. In addition, there was 1 (one) drug user who was referred to the RI BNN Rehabilitation Center located in Makassar, South Sulawesi at the request of his family.

Provision of rehabilitation is considered to be the best way to help someone stop using narcotics, prevent the recurrence of narcotics abuse cases (narcotics recidivism) as well as be counted as a period - a period of serving a sentence. However, the reality on the ground

¹¹ Siti Hidayataun and Yeni Widowaty, "Konsep Rehabilitasi Bagi Pengguna Narkotika Yang Berkeadilan," *Jurnal Penegakan Hukum Dan Keadilan* 1, no. 2 (2020): 166-81, <https://doi.org/10.18196/jphk.1209>.

shows that rehabilitation cannot always guarantee that they will be free from narcotics because not a few of them return to using narcotics after completing the rehabilitation phase at the BNN. Therefore, it is necessary to study the effectiveness of rehabilitation in reducing the number of narcotics users in Badung Regency.

METHODS

In addressing the research questions, the author applied empirical legal research, based on the facts approach and statutory approach. The data sources used are primary data from interviews with the Badung BNN Rehabilitation Sub-Coordinator, Badung BNN Post-Rehabilitation Officers, and Former Narcotics Addicts who have Completed Rehabilitation at Badung BNN. While the secondary data used is in the form of primary legal materials such as laws and regulations related to the writing of this article, secondary legal materials are in the form of books, legal journals, theses, and browsing through the internet to obtain other literature.

Data collection techniques used were interviews, literature studies, and online data searches via internet searching. The data analysis technique that the author uses is qualitative by describing, explaining, and explaining research results in a quality manner in the form of sentences that are easy to understand, structured, and orderly.

EFFECTIVENESS OF REHABILITATION IN REDUCE THE NUMBER OF NARCOTICS USERS IN BADUNG REGENCY

I. REHABILITATION MECHANISM FOR NARCOTICS USERS IN INDONESIA

Narcotics addicts are narcotics users without rights and are against the law and at the same time violate regulations applied in Indonesia, therefore the government considers it obligatory to restore the condition of narcotics addicts due to the negative influence of narcotics. The form of recovery is in the form of a rehabilitation policy for narcotics addicts. The rehabilitation policy has been outlined in Article 54 of Law no. 35/2009 concerning Narcotics that narcotics addicts are required to carry out medical rehabilitation and social rehabilitation. Rehabilitation aims to restore and/or improve the mental, physical, and social skills of drug addicts. Actual rehabilitation can be prioritized as an effort to tackle narcotics crime in line with the increasing number of narcotics addicts.

The authority to provide rehabilitation for narcotics addicts belongs to the National Narcotics Agency as stated in BNN Head Regulation No. 11/2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions. At the Badung Regency BNN, there are criteria for carrying out rehabilitation for narcotics addicts. Based on the results of an interview with Mrs. Fitria Sari Irsan the Sub-Coordinator of Rehabilitation for the Badung Regency National Narcotics Agency, she said that there must be an intention from a narcotics addict that arises from within himself to carry out rehabilitation and not just a request or wish of his parents. Based on the data obtained from the rehabilitation section, it shows that in 2019 20 (twenty) people dropped out, in 2020 as many as 3

(three) people dropped out and in 2021 there were 4 (four) people who dropped out because they were not able to complete his rehabilitation period.¹²

Most of the narcotics addicts who carry out rehabilitation at the Badung Regency National Narcotics Agency are generally registered by their parents, because so far narcotics addicts have not been able to come alone fully conscious, given the stigma or negative assumption that has been attached to society that narcotics addicts will be arrested and put in prison if they report themselves to the National Narcotics Agency. When they first visit the National Narcotics Agency, narcotics addicts will carry out a screening that aims to find out the extent of the severity of the drug use experienced. If it is not too severe, it will be treated as an outpatient, but if it is severe, it will be referred for hospitalization.

The process and technical implementation of the rehabilitation carried out by the Badung Regency BNN is divided into 2 ways, namely outpatient and inpatient care. The Badung Regency National Narcotics Agency only provides outpatient care, because it does not yet have a place to carry out inpatient care and does not have sophisticated equipment to carry out detoxification. If it turns out that after carrying out the screening process, the results show that narcotics addicts require hospitalization they will be taken to Bangli Hospital where there is a special building to carry out separate rehabilitation for the treatment of patients affected by mental or mental retardation.

Apart from the Bangli Hospital, several other agencies can be used as referral places for drug addicts to undergo rehabilitation including the Mangusada Regional General Hospital, Community Health Centers, Baddoka BNN Rehabilitation Center, Tanah Merah BNN Rehabilitation Center, Lido Bogor Rehabilitation Center, and Mandatory Report Recipient Institutions. other. Obligatory Report

¹²An interview with Mrs. Fitria Sari Irsan as Rehabilitation Coordinator Indonesian National Narcotics Agency in Badung on November 3, 2022.

Recipient Institutions are health centers, hospitals, and/or medical and social rehabilitation institutions that are given authority from the Government. Obligatory Reporting Recipient Institutions have the aim of fostering narcotics addicts, as a method of rehabilitation.¹³

The stages of rehabilitation for narcotics addicts at the Badung Regency BNN are carried out for a maximum period of 8 (eight) months and a minimum of 3 (three) months with a time of 2 (two) hours for each rehabilitation process. This is based on how much narcotics enter the body of a narcotic addict. The outpatient treatment lasts for 8 (eight) meetings, then 3 (three) random urine tests will be carried out. While undergoing the rehabilitation program, narcotics addicts are not charged at all or free of charge, but if they are referred to a rehabilitation center other than the Badung Regency National Narcotics Agency, a fee will be charged. These costs are transportation costs for transporting clients and an officer from the National Narcotics Agency for departure and return to the rehabilitation center because the National Narcotics Agency does not have a budget for this.

Talking about where the technical implementation of rehabilitation is more effective between the Badung Regency National Narcotics Agency or the Bangli Mental Hospital (RSJ), then based on the results of the author's interview with Mrs. Fitria Sari Irsan as Sub. The Rehabilitation Coordinator said that more effective rehabilitation was carried out at the Bangli Mental Hospital (RSJ). This is because there is a guarantee that drug addicts who carry out rehabilitation at the Bangli Mental Hospital (RSJ) can fully recover. Narcotics addicts are not allowed to carry communication devices while undergoing rehabilitation so that they can focus on recovering. In addition, narcotics addicts will be given detoxification aimed at cleaning up the narcotic content in their bodies. Narcotics addicts live normal life like their daily activities at the Bangli Mental Hospital (RSJ). The

¹³ Hidayataun and Widowaty, "Konsep Rehabilitasi Bagi Pengguna Narkotika Yang Berkeadilan."

implementation of a rehabilitation process cannot be free from the constraints felt by the Badung Regency National Narcotics Agency, including:

1. Environment

When an addict undergoes a rehabilitation period at the Badung Regency National Narcotics Agency, it does not mean that they are separated from the surrounding environment like a social friend. Based on the results of the author's interview with Mrs. Fitria Sari Irsan the Sub-Coordinator for Rehabilitation of the Badung Regency National Narcotics Agency, some narcotics addicts start using narcotics because of friends' invitations, which means that when narcotics addicts reconnect with a social environment that is snaring or not good enough, rehabilitation is not impossible. run will fail.

2. Self Will

The implementation of rehabilitation for narcotics addicts at the Badung Regency National Narcotics Agency requires them to come and report, but sometimes some addicts do not come for counseling. It can be seen that the intention to recover and do rehabilitation returns to the addict himself. If there is no determination to recover and rehabilitation, then the implementation of rehabilitation will not go well.

3. Facility and infrastructure

The next obstacle faced by the Badung Regency National Narcotics Agency in providing rehabilitation is incomplete facilities and infrastructure, this is because Badung Regency does not yet have a special place to carry out rehabilitation and does not have sophisticated medical equipment to carry out detoxification. So that for outpatient care they will be referred to the Bangli Mental Hospital (RSJ).

4. Budgeting

If in the future a narcotics addict who has completed rehabilitation is caught red-handed using narcotics, then if he wants to return to rehabilitation for the second time, he will be included in the following year. This is due to the limited budget where every name of narcotic addict can only take part in rehabilitation once a year because the Badung Regency National Narcotics Agency works according to a predetermined target.

Referring to Soerjono Soekanto's theory of legal effectiveness which determines whether a law is effective or not is based on 5 factors, namely:¹⁴

- 1) Law (statute).
- 2) Law enforcers, namely institutions that create and enforce laws.
- 3) Supporting facilities or facilities for legal reinforcement.
- 4) Society, namely the area where the law is enforced.
- 5) Culture, namely the work, creativity, and taste based on human initiative in life.

Based on these five factors, if it is associated with the effectiveness of rehabilitation for narcotics addicts at the Badung Regency BNN, the results are:

- 1) The first factor is the legal factor or the law regarding implementation, the types and institutions authorized to provide rehabilitation have been regulated systematically and, the existing regulations regarding rehabilitation at the National Narcotics Agency are sufficiently synchronized when implemented, hierarchically the laws and regulations there is no conflict, both qualitatively and quantitatively, the regulations governing the implementation of rehabilitation

¹⁴ Muhammad Miftakhul Huda, Suwandi Suwandi, and Aunur Rofiq, "Implementasi Tanggung Jawab Negara Terhadap Pelanggaran HAM Berat Paniai Perspektif Teori Efektivitas Hukum Soerjono Soekanto," *IN RIGHT: Jurnal Agama Dan Hak Azazi Manusia* 11, no. 1 (2022): 115-34.

have been sufficient, and the issuance of regulations regarding the rehabilitation process at the National Narcotics Agency has complied with the juridical requirements.

- 2) The second factor that shows whether rehabilitation is effective or not at the Badung Regency BNN is the law enforcement officers themselves. This second factor focuses on law enforcement officials who are reliable and competent in carrying out their duties as well as possible. The reliability referred to here is the professional skills at the Badung Regency BNN to carry out rehabilitation as evidenced by the existence of the rehabilitation, outpatient, and post-rehabilitation fields, all of which have their respective duties, principals, and functions. The rehabilitation sector is tasked with providing social rehabilitation using counseling supported by psychologists and counselors, post-rehabilitation is tasked with overseeing the lives of former narcotics addicts who have completed their rehabilitation period to ensure they can truly live in society as before, and the outpatient department in charge of carrying out outpatient care during the rehabilitation process.

In addition to law enforcement officers from the Badung Regency National Narcotics Agency, there is also cooperation with other institutions, namely the Republic of Indonesia Police, Mandatory Report Receiving Institutions (IPWL) such as Community Health Centers, Bangli Hospital, Mangusada Hospital, and others.

- 3) The third factor is regarding facilities in the form of facilities and infrastructure available to officials when carrying out their duties and functions. Facilities and infrastructure, namely accommodation used as a tool to obtain legal effectiveness, in this case, is the implementation of rehabilitation at the Badung Regency BNN. Based on the results of the author's research, it can be seen that there are still facilities that do not support

rehabilitation at the Badung Regency National Narcotics Agency, namely they do not have a special place for inpatient treatment for narcotics addicts, so they can only carry out outpatient care. The Badung Regency National Narcotics Agency does not also have sophisticated equipment for detoxification.

- 4) The fourth factor is the community factor, where the effectiveness of regulation depends on the condition of the community, for example understanding and understanding the applicable regulations, the causes of people not complying with applicable regulations, and the causes of people complying with applicable regulations. His relationship with rehabilitation at the Badung Regency National Narcotics Agency is that narcotics addicts undergoing rehabilitation have the awareness to be able to recover and be released from narcotics addiction, so that with intention from within they realize that using narcotics is an act that violates laws and regulations. Narcotics addicts who are rehabilitated will follow all existing rules regarding the implementation of rehabilitation starting from the rehabilitation process to post-rehab properly.
- 5) The fifth factor is related to culture as a habit that is carried out by the community about treating a rule. Rehabilitation by the Badung Regency BNN can be seen in the presence of narcotics addicts visiting the Badung Regency National Narcotics Agency to take part in outpatient care and are required to report 8 (eight) meetings and attend counseling and 3 (three) urine tests as a treatment for regulations that made a habit.

II. THE EFFECT OF REHABILITATION ON NARCOTICS USERS

The results of the interview that the author obtained with Mr. Gede Denny Kartika Mukti as the Post-Rehabilitation Officer of the Badung Regency National Narcotics Agency show that the implementation of rehabilitation at the Badung Regency BNN runs a sustainable rehabilitation program which is divided into 2 stages, namely the rehabilitation process and post-rehabilitation. Narcotics addicts who have completed the rehabilitation process will then continue to monitor their condition for 2 (two) months by post-rehabilitation officers.¹⁵ There are 3 (three) rehabilitation objectives, namely:

1. Recovered

A recovered condition is one of the goals of rehabilitation for narcotics addicts. Narcotics addicts are expected after undergoing rehabilitation to be able to stop and no longer be addicted to using narcotics and their bodies can function as before.

2. Productive

Regular use of narcotics will certainly cost large amounts of money. The results that the author got after an interview with Mr. I Putu Satria Sutapa, who is a former narcotics addict who has completed his rehabilitation period at the Badung Regency BNN, said that for one use of methamphetamine weighing 0.2 grams, he must spend Rp. 400,000.00,- . This shows that the use of narcotics makes narcotics addicts continue to spend their money and become unable to work due to the negative effects of narcotics. Therefore, by participating in this rehabilitation, it is hoped that drug addicts will be able to recover so that they can be produced to make money for

¹⁵An interview with Mr. Gede Denny Kartika Mukti as Post-Rehabilitation Officer for the Badung Regency National Narcotics Agency on November 3, 2022.

their families as before and can return to having income from the work they previously occupied.

3. Social Function

A narcotics addict sometimes likes to stay away from his social world, for example, does not like socializing with neighbors, isolates himself, and likes to do solitary activities. It is hoped that after participating in rehabilitation, narcotics addicts can return to society, for example in Bali they can be active again in banjars and take part in activities at Sekaa Teruna Teruni (STT) in their environment for those who are still teenagers.

If the three rehabilitation objectives can be achieved, then the rehabilitation process is considered successful. However, when a narcotics addict who has finished rehabilitation turns out to be back on narcotics, the rehabilitation process is considered a failure. According to Mr. Gede Denny Kartika Mukti a Post-Rehabilitation Officer at the Badung Regency National Narcotics Agency, it is not uncommon for drug addicts to be caught using narcotics again, even for the third or fourth time. The dream of drug addicts is to be cured, but this rehabilitation can only reach the recovery stage. The most difficult thing to maintain when a narcotics addict has finished undergoing the rehabilitation process is to maintain his recovery.

Two factors make it difficult for drug addicts to maintain their recovery, namely:

1. Narcotics have replaced brain functions

The use of narcotics can affect brain performance for narcotics addicts. Narcotics become a primary need that must be met like food, so that throughout his life narcotics addicts must continue to strive to be able to maintain their recovery.

2. Narcotics addicts can relapse at any time

Narcotics addicts who have completed rehabilitation still tend to use narcotics suddenly and uncontrollably, especially when the

mood is chaotic. This is what makes some addicts experience relapse. Relapse or relapse is the recurrence of old patterns of drug use regularly. However, the signs and symptoms of relapse are usually quite easy to spot, such as: re-associating with drug users, having the equipment to use drugs, and often distancing themselves.¹⁶

Based on these two factors, if in the future narcotics addicts who have finished undergoing rehabilitation return to using narcotics, they will return to rehabilitation the following year with the same rehabilitation procedure as before. This is because a narcotics addict can only participate in rehabilitation once a year, no more due to budget constraints owned by the Badung Regency National Narcotics Agency. In addition, if outpatient care is deemed insufficient to treat narcotics addicts, they will be referred to other rehabilitation facilitation institutions for inpatient care, for example at the Bangli Asylum (RSJ).

Post-rehabilitation officers have the authority to supervise narcotics addicts after carrying out rehabilitation as a form of observation through the following methods:

1. Family Communication

The post-rehabilitation officer will coordinate the behavior of narcotics addicts in terms of sleeping patterns, eating patterns, and the condition of objects at home whether they are often lost or not. This coordination is intended so that post-rehabilitation officers can find out how addicts are after completing rehabilitation at the Badung Regency National Narcotics Agency.

2. Urine test periodically

During the ongoing rehabilitation process starting from the implementation of the rehabilitation and post-rehabilitation processes, every narcotics addict who is rehabilitated at the Badung

¹⁶ BNN Jatim, "Sudah Di Rehabilitasi Masih Bisa Kambuh?," [jatim.go.id](https://jatim.bnn.go.id/sudah-rehabilitasi-masih-bisa-kambuh/), 2022, <https://jatim.bnn.go.id/sudah-rehabilitasi-masih-bisa-kambuh/>.

Regency National Narcotics Agency will undergo a urine test as a form of control 3 (three) times.

3. Home visit

Post-narcotics officers will visit narcotics addicts' homes to find out the condition of the environment around narcotics addicts. This home visit activity is a form of direct supervision of post-rehabilitation officers to each narcotics addict who has completed his rehabilitation period at the Badung Regency National Narcotics Agency. The post-rehabilitation monitoring process took place 2 (two) times for 2 (two) months.

Post-rehabilitation is an integral element in the series of narcotics addiction rehabilitation and cannot be seen as an independent form of therapy, because it relates to the general perception that after addicts carry out rehabilitation in a rehabilitation center, they still need supervision of the stages of reintegration into society can run, which aims to be able to productive, independent and normative life.¹⁷

In this study, to find out the effectiveness of providing rehabilitation for narcotics addicts, the authors conducted interviews with a narcotics addict who had completed rehabilitation at the Badung Regency National Narcotics Agency. who had finished undergoing rehabilitation at the Badung Regency National Narcotics Agency said that he was following the rehabilitation program on an outpatient basis. In the beginning, Mr. I Putu Satria Sutapa decided to join rehabilitation based on his awareness, not being reported by his parents like most other drug addicts. Apart from that, another reason is that he still thinks about his family and has been caught red-handed using narcotics 1 (one) time.¹⁸

¹⁷ Ambarwati, "Efektivitas Program Rehabilitasi Badab Narkotika Nasional Pada Pecandu Narkoba Di Provinsi Sumatera Selatan."

¹⁸ S Supartin and S Kurniasari, "Optimalisasi Peran Keluarga, Sekolah Dan Masyarakat Dalam Upaya Pencegahan Penyalahgunaan Narkoba," ... (*Sinergi Pemberdayaan Masyarakat*) 11, no. 1 (2022): 12-21, <https://ejournal.ung.ac.id/index.php/sibermas/article/view/11961>.

The rehabilitation process undertaken by Mr. I Putu Satria Sutapa is divided into 2 (two) stages, namely 2 (two) months for outpatient rehabilitation and 2 (two) months for post-rehab by visiting the Badung Regency National Narcotics Agency every 1 (one) week once for a total of 8 (eight) meetings. The rehabilitation was carried out purely without the use of detoxification or certain drugs, because it was feared that it would lead to dependence, for example on the use of benzo. The method of rehabilitation used is using psychosocial therapy methods or focuses on optimizing the social functions of the narcotics addict.

Francis Turner said that psychosocial therapy is therapy during a series of treatments to restore the psychological state of victims affected by psychosocial problems which are carried out by experts using psychological approaches, affection, moral and spiritual support, as well as strengthening social bonds that aim to reactivate one's social functioning.¹⁹

Based on the results of the author's interview with I Putu Satria Sutapa who is a former narcotic addict of the methamphetamine type who has completed rehabilitation at the Badung Regency National Narcotics Agency stated that there are differences felt after completing rehabilitation, including having a more organized portion of life, a more open mind, and aware of the mistakes made.

Narcotics addicts after undergoing rehabilitation at the Badung Regency BNN are not necessarily released from supervision. According to Mr. I Putu Satria Sutapa, the Badung Regency National Narcotics Agency will carry out monitoring to monitor the condition of addicts in the form of home visits and keep in touch with post-rehabilitation officers and at the end of rehabilitation there will be 2 (two) urine tests.

Based on Mr. I Putu Satria Sutapa's confession, by participating in the rehabilitation program at the Badung Regency National

¹⁹ Aprilyanto Silitonga, "Efektifitas Pelayanan Rohani Terhadap Anak Remaja Korban Penyalahgunaan NAPZA," *Khatulistiwa: Jurnal Pendidikan Teologi* 1, no. 1 (2023): 52-64, <https://jurnal.sttkhatulistiwa.ac.id/index.php/KHATULISTIWA/article/view/14>.

Narcotics Agency, he has no desire at all to use methamphetamine-type narcotics until now. For him, the rehabilitation he underwent was effective in getting rid of his addiction to methamphetamine. If the desire to use methamphetamine reappears, then to divert it is to take other positive activities. Currently, Mr. I Putu Satria Sutapa works as a bartender at a café in the Canggu area. While undergoing rehabilitation, he was given training in making drinks or coffee because it was his hobby. Therefore, it can be seen that one of the goals of rehabilitation, namely being productive, has been achieved.

Mr. I Putu Satria Sutapa said that at first, he used methamphetamine because it was to support his work and look after his pregnant wife. Apart from that, a friend's invitation was also one of the initial triggers for him to use methamphetamine. According to his statement, by using methamphetamine, the mind becomes calmer, even though the burden is felt to be a lot, the body's stamina will increase again, but when not using the body, the body will feel very weak. Referring to the typology of victims put forward by Stephen Schafer, narcotics addicts are included in self-victimizing victims or victims of crimes that occur as a result of crimes committed by themselves.

A rehabilitation specialist doctor named Dr. Rusk stated that the success of rehabilitation is based on the patient's serious intention to be able to expand his potential as much as possible because experts can only provide direction, guidance, and facilities that support and encourage sufferers for the success of the rehabilitation being undertaken.²⁰ According to Mr. I Putu Satria Sutapa's statement, he chose rehabilitation based on his motivation, then underwent rehabilitation at the Badung Regency National Narcotics Agency through social rehabilitation assisted by the rehabilitation, outpatient, and post-rehabilitation departments. After undergoing rehabilitation, Mr. I Putu Satria Sutapa felt a better life and was able to be free from

²⁰ Fahri Hidayah, Zulkifli Lubis, and Junjungan Saut Bonar Pangihutan Simanjuntak, "Perilaku Sosial Pasien Rawat Jalan Dalam Ketergantungan Narkotika," *Jurnal Analisa Sosiologi* 12, no. 1 (2023): 36-65, <https://doi.org/10.20961/jas.v12i1.63878>.

dependence on crystal methamphetamine. This proves that the provision of rehabilitation to the Badung Regency National Narcotics Agency has been running effectively and has been able to reduce the number of narcotics users.

CONCLUSION

The conclusion obtained is that the rehabilitation carried out by the Badung Regency BNN has not been effective, because the facilities and infrastructure are still incomplete and supportive. This is because the Badung Regency National Narcotics Agency does not yet have a special place to carry out inpatient care and sophisticated equipment for the detoxification process of medical rehabilitation, so what is mandated by Article 54 of Law no. 35/2009 Concerning Narcotics where narcotics addicts are required to carry out medical rehabilitation and social rehabilitation cannot go well. If the three goals of rehabilitation, namely recovering, being productive, and functioning socially, can be achieved, then rehabilitation is considered effective, but among the three goals, only the recovery stage is to be achieved, because not all narcotics addicts can reach these stages. To achieve these three objectives, complete facilities and infrastructure cannot be separated.

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