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EXAMINING THE STATE'S JURISDICTION IN SEXUAL ASSAULT STATELESS VICTIMS ON SHIPS ON THE HIGH SEAS

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ABSTRACT:

Issues regarding jurisdiction over the handling of sexual assault cases, especially on the high seas, are a major concern of the international community, especially if the victim is a stateless person. They are often isolated and have limited access to legal assistance. This situation makes them one of the most vulnerable groups to sexual assault. The Stateless Convention 1954 stipulates that stateless persons can request legal protection from the state parties to the Convention. While on the high seas, UNCLOS 1982 has regulated that the flag state has jurisdiction over every activity on a ship flying its flag. However, there is no clarity regarding specific protection for stateless persons on ships. This paper will identify which jurisdictions can apply when there is a sexual assault against a stateless person on a ship on the high seas. The research method used is prescriptive normative law with a statute approach by examining laws and regulations. We argue that when it comes to ships flying a particular flag and sailing on the high seas, UNCLOS 1982 should be considered customary international law. Furthermore, when similar crimes occur, there must be a justification for intervention by other states.

***Keywords**; High Seas, Jurisdiction, Sexual Assault, Stateless Person.*

A. Introduction

Ships have become a vital means of transportation, practical for exploration and trade, or for providing aid to people in need. Amidst the various functions on the high seas, crimes such as sexual assault are not uncommon. Sexual assault is any form of sexual contact, whether verbal or non-verbal, that is committed without the victim's consent and with the aim of forcing the victim to engage in sexual activity.[1] An act is considered consensual when it is accepted with free will, not when physical resistance fails to occur. Sexual assault has been known since World War II, when there were many cases of sexual assault such as rape.[2]

1 Kathleen C Basile, Kathryn Jones, and Sharon G Smith, "Sexual Assault," *The Office on Women's Health*, 2022, https://www.womenshealth.gov/relationships-and-safety/sexual-assault-and-rape/sexual-assault.

2 Mella Fitriyatul Hilmi, "Kekerasan Seksual Dalam Hukum Internasional," Jurist-Diction 2, No. 6 (2019), p. 2204, https://doi.org/10.20473/JD.V2I6.15949.

The problem of sexual assault on board ships has been known to exist since at least 1998. Sexual assault on ships has been widely reported since 2015, where it has been recorded that there have been 450 cases of sexual assault on ships in the period from 2015 to 2022. In the year 2019 alone, up to 101 cases of sexual assault on ships have been recorded. Although in 2020 and 2021 there was a decrease of 22 cases and 11 cases, in 2023 there was an increase in the number of sexual assault cases on ships from 87 cases in 2022 to 131 cases in 2023, where the majority of the victims were passengers.[3] The exact number of sexual assaults on ships is likely to be higher than what is reported, as these statistics are only those reported by the United States. In addition, an estimated two out of three sexual assaults are not reported due to the complexity of the laws governing ships and the challenges of reporting and investigation.[4]

Due to the challenges of uncertainty regarding state authority and responsibility, the issue of jurisdiction to address cases of sexual assault on ships on the high seas is undoubtedly of concern to the international community. The ship is a closed and unique environment. It has its own set of rules and social dynamics. There are a large number of crew members and passengers on board, consisting of different languages, cultures, and nationalities. Furthermore, the issue becomes even more complicated when stateless persons are involved. In principle, it is the right of every human being to have a nationality, which is also laid down in various international legal instruments, such as the "Universal Declaration of Human Rights" ("UDHR"). However, as of July 2023, there are an estimated 4.4 million people without a nationality, commonly referred to as stateless persons.[5]

Stateless persons are defined as people who are not legally recognized as citizens of any country.[6] However, the actual number of stateless persons may be much higher,[7] as the

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3 US Department of Transportation, "Cruise Line Incident Reports" (2023), https://www.transportation.gov/mission/safety/cruise-line-incident-reports.

4 Chris Eberhart, "Cruise Ship Rapes and Sexual Assaults Hit Record High in 2023: FBI," *New York Post*, 2024, https://nypost.com/2024/01/27/news/cruise-ship-rapes-and-sexual-assaults-hit-record-high-in-2023-fbi/.

5 United Nations High Commissioner for Refugees "Global Trends Report 2022" (2023), p. 5, https://www.unhcr.org/global-trends-report-2022.

6 Tetiana Drakokhrust, "The Concept and Structure of Status of Stateless Persons – International Law Approach," Studia Prawnoustrojowe, No. 59 (2023), p. 61, https://doi.org/10.31648/SP.8582; Andrés Ordoñez Buitrago, "Statelessness and Human Rights: The Role of the United Nations High Commissioner for Refugees (UNHCR)," EAFIT: Journal of International Law 2, No. 2 (2011), p. 10, https://api.core.ac.uk/oai/oai:ojs.publicaciones.eafit.edu.co:article/631.

7 Pristina Widya and Najamuddin Khairur Rijal, "The Role of the United Nations High Commissioner for Refugees (UNHCR) in Dealing with Stateless Problems in Malaysia," Journal of Social and Policy Issues 2, No. 2 (2022), p. 44, https://doi.org/10.58835/jspi.v2i2.46.

problem of statelessness is often a "hidden issue" with no precise data available.[8] On average, the number of stateless persons is increasing each year, such as in 2022, when the number increased by 2% compared to the previous year. To date, the most significant numbers of stateless persons have been reported from Bangladesh (952 thousand), Côte d'Ivoire (931 thousand), Myanmar (630 thousand) and Thailand (574 thousand). The increase in the number of stateless persons is due to several reasons, including the slow pace of completion of the registration of stateless persons.[9] In addition, in many cases, the increase in the number of stateless persons is the result of discriminatory state legislation against certain groups of people.

There are some factors that can cause a person to become stateless, which can be divided into two categories: the factor of statelessness by birth and the factor of statelessness after birth. A person who becomes stateless by birth is usually caused by the difference in the citizenship of his or her parents and was born in a country that follows the principle of *ius sanguinis*, where in that country the citizenship of a child is determined by the citizenship of his or her parents.[10] On the other hand, people who become stateless after birth may be caused by various factors, such as legal conflicts arising from the granting of citizenship status,[11] unilateral action by the State or denaturalization for specific reasons,[12] a change in the territory of their country of origin,[13] and obstacles to administrative rules related to the acquisition, restoration or loss of citizenship status.[14]

The urgency of this research is due to the presence of stateless persons on the high seas, who are often isolated and have limited access to legal assistance, makes them one of the most vulnerable groups to sexual assault. Moreover, it is not uncommon for jurisdiction

8 Laura van Waas, Amal de Chickera, and Ottoline Spearman, "Stateless in a Global Pandemic" (2020), p. 4, https://files.institutesi.org/Covid19_Stateless_Impact_Report.pdf.

9 United Nations High Commissioner for Refugees, "Global Trends Report 2022," p. 43.

10 Ajeng Citra Mukti, "Pelaksanaan Pendaftaran Untuk Memperoleh Kewarganegaraan Republik Indonesia Anak Hasil Perkawinan Campuran Yang Lahir Sebelum Dan Sesudah Berlakunya Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia" (2013), pp. xiv–xv.

11 Rafifrian Evandio, "Dampak Terjadinya Stateless Terhadap Kehidupan Masyarakat Etnis Rohingya Pasca Penerapan Myanmar Citizenship Law Tahun 1982" (2020), p. 13, https://lib.ui.ac.id/detail?id=20499839&lokasi=lokal.

12 Widodo Ekatjahjana, "Masalah Kewarganegaraan Dan Tidak Berkewarganegaraan," INOVATIF: Jurnal Ilmu Hukum 2, No. 3 (2010), p. 107, https://online-journal.unja.ac.id/jimih/article/view/205.

13 Utiyafina Mardhati Hazhin, "Aspek Kedudukan Hukum Etnis Rohingya Menurut Hukum Pengungsi Internasional (Studi Perlindungan Hukum Etnis Rohingya Di Indonesia)" (2013), pp. 77–78, https://digilib.uns.ac.id/dokumen/34626/Aspek-Kedudukan-Hukum-Etnis-Rohingya-Menurut-hukum-pengungsi-internasional-Studi-Perlindungan-Hukum-Etnis-Rohingya-di-Indonesia.

14 Muhyiddin Syarif, "Perlindungan Hukum Kepada Non-Refugees Stateless Person Dalam Perspektif Hukum Internasional" (2019), p. 20, http://repository.unair.ac.id/id/eprint/94220.

to be contested when the flag state is different from the state of the perpetrator. As a result, the international community, at the national and international levels, needs to pay close attention to improving the treatment of stateless persons who are sexually assaulted on ships on the high seas and protecting their rights. This journal aims to analyze and highlight the legal complexities that arise in such situations. It also aims to identify possible legal gaps in international jurisdiction, discuss the challenges of determining the competent authority to prosecute such cases, and examine the extent to which international law protects stateless persons from sexual assault on the high seas. The problems that will be discussed in this study are to identify the legal position and challenges in addressing the problem of sexual assault against stateless victim. Then, at the end, it will analyze jurisdiction applicable to cases of sexual assault on ships on the high seas against stateless persons.

B. Research Method

This research is conducted using prescriptive normative legal research, where this research seeks to describe the jurisdiction that applies when there is a sexual assault on a ship on the high seas that occurs to a stateless person. Normative legal research is primarily characterized by its reliance on secondary data sources when conducting legal studies. These sources are typically categorized into three tiers: primary legal materials, secondary legal materials, and tertiary legal materials. The approach used in this research is a statutory approach through the examination of legislation on primary legal materials, such as “the 1954 Convention Relating to the Status of Stateless Persons”, “the 1961 Convention on the Reduction of Statelessness”, and “the United Nations Convention on the Law of the Sea”. In addition, this research will also make use of secondary legal materials drawn from publications related to the law, such as "*Statelessness and Human Rights: The Role of the United Nations High Commissioner for Refugees (UNHCR)*" written by Andrés Ordoñez Buitrago or from the Internet such as unhcr.org.

C. Discussion

1. The legal position of a stateless person

Statelessness refers to the absence of legal recognition of nationality by any state.[15] Stateless persons have been in existence since the early 20th century when statelessness was recognized with the granting of Nansen passports, which were used for access to entry

[15] Drakokhrust, “The Concept and Structure of Status of Stateless Persons – International Law Approach,” p. 61.

and transit in other countries. In international law, stateless persons are divided into the following categories:

a. Stateless *de jure*, which refers to people who are stateless due to the loss of their citizenship status as a result of not having been granted citizenship status at birth or not having acquired a new citizenship status.[16]
b. *De facto* statelessness refers to persons who do not have the status of a citizen because they hold more than one nationality or because they are unable or unwilling, for legitimate reasons, to avail themselves of the protection of their country of origin.[17] Although the 1961 Convention recommends that de facto stateless persons be treated on an equal basis with those classified as de jure stateless, those who are considered de facto stateless do not enjoy the protection of the 1954 Convention.[18]

The legal status of stateless persons is governed by international law, particularly the "1954 Convention on the Status of Stateless Persons" ("CSP") and the "1961 Convention on the Reduction of Stateless Persons" ("CRS"). The CSP governs the protection and rights of stateless persons. These include the right to an identity card, administrative assistance, travel documents, and the right not to be discriminated against.[19] In addition, stateless persons are also required to comply with the laws and regulations of the country where they reside. The purpose of the CSP is to provide a framework for the protection of stateless persons and to ensure that they receive the necessary rights and assistance. Meanwhile, the CRS was explicitly created to require each country to provide protection in its laws and regulations to prevent statelessness both from birth and in the future, such as by changing countries or losing nationality.[20] As a result, the legal status of stateless persons is often

16 Widya and Rijal, "The Role of the United Nations High Commissioner for Refugees (UNHCR) in Dealing with Stateless Problems in Malaysia," p. 44; Indira Goris, Julia Harrington, and Sebastian Köhn, "Statelessness: What It Is and Why It Matters," Forced Migration Review, No. 32 (2009), p. 4, https://www.fmreview.org/statelessness/goris-harrington-kohn.

17 Hugh Massey, "UNHCR and De Facto Statelessness" (2010), p. 61, https://www.refworld.org/docid/4bbf387d2.html.

18 United Nations High Commissioner for Refugees, Handbook on Protection of Stateless Persons (2014), p. 44, https://www.refworld.org/docid/53b676aa4.html.

19 Khalid Fadjri Siddiq and Budi Ardianto, "Stateless Person dalam Tinjauan Hukum Nasional dan Hukum Internasional di Indonesia," Uti Possidetis: Journal of International Law 1, No. 3 (2020), pp. 290–91, https://doi.org/10.22437/up.v1i3.10873.

20 International Development Law Organization and United Nations High Commissioner for Refugees, "Addressing Statelessness Through the Rule of Law" (2022), p. 5, https://www.idlo.int/publications/addressing-statelessness-through-rule-law.

recognized in the national legislation of several States, which regulate the rights of stateless persons in their country.

In addition to the CSP and CRS, the fundamental rights applicable to stateless persons are also laid down in several international human rights instruments. First, the UDHR establishes everyone's right to equal treatment, the right to life and security, the right to access to justice, and the right to nationality. Second, the "Convention on the Rights of the Child" ("CRC") and the "International Covenant on Civil and Political Rights" ("ICCPR") provide rules on the right of every child to be born with a nationality and to have his or her birth registered. Third, the "International Convention on the Elimination of All Forms of Racial Discrimination" prohibits all forms of discrimination, including guaranteeing an individual's right to citizenship without discrimination. In addition, customary international law also prohibits racial discrimination against stateless persons, reinforcing the provisions of the CSP and CRS.[21]

In the context of sexual assault, human rights instruments also provide protection for stateless persons. For example, Article 7 of the ICCPR affirms the right of everyone to be free from torture or cruel and inhuman treatment. Indeed, the prohibition of torture, in this case sexual assault, is a jus cogens norm that binds states under international treaty law.[22]

2. Challenges in Addressing the Problem of Sexual Assault against Stateless Persons

Fundamentally, international law regulates the interaction between states. Consequently, the state has always been the main subject of international law.[23] Thus, when a stateless person is victimized by a crime, such as sexual assault, there is often no recourse available.[24] This is mainly due to the fact that the victims generally have to rely on the country of their nationality in order to file a claim.[25] However, over time, access to redress

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21 *Ibid*.

22 Veriena J B Rehatta, "Kekerasan Seksual Terhadap Perempuan Di Daerah Konflik (Kajian Hukum Internasional Dan Penerapannya Di Indonesia)," SASI 20, No. 2 (2014), p. 55, https://doi.org/10.47268/sasi.v20i2.327.

23 Aditya Gunawan and Nellyana Roesa, "Legal Analysis of Recognition for the State Under International Law (Case Study on General Assembly of United Nation Resolution Number 2758 (XXVI) About Restoration of the Lawful Right of the People's Republic of China in United Nation," Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan 1, No. 2 (2017), p. 106, https://jim.usk.ac.id/kenegaraan/article/view/13094.

24 Christine Evans, The Right to Reparation in International Law for Victims of Armed Conflict, Cambridge Studies in International and Comparative Law (2012), pp. 92–93, https://doi.org/10.1017/CBO9781139096171.

25 Maria Jose Recalde-Vela, "Access to Redress for Stateless Persons Under International Law: Challenges and Opportunities," Tilburg Law Review 24, No. 2 (2019), p. 183, https://doi.org/10.5334/tilr.153.

for a crime has become less dependent on the state. Human rights law has long provided protection for stateless victims through the establishment of less State-dependent rules for access to redress, where stateless persons can seek protection despite the lack of nationality or habitual residence status. For example, in a 1999 case before the Inter-American Court of Human Rights, victims of statelessness from the Dominican Republic suffered expulsion, detention, and sexual assault. Although the Dominican Republic rejected the claim due to lack of evidence and the statelessness of the victims' identities, the Court ruled that the absence of identity did not erase their status as victims.[26] However, in practice, there are still many cases where stateless persons have difficulties in obtaining redress for their harms due to the need for proof of their identity,[27] while a person must have a legal link to citizenship in order to have a legal identity.[28] Furthermore, stateless victims are often discriminated against while trying to access justice.[29]

The consequences of being stateless can be profound. Statelessness potentially exposes a person to further human rights violations, not only violations of the right to nationality[30] but also other violations, such as difficulties in accessing basic rights such as education, health care, employment and freedom of movement,[31] or even human rights violations committed by the State authorities of their own country, as in the case of the Rohingya.[32] Stateless persons may also be detained for an indefinite period of time at the Immigration Department due to the lack of valid travel documents as a result of a variety of obstacles. In addition, it is not uncommon for stateless persons to be at risk of sexual assault and exploitation.[33]

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26 Inter-American Court of Human Rights, Expelled Dominicans and Haitians People v. the Dominican Republic, No. 282 (Inter-American Court of Human Rights 2014), para. 182.

27 Recalde-Vela, "Access to Redress for Stateless Persons Under International Law: Challenges and Opportunities," p. 197.

28 International Development Law Organization and United Nations High Commissioner for Refugees, "Addressing Statelessness Through the Rule of Law," p. 4.

29 *Ibid,* p. 9.

30 Mark Manly and Laura van Waas, "The State of Statelessness Research: A Human Rights Imperative," Tilburg Law Review 19, No. 1–2 (2014), p. 3, https://doi.org/10.1163/22112596-01902029.

31 I Putu Dwika Ariestu, "The State Responsibilities Relating to Human Rights Violations to The People with Stateless Persons Status in Rohingya Crisis," Jurnal Magister Hukum Udayana 7, No. 2 (2018), p. 159, https://doi.org/https://doi.org/10.24843/JMHU.2018.v07.i02.p02; Bureau of Population Refugees and Migration, "Gender-Based Violence Among Stateless and National Populations in the Dominican Republic" (2017), https://2017-2021.state.gov/prm-funded-research-and-evaluation/gender-based-violence-among-stateless-and-national-populations-in-the-dominican-republic/.

32 Recalde-Vela, "Access to Redress for Stateless Persons Under International Law: Challenges and Opportunities," p. 185.

33 United Nations High Commissioner for Refugees, "Statelessness Explained," *UN Refugee*, 2023, https://www.unrefugees.org/news/statelessness-explained/.

Studies show that stateless women are far more vulnerable to sexual assault than women with citizenship status, with 52% of stateless women more likely to be sexually assaulted than women with citizenship status.[34] Apart from women, stateless men are also 4% more likely to be victims of sexual assault compared to stateless men. The lack of legal documentation and legal protection for stateless persons exacerbates their vulnerability to sexual assault[35] and makes it more difficult for them to access justice. This is evidence that the level of vulnerability of stateless persons to legal injustice is higher than that of persons who have citizenship.

Statelessness can result in stateless persons being victimized in a variety of ways,[36] including through sexual assault. By virtue of the right of victims to seek and obtain reparation for the harm they have suffered, there is an obligation to provide reparation when there are acts that violate international norms and cause harm.[37] However, due to the fact that the victim, in this case, was a stateless person, who is considered a vulnerable person, it is not uncommon for stateless persons to be reluctant to seek redress from international organizations or associated States when they are victims of harm.[38] Redress is closely related to reparation. This has implications for its close relationship to the concept of access to justice. In international law, it is recognized that there is an obligation to provide all forms of reparation to which victims may have access when violations have occurred.

3. Jurisdiction to Address Sexual Assault Against Stateless Persons on Ships at High Seas

a. Jurisdiction when flag state and perpetrator state are parties to the CSP

In the framework of international law, every ship must fly the flag of the country, which shows the ownership or jurisdiction of the ship, generally known as the flag state. The purpose of the flag state on the ship is to indicate which jurisdiction is applicable to the ship and who has the right to be responsible for all activities that take place on the ship. The "1982 United Nations Convention on the Law of the Sea" ("Sea Convention") governs the maritime areas, which are divided into areas of absolute sovereignty, areas of sovereign

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34 Bureau of Population Refugees and Migration, "Gender-Based Violence Among Stateless and National Populations in the Dominican Republic."

35 Office to Monitor and Combat Trafficking in Persons, "Trafficking in Persons Report 2016" (2016), p. 15, https://2009-2017.state.gov/j/tip/rls/tiprpt/2016/258689.htm.

36 Zelda van der Velde and Rianne Letschert, "Collective Victimisation of Stateless Peoples: The Added Value of the Victim Label" 19, No. 1–2 (2014), p. 285, https://doi.org/10.1163/22112596-01902027.

37 Recalde-Vela, "Access to Redress for Stateless Persons Under International Law: Challenges and Opportunities," p. 186.

38 *Ibid*.

rights, and areas beyond the jurisdiction of any state.[39] The high seas are areas beyond the territorial waters of any country.[40] Therefore, the jurisdiction of the flag state applies when a ship is sailing on the high seas and there are activities on board.[41]

Jurisdiction in the context of international law has a crucial role in the determination of the authority and responsibility of States with respect to violations or crimes, including human rights violations, especially on the high seas. The high seas are governed by the principle of freedom, which makes the high seas legal order refer to the principle of exclusive flag state jurisdiction.[42] The term flag state was first encountered in the Muscat Dhows case, which stipulates that the state has the right to decide which ships can fly its flag and also make rules regarding the granting of the right to fly the flag of the state. Each state is required to prove that the ships it has registered possess the nationality of that state. In order to be registered as a national, ships must have a real connection with the state in question. For the determination of the real connection, the Draft Provisional Articles Concerning the Regime of the High Seas, prepared by the International Law Commission (ILC), provides rules, namely that:

1) whether the ship is owned by the State concerned; or
2) more than half owned by nationals or persons lawfully resident in the State, or by an enterprise the majority of whose employees are nationals of the State; or
3) owned by a limited liability company incorporated under the laws of that State and having its registered office in that State.

In the future, the state will be required to provide a document stating that the ships have obtained the right to fly its flag.

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39 Heryandi et al., Hukum Laut Internasional: Pengaturan Zona MAritim Dalam United Nations Convention on the Law of the Sea 1982 Dan Dalam Peraturan Perundang-Undangan Indonesia (2021), pp. 41–130; Ahmad Syofyan, "Ilegal, Unreported, Unregulated Fishing Menurut Hukum Internasional Dan Implementasinya di Indonesia," in Hukum Laut Internasional Dalam Perkembangan, Vol. 3 (2015), p. 150, http://repository.lppm.unila.ac.id/2747/.

40 Grace Carolina et al., "UNCLOS 1982 Analysis Regarding Problems of State Jurisdiction and Law Enforcement on Foreign Flag Ships," IJRAEL: International Journal of Religion Education and Law 2, No. 1 (2023), p. 48, https://doi.org/10.57235/IJRAEL.V2I1.323.

41 Asri Dwi Utami, Siti Muslimah, and Ayub Torry Satriyo Kusumo, "Yurisdiksi Internasional Penanggulangan Perompakan Di Laut Lepas," Yustisia 3, No. 1 (2014), p. 98, https://doi.org/10.20961/YUSTISIA.V3I1.10130.

42 Yoshifumi Tanaka, The International Law of the Sea (2019), p. 186, https://doi.org/10.1017/9781108545907.

Enforcing protection and order on the high seas depends on the concept of the nationality of ships.[43] According to the Sea Convention, the nationality of a ship is determined by the flag under which it is flying. Flag States exercise prescriptive jurisdiction and have jurisdiction over any ship that flies their flag, regardless of where it may be sailing.[44] The specificity of the flag state in having authority and jurisdiction over ships sailing on the high seas is emphasized in the international law of the sea, in particular Sea Convention. In terms of law enforcement, the flag state has jurisdiction over all persons on board. Therefore, there is a so-called floating island theory in the international law of the sea.

The law of the sea recognizes the main theory of jurisdiction over ships, namely the floating island theory. This theory is a concept used in the context of the criminal jurisdiction of a foreign ship, which emphasizes that foreign ships are considered as a legally separate territory from their home state.[45] Any ship flying the flag of a state means that it is part of that state's territory, which means that jurisdiction over any crime or offense that occurs on the ship lies with the flag state.[46] The jurisdiction of other states' courts over matters occurring on the ship is overridden, particularly on the high seas, where the jurisdiction of the flag state prevails. The exclusivity of the flag state over its jurisdiction on the high seas can also be proven by several cases in international courts, such as in The 'Enrica Lexie' Case (Italy v. India) the Court of Arbitration agreed that the flag state of the ship has law enforcement jurisdiction over activities that occur on the ship.

The jurisdiction of a state to prosecute a crime, in this case sexual assault, committed on the high seas is a complex issue in the context of international law. The high seas, which is an area that is not bound by the jurisdiction of any state,[47] ultimately results in the determination of the state that is entitled to try the perpetrator being applied to the flag state.

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43 Malcolm N Shaw, International Law (2021), p. 1219.

44 Jiancuo Qi and Pengfei Zhang, "Enforcement Failures and Remedies: Review on State Jurisdiction Over Ships at Sea," Journal of East Asia and International Law 14, No. 1 (2021): p. 13, https://doi.org/10.14330/JEAIL.2021.14.1.01.

45 Gotthard Mark Gauci, "The Ship as an Extension of Flag State Territory and an Entity with Human Attributes – Is It Time to Jettison These Legal Fictions?," International and Comparative Law Review 21, No. 2 (2021), p. 7, https://doi.org/10.2478/iclr-2021-0011; Tanaka, The International Law of the Sea, p. 190.

46 Lusy K F R Gerungan, "Yurisdiksi Teritorial Atas Kapal Asing Dalam Pencegahan Ilegal Fishing Di Wilayah Perairan Indonesia Dan Philipina," LEX ET SOCIETATIS 4, No. 7 (2016), p. 18, https://doi.org/10.35796/les.v4i7.12612.

47 Jeremia Humolong Prasetya, "The Operation of Unmanned Vessel in Light of Article 94 of the Law of the Sea Convention: Seamanning Requirement," Indonesian Journal of International Law 18, No. 1 (2020), p. 109, https://doi.org/10.17304/ijil.vol18.1.804.

This is also reinforced by the principle of territoriality, where a State, particularly the flag State in this case, can claim jurisdiction over a sexual assault committed against a stateless person as the crime occurred on its territory.[48] The territoriality principle is one of several principles used as a basis for a State's jurisdiction over the acts of a person. However, the application of flag State jurisdiction in cases of sexual assault against stateless persons on ships on the high seas may depend on several factors, namely:

1) Nationality of the Ship: Flag state jurisdiction applies to ships registered in that state. If the ship involved in a sexual assault case is registered in a state, then the state has jurisdiction to handle the case.
2) National Laws: Flag states may have national laws governing crimes that occur on their registered ships, including cases of sexual assault. If the flag state's national laws cover such crimes, it can enforce its laws against the perpetrators.
3) International Conventions: Several international conventions govern crimes at sea, including sexual assault. For example, Sea Convention provides a legal framework governing the jurisdiction of states in cases of crimes at sea. Flag states can exercise their jurisdiction based on the provisions of Sea Convention or other relevant international conventions.
4) International Cooperation: In some cases, flag states may cooperate with other countries to address cases of sexual assault on ships on the high seas. This can involve information sharing, coordination of investigations, and joint prosecution of perpetrators.

Nevertheless, international law has evolved over time to reduce the primacy and priority of the application of the territorial principle. The development in question is the existence of the principle of nationality, where the States of the perpetrator are entitled to apply their jurisdiction to prosecute perpetrators of sexual assaults on ships on the high seas since State sovereignty is not limited to territorial jurisdiction only but also includes extraterritorial jurisdiction.[49]

1) Active personality principle emphasizes that even if the alleged crime or offense occurred outside the territory of the state concerned, each state has the right to

[48] Leonard Marpaung, "Yurisdiksi Negara Menurut Hukum Internasional" (2017), p. 2, https://diskumal.tnial.mil.id/fileartikel/artikel-20180511-152350.pdf.
[49] *Ibid,* p. 1.

exercise its jurisdiction over its respective citizens.[50] Based on the active personality principle, the state in question does not have to extradite the citizen who committed the crime or violation to another state on the grounds that the state in question can prosecute the perpetrator under its jurisdiction.

1) Passive personality principle emphasizes more on its citizens who are affected by crimes or violations or become victims of crimes that occur in other states.[51] This principle justifies that each state has the right to protect its citizens in other countries and is authorized to punish the perpetrators in its territory if the state where the crime occurred is unwilling or unable to punish the perpetrators.

In the case of sexual assault involving a stateless person, based on Article 16 of the CSP, they may seek justice from the States concerned, either the flag state or the state of the perpetrator, as long as the State is a party to the CSP. Accordingly, the stateless victim may not only seek legal assistance from the flag state but may also seek legal assistance from the state of the perpetrator, based on the active personality principle and the CSP, as long as the state of the perpetrator is a party to the Convention.

Practically, the active personality principle is implemented by countries that have national laws to prosecute their citizens who commit crimes abroad. For example, the case of Khasanah, an Indonesian citizen who committed murder in Singapore in 2017, was tried in the Central Jakarta District Court. This is in accordance with the Indonesian Criminal Code which stipulates that Indonesian law applies to its citizens who commit crimes abroad, thus the perpetrator is not handed over to the country where the crime occurred. In this case, although the stateless victim may request the protection of the perpetrator's state and the State willing and able to try the crime, the perpetrator's state must obtain the consent of the flag state, as the flag state has exclusive jurisdiction on the high seas.[52]

b. Jurisdiction when flag state and perpetrator state are non-parties to the CSP

Sea Convention is an international legal instrument that specifically governs the various laws that apply at sea. This Convention was adopted in 1982 after nine years of

[50] Cedric Ryngaert, Jurisdiction in International Law, 2nd ed., Oxford Monographs in International Law (2015), p. 104.
[51] Kenneth S Gallant, International Criminal Jurisdiction: Whose Law Must We Obey? (2022), p. 564, https://doi.org/10.1093/oso/9780199941476.001.0001.
[52] Qi and Zhang, "Enforcement Failures and Remedies: Review on State Jurisdiction Over Ships at Sea," p. 13.

negotiations from 1973 to 1982 at the Third United Nations Conference on the Law of the Sea. Sea Convention has several main objectives,[53] namely:

1) Establishes national boundaries for claiming marine areas such as the territorial zone, exclusive economic zone, continental shelf, and high seas. This rule aims to avoid disputes over territories by each state and to promote international cooperation regarding the utilization of marine resources.
2) Provides rules on the rights and obligations of states to use and protect marine resources. Sea Convention also regulates navigation rights, natural resource utilization rights, and the obligation of states to protect and preserve the marine environment.
3) Provides rules on dispute settlement mechanisms related to the law of the sea between states, including rules on dispute settlement through arbitration and the "International Tribunal for the Law of the Sea" ("ITLOS").

Sea Convention is an international treaty that has been ratified by 168 states, demonstrating its widespread acceptance[54] by coastal and non-coastal states around the world. The consistent practice of many states in applying Sea Convention in various cases that have arisen at sea has also contributed to Sea Convention becoming a customary international law.[55] The International Court of Justice also has recognized Sea Convention as customary international law,[56] as reflected in several cases, such as Nicaragua v. Honduras in 1986 and Romania v. Ukraine in the Black Sea Delimitation Case in 2009.

If a stateless person is sexually assaulted on a ship whose flag state is not a party to the CSP, and the perpetrator is a national of a non-party to the CSP, law enforcement may look to Sea Convention, where the ship's flag state still has jurisdiction to investigate and prosecute the perpetrator. According to Sea Convention, the flag state is responsible for all

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53 Mark Usher et al., "The United Nations Convention on the Law of the Sea and the Legal and Institutional Framework for Ocean Affairs in Belize Sustainable Marine Fisheries, Marine Aquaculture, Seafood Processing, Marine and Coastal Tourism" (2019), p. 1, https://unctad.org/publication/united-nations-convention-law-sea-and-legal-and-institutional-framework-ocean-affairs.

54 Miguel de Serpa Soares, "High-Level Commemorative Meeting of the General Assembly to Mark the 40th Anniversary of the Adoption of the United Nations Convention on the Law of the Sea (UNCLOS)" (, 2022), p. 2. https://www.un.org/ola/sites/www.un.org.ola/files/documents/2022/05/29042022-mss-statement-40-anniversary-unclos.pdf.

55 *Ibid*.

56 Zhengkai Mao et al., "Binding Force of Extended Continental Shelf Limits: Investigating Whether Article 76(8) of UNCLOS Constitutes Customary International Law," Front. Mar. Sci. 10 (2023), p. 8, https://doi.org/10.3389/fmars.2023.1266802.

activities on the ship. Even if the flag state has not ratified Sea Convention, it still applies due to the fact that Sea Convention is customary international law that must be followed and adhered to by the entire international community. Sea Convention has clearly established that the flag state has full jurisdiction over its ships. Therefore, even in cases of sexual assault against stateless victims who do not have the nationality of the flag state of the ship, the flag state is still responsible for protecting everyone on board.

c. The intervening state jurisdiction

The high seas are an area where flag state jurisdiction is prioritized. However, in some cases, such as on refugee boats, it is difficult to identify the flag state on the ship. In fact, some ships are often found to be stateless ships. It is also not uncommon for the states involved, either the flag state or the perpetrator state, to be unwilling or unable to prosecute perpetrators of sexual assaults that occur on ships on the high seas against stateless victims. Unwilling or unable is a doctrine that asserts a state's lack of readiness or ability to take steps that can reduce the occurrence of threats.[57] This situation can be caused by many things. For example, the state is in an unstable condition or is in a period of conflict.

Sexual assault is a heinous act that is recognized by various international human rights laws.[58] Sexual assault committed against stateless victims certainly has a major impact as they are categorized as vulnerable individuals and must be protected by various international treaties such as the UDHR. Thus, there is a need for intervention from other states to prevent more serious human rights violations from occurring when the states concerned are unable or unwilling to prosecute the perpetrator.

The authority for another state's intervention in a ship, particularly a stateless ship, is set out in Article 110 Sea Convention. In addition, there are two theories that provide justification for the state's action to intervene in all actions on a stateless ship, namely:[59]

1) The Any State Theory asserts that any state can enforce its jurisdiction over ships that do not have a flag state or nationality with the justification that such action

[57] Madeline Holmqvist Skantz, "The Unwilling or Unable Doctrine - The Right to Use Extraterritorial Self-Defense Against Non-State Actors" (2017), p. 32, https://www.diva-portal.org/smash/get/diva2:1134709/FULLTEXT02.pdf.

[58] Amnesty International, Council for the Development of Economic, and Social Research in Africa, Monitoring and Investigating Sexual Violence in Africa (2000), p. 5.

[59] Human Rights at Sea, "Insight Briefing Note: Stateless Vessels A Commercial Legal Review" (2021), p. 4, https://www.humanrightsatsea.org/sites/default/files/media-files/2021-12/HRAS_Insight-Briefing-Note_Stateless_Vessels_JUNE_2021_SP.pdf.

is to prevent immunity for what happens on that ship that might cause chaos on the high seas, including the possibility of human rights violations on the stateless ship. Academics mostly choose this theory since it is considered to provide more opportunities for the states to enforce their jurisdiction in order to maintain the law in the stateless ship and thus be more useful to maintain order on the high seas.

2) The Nexus State Theory provides justification for other states to intervene and enforce their jurisdiction on the condition that there must be a relationship between the intervening state and the stateless ship. This relationship can be with various things such as the presence of its citizens who become crew on the stateless ship.

Sexual assaults against stateless victims on the high seas are grave breaches of human rights, particularly the right to safety, security, and dignity.[60] The use of Any State Theory to justify another state enforcing its jurisdiction over a stateless ship becomes more legitimate in this case due to the low likelihood of humanitarian grounds being challenged. In addition, the case of *Molvan v. Attorney-General* for Palestine reinforced the justification for the intervening state. The case involved the ship Asya, which was found without a flag on the high seas by a British vessel. Despite flying a Turkish flag, the Asya eventually lowered it and flew a non-state flag upon inspection. Without proof of state identity, the British ship's actions were upheld by the Privy Council. This case confirms the right of states to inspect suspicious vessels without national identity as per Article 110 of the Sea Convention.

d. Universal Jurisdiction

In sea, universal jurisdiction accommodated in Article 100 Sea Convention regarding piracy. Besides that, this type of jurisdiction also regulated in the "*Rome Statute of the International Criminal Court 1998*" regarding of extraordinary crimes such as genocide, crimes against humanity, war crimes, and aggression. Universal jurisdiction is exclusively related to *jus cogens* and piracy.

[60] United Nations High Commissioner for Refugees, "Protection from Sexual Exploitation and Abuse (PSEA)" (2023), p. 1, https://emergency.unhcr.org/protection/protection-principles/protection-sexual-exploitation-and-abuse-psea.

When associated with sexual assault cases against stateless person on the high seas, it is mandatory to look whether this crime fall into the situation that is governed in Sea Convention and/or Rome Statute. The measure to assess whether cases of sexual assault against stateless persons on ships on the high seas can be subject to universal jurisdiction is by referring to *jus cogens* and *erga omnes*,[61] once there are norms which are against conscience and all states agree on the existence of such norms, it gives rise to universal jurisdiction. At present, the crimes listed as jus cogens are only those set out in the Rome Statute, including torture.

Torture is an act committed by a public capacity that causes severe suffering or pain intentionally directed at a person to obtain a confession or certain information, discriminate, or punish a person. In principle, when a stateless victim is sexually assaulted on a ship on the high seas, the crime is a general criminal offense, resulting in territorial or nationality jurisdiction taking precedence. Meanwhile, in order to placing this case under universal jurisdiction, the crime needs to reach the jus cogens threshold, especially torture. Therefore, it is difficult to place such cases under universal jurisdiction.

D. Conclusion

In a situation where a stateless person experiences sexual assault on a ship while sailing on the high seas, there are two main legal frameworks related to the applicable jurisdiction. The CSP provides access to courts for stateless victims to states that have become parties to the Convention. Consequently, when both the flag state and the perpetrator state are state parties to the CSP and are willing to redress the harm, the stateless victim can rely on the CSP. However, if the states concerned are non-state parties to the CSP, then the stateless victim can request assistance to redress the harm to the flag state by relying on the Sea Convention as customary international law. In addition, in cases where the flag state cannot be identified, or both the flag state of the ship and the perpetrator state are unwilling or unable to enforce the law for the stateless victim, it might be considered for granting authorization to other states to intervene for reasons of humanity. However, in this case, universal jurisdiction cannot be implemented, considering the crime has not met the threshold to be categorized as torture as well as jus cogens.

[61] Mark Chadwick, "Piracy and the Origins of Universal Jurisdiction: On Stranger Tides?," Vol. 34, *Queen Mary Studies in International Law (2019)*, p. 237.

E. Suggestion

Although there is no room for states to avoid their responsibilities in the event of a crime in their territory or committed by their citizen, it is necessary to clearly regulate the process for stateless persons to request compensation or demand a settlement for crimes that occur to them either with individuals or States. In addition, there also needs to be further action when it has been identified as to who is liable to redress it, such as providing a mechanism to access the redress of harm.

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THE INDONESIAN POLICY ON THE EXPORT OF SEA SAND ON ECONOMY AND COASTAL COMMUNITIES

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ABSTRACT:

The reopening of sea sand export permits has raised concerns among the public after being banned for more than 20 (twenty) years. The government has issued Government Regulation (PP) Number 26 of 2023 concerning Management of Sedimentation Products in the Sea. In this case, the reason for adopting this sand export policy is because it is considered to be important in relation to economic income. So, with the notification that the export of sea sand will be allowed to resume, it continues to reap polemics. The policy of reopening sea sand export permits has caused different reactions from various groups or parties. Those who support it assume that sea sand exports can increase state income through Non-Tax State Revenue (PNBP). Apart from that, the sand from the dredging will be used for development and infrastructure. Those who oppose it believe that the sea sand export policy could have a negative impact on the environmental ecosystem, especially coastal areas and small islands. One of them is sea water abrasion which can have a serious impact on the lives of coastal communities. So, regarding this policy there should be a thorough review. The method used in this research is a normative approach method which is carried out by utilizing descriptive analysis research sources. Dredging sedimentation in the form of sea sand from a business perspective has its own benefits, if used properly, the sea sand export policy can add economic value to a region or country in the form of increasing the country's foreign exchange earnings while still paying attention to the welfare of coastal communities.

***Keywords**; Sea Sand Exports; Indonesian Economy; Coastal Communities.*

A. Introduction

Indonesia has faced major challenges in sand management in recent decades. One of the reasons for excessive sand mining in some areas of Indonesia is the high demand for sand as construction material. This is a demand from neighboring countries, especially Singapore. To address this issue, the Indonesian government banned sand exports in 2003 to protect natural resources and reduce environmental damage. 20 years later, President Joko

Widodo announced a new policy to restart sand exports in 2023. The reason for this sand export policy is economic revenue.[1]

The reopening of sea sand export licenses has raised concerns among the public after more than 20 years of prohibition. The government has issued Government Regulation (PP) Number 26 of 2023 concerning the Management of Sedimentation Results in the Sea. Article 9 letter c paragraph (2) of Government Regulation No. 26 of 2023 allows the export of sea sand as a form of utilization of sea sand sedimentation, as long as domestic needs are met. With the notification of the re-authorization of sea sand exports, it continues to reap polemics. The government is asked to maintain a balance between economic interests and the long-term sustainability of coastal ecosystems.[2]

The policy to reopen sea sand export licenses has caused different reactions from various parties, both those who support and those who oppose. Yusri Usman, Director of the Center of Energy and Resources Indonesia (CERI), believes that the issuance of the PP is the right thing, but not perfect. If sand mining is done selectively and on a limited scale, it should have a positive impact on Indonesia, provided that the mining is not excessive or well planned and considers the environment. Then this policy also raises concerns for some parties, one of which is Moh Abdi Suhufan as the National Coordinator of Destructive Fishing Watch (DFW) Indonesia, who assesses that the return of this permit can have a negative impact on environmental ecosystems, especially coastal areas and small islands. One of them is sea water abrasion, which can have a serious impact on people's lives and damage facilities and infrastructure.[3]

Regarding the polemics over the sea sand export permit, Minister of Energy and Mineral Resources Arifin explained that the reason for reopening the sea sand export permit is to maintain the economic value of shipping lanes and stockpiles. Sediments on the seabed make the channel shallow and dangerous for ships passing through. This often happens near shipping lanes such as the Strait of Malacca to Batam and Singapore. In addition, sea sand

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1 Luvian, RA, "Menilik Dampak dan Implikasi dari Kebijakan Ekspor Pasir", Kompas.com, 2023. Diakses pada 2023. https://katanetizen.kompas.com/read/2023/06/20/195045285/menilik-dampak-dan-implikasi-dari-kebijakan-ekspor-pasir?page=all.

2 Subhanie, D. *"Pembukaan Kembali Ekspor Pasir Laut Terus Menuai Polemik", sindonews.com, https://ekbis.sindonews.com/read/1120417/34/pembukaan-kembali-ekspor-pasir-laut-terus-menuai-polemik-1686146804*, . Diakses pada 2023

3 Rizky, M. "Jokowi Buka Ekspor Pasir Laut, Bahayanya Bisa Terjadi Ini", cnbcindonesia.com, https://www.cnbcindonesia.com/news/20230529143950-4-441469/jokowi-buka-ekspor-pasir-laut-bahayanya-bisa-terjadi-ini. Diakses pada 2023.

also has economic value to the country. Moreover, sediment in the form of mud is better sold abroad than stored in shipping lanes.[4]

Parid Ridwanuddin, Coastal and Marine Campaign Manager of Walhi (Wahana Lingkungan Indonesia), argues that the benefits of sea sand exports to the state treasury are small and short-term. Sea sand mining actually causes environmental damage that endangers the ecosystem and the sustainability of coastal communities. The Blue Sea Fishermen Group, a community of fishermen in Batam, also spoke out and opposed the Government Regulation. President Joko Widodo's decision to open a sea sand export port after being banned for decades has raised concerns for fishermen and residents in the Riau Islands. The sea sand has long been dredged to make land for Singapore.[5]

In this study the author describes previous research that is relevant to the problem under study, namely in 2023, Helena Dwi Yansen et al conducted a study entitled "Analysis of Marine Sedimentation Export Policy (Sea Sand) Against Government Regulation Number 26 of 2023 concerning Management of Marine Sedimentation Products". This study aims to examine and analyze regulations and their impact on the preservation of marine ecosystems and community use without causing damage. The method used is using normative legal research methods. The results of the study show that the implementation of the marine sedimentation export policy has received a lot of criticism because it will endanger the marine ecosystem.

The difference between the above research and the author's research is the object of different problems where the object of the author's problem is broader in scope. The author takes the problem of the impact caused by the re-implementation of the sea sand export policy on the country's economy and coastal communities. so that later this research can provide education for the community and also evaluation by the government in making policies.

The problem that will be discussed in this article is about how the impact of the reopening of the sea sand export policy after 20 (twenty) years of prohibition on the Indonesian economy and also its impact on coastal communities. The purpose of this writing

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4 Yarwandana, E. (2023) "Heboh Jokowi Buka Ekspor Pasir Laut, Menteri ESDM Bela Begini", cnbcindonesia.com, https://www.cnbcindonesia.com/news/20230531120002-4-442164/heboh-jokowi-buka-ekspor-pasir-laut-menteri-esdm-bela-begini#.

5 Praditya, II. (2023) "Fakta-Fakta Jokowi Buka Keran Ekspor Pasir Laut, Siapa Diuntungkan?", https://www.liputan6.com/bisnis/read/5302129/fakta-fakta-jokowi-buka-keran-ekspor-pasir-laut-siapa-diuntungkan.

is made to describe and find out whether the reopening of the sea sand export permit policy is appropriate and provides benefits to the Indonesian economy and coastal communities or vice versa. The benefits of this paper are expected to provide an understanding of the community regarding the impact caused by the continuous export of sea sand and also provide views on the government and other parties in making policies that should be in line with the interests and welfare of the community.

B. Research Methods

The research method used in this paper uses a normative approach method which is focused on knowing the reopening of the sea sand export permit policy so that a complete material picture is obtained regarding the impact of the sand export permit on the Indonesian economy and coastal communities. This research is conducted by utilizing descriptive characterized analytical research sources that prioritize secondary data reinforced by primary data and then evaluated qualitatively based on a legal point of view.

C. Discussion

1. The Impact of Sea Sand Export Permits on the Indonesian Economy

The source of state funding comes from tax and non-tax revenues. Taxes are the main source of government revenue and are used for government expenditures such as routine and development budgets. Non-Tax State Revenue or better known as PNBP, Based on Article 1 paragraph (1) of Law Number 9 of 2018 concerning Non-Tax State Revenue, it is stated that Non-Tax State Revenue is a levy paid by individuals or entities by obtaining direct or indirect benefits for services or utilization of resources and rights obtained by the state, based on statutory regulations, which become Central Government revenues outside tax revenues and grants and are managed in the state revenue and expenditure budget mechanism.[6]

Sedimentation dredging in the form of sea sand from the business side of sea sand dredging has its own benefits, in addition to being useful for infrastructure development as well as reclamation if utilized properly, sea sand can also add economic value to a region or country in the form of increased foreign exchange earnings from PNBP and taxes, especially from domestic sales and export activities of sea sand.

[6] Bachmid, et.al, "Tinjauan Yuridis Terhadap Penerimaan Negara Bukan Pajak Dalam Undang-Undang Nomor 9 Tahun 2018 Tentang Penerimaan Negara Bukan Pajak". *Jurnal Pionir*, Vol. 6 No. 1, 2020.

Long before the existence of Government Regulation No. 26/2023, at a hearing of Committee VII of the House of Representatives with the Director General of IKFT of the Ministry of Industry, the Director General of Mineral and Coal of the Ministry of Energy and Mineral Resources, and the Chairman of the Indonesian Cement Association, at the House of Representatives Building, Senayan, Jakarta, on January 26, 2022 confirmed that sea sand mining is an added value of state revenue. Donny Mariadi, Vice Chairman of Committee VII of the House of Representatives, believes that sea sand mining is one of the strategic activities of the region to meet the material needs for infrastructure development and industrial estates, to strategically fill the material stored in the landfill area, including expansion. The improvement of the Port Industrial Estate and port area increases the income of people in coastal areas and regions as well as the state through taxes from domestic sales and export activities of PNBP and sea sand.[7]

The Sea Sand Benchmark Price is regulated in the Decree of the Minister of Maritime Affairs and Fisheries (Kepmen KKP) Number 82 of 2021 concerning the Sea Sand Benchmark Price in Calculating Retribution According to Types of Non-Tax State Revenue (PNBP). KKP Ministerial Decree Number 82 of 2021 explains the provisions regarding the reference price of sea sand in calculating tax-free state revenue (PNBP) rates. The price of sea sand utilization for household purposes is IDR 188,000 per cubic meter. The export price is IDR 228,000 per cubic meter. The basic price of sea sand is used as a reference in the disbursement of Non-Tax State Revenue to the Government in the form of business licenses related to sea utilization for sea sand utilization activities.[8]

The economic benefits obtained from the export of sea sand do not necessarily make state revenues increase significantly. Nairul Huda, a researcher at the Institute of Economics and Financial Development (Indef), said that the sea sand export policy has little impact on government revenue. On the contrary, although this policy has advantages and disadvantages, it provides greater benefits for entrepreneurs. The potential export value of sea sand is Rp 733 billion. On the other hand, the potential state revenue from the sea sand export policy is only Rp 74 billion. On the one hand, sea sand export licenses will have an

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7 Jauhari, A & Surono, A, "Pengaruh Kebijakan Izin Ekspor Sedimentasi Pasir Laut terhadap Keadilan Ekologis pada Kesejahteraan Masyarakat Pesisir Pantai". *National Conference on Law Studies (NCOLS)*, Vol. 5, No. 1, 2023, pp. 68-86.

8 CNN Indonesia. (2023). "KKP Jelaskan soal Harga Pasir Laut yang Dipatok Sebelum Ekspor Dibuka". https://www.cnnindonesia.com/ekonomi/20230610101649-92-960044/kkp-jelaskan-soal-harga-pasir-laut-yang-dipatok-sebelum-ekspor-dibuka.

impact on increasing state revenues even though it is not significant, but it is not worth the risk of damage to the marine ecosystem because the potential value of state revenue is relatively low.[9]

Damage to marine ecosystems can have a negative impact on the economy. Marine ecosystems can function as a source of food for fish, spawning grounds, breeding grounds for various marine biodiversity, to marine tourism destinations with high economic value which is one of the sources of state revenue so that this can have an adverse impact on the potential of state revenue from various sectors, one of which is tourism. Based on BPS data (2023) in 2022 the country's foreign exchange from the tourism sector has increased by 4.26 billion USD. The tourism sector is a sector that can be used as the number one foreign exchange earner to advance national progress.[10]

Prior to the export ban on sea sand, Indonesia was a major supplier of sea sand to Singapore for land expansion through land reclamation. The imported sand was sourced from islands around the Riau Islands. Between 1997 and 2002, an average of more than 53 million tons were shipped annually. In 2007, Indonesia confirmed a ban on the export of sea sand to the Singapore government. About 250 million cubic meters of sand are exported to Singapore annually. The sand is sold at S$1.3 per cubic meter, but the price can rise to around S$4. This price difference costs Indonesia around S$540 million, or Rp2.7 trillion, annually.[11]

To overcome these problems, the government has a central role where it needs to recalculate carefully and study more deeply whether the lifting of the ban on the export of sea sand for approximately 20 years will have a significant impact on government revenue or will actually increase costs due to environmental and ecosystem damage. The Fiscal Policy Agency (BKF) of the Ministry of Finance (Kemenkeu) said that the revenue from the

[9] Liputan6.com. (2023). "Potensi Pendapatan Negara dari Ekspor Pasir Laut Cuma Rp 74 Miliar". https://www.liputan6.com/bisnis/read/5337062/potensi-pendapatan-negara-dari-ekspor-pasir-laut-cuma-rp-74-miliar?page=3. Diakses pada 2023.

[10] Muhamad, RS et.al "Valuasi Ekonomi Dan Persepsi Wisatawan Terhadap Wisata Pantai M Beach Di Kabupaten Lampung Selatan Provinsi Lampung". *Jurnal Ilmu-Ilmu Agribisnis*, Vol. 11 No. 4, 2023, pp. 243-251.

[11] Idris, M. (2023). "Singapura Paling Diuntungkan Dengan Ekspor Pasir Laut RI", Kompas.com, https://money.kompas.com/read/2023/06/01/074309926/singapura-paling-diuntungkan-dengan-ekspor-pasir-laut-ri. Diakses pada 2023.

export of sea sand is very small, because this policy is not to boost the country's economy but only as a sectoral policy.[12]

2. Impact of the Sea Sand Export Permit on the Welfare of Coastal Communities

Indonesia is an archipelago with 70% of its territory covered by oceans, and has enormous economic potential, including marine resources and marine products such as seaweed. With such abundant resources, fishermen's income should be enough to fulfill their daily needs. However, this is not the case. Around 90 out of 16.2 million fishermen in Indonesia, or less than 14.58 million, are economically and politically powerless and live below the poverty line. As traditional fishermen who belong to the poor community, their lives are very concerning because they are often exploited by capitalists and middlemen, resulting in unequal income distribution.[13]

Information related to the Government reopening the sea sand export policy has drawn many responses from various parties. Responses in the form of criticism are given by various groups. Especially the views of coastal communities who support their welfare. The birth of Government Regulation Number 26 of 2023 which regulates the management of sedimentation results in the sea has drawn criticism because it is considered to pose a serious threat to the environment, especially the marine ecosystem. It is feared that the presence of this policy will greatly threaten the sustainability of life, especially in coastal communities. (Zainal Arifin, Coordinator of LIPI) stated that the granting of sea sand export licenses does contribute to the revenue and expenditure budget (APBN), but environmental factors and the interests of communities around mining should not be ignored.[14]

Geographically, fishermen can be found throughout Indonesia. This is not surprising given that two-thirds of Indonesia's territory is ocean and fishing opportunities are huge. Dani Setiawan, Director General of the Indonesian Traditional Fishermen Association, is concerned about the welfare of Indonesian fishermen. He considers the lack of welfare experienced by fishermen an irony because Indonesia's motto is the largest maritime and

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12 Kontan.co.id (2023) "Kemenkeu Klaim Penerimaan Negara dari Ekspor Pasir Laut Sangat Kecil", kontan.co.id. https://nasional.kontan.co.id/news/kemenkeu-klaim-penerimaan-negara-dari-ekspor-pasir-laut-sangat-kecil. Diakses pada 2023.

13 Anwar, Z & Wahyuni. "Miskin Di Laut Yang Kaya: Nelayan Indonesia Dan Kemiskinan", *Jurnal Sosioreligius*, Vol. 1 No. IV, 2023, p. 1.

14 Aprialdi. (2023). "Keran Ekspor Dibu (Pasir Laut Mengalir Jauh)". Siar. https://siar.or.id/2023/06/16/keran-ekspor-dibuka-pasir-laut-mengalir-jauh/#:~:text=%E2%80%9CIzin%20penambangan%20pasir%20lautdi%20satu%20sisi%20akan%20berdampak,Laut%20Pusat%20Penelitian%20Oseanografi%20%28P2O%29%20LIPI%2C%20Zainal%20Arifin. Diakses pada 2023.

archipelagic country. This really needs to be taken seriously, considering that many of most Indonesians work as fishermen, of course the job is threatened.

In this case, the sand export policy must also consider the impact on local communities in sand exporting areas. The following are some significant negative impacts on the economy of coastal communities, especially fishermen and coastal communities, namely:[15]

1. Decrease in Fishermen's Productivity

   The destruction of coral reefs and sea grass beds due to mining activities can reduce fish populations and disrupt the marine food chain. This can reduce fishermen's catches and threaten their livelihoods.
2. Disruption to the Livelihoods of Coastal

   Shellfish farming, small-scale fishing, tourism, and others. The destruction of coastal ecosystems due to sand mining can reduce the productivity of these sectors and threaten the economic welfare of coastal communities.
3. Threats to Cultural Heritage

   For example, traditional villages, temples and places of worship. This can threaten the preservation of the culture and identity of coastal areas.
4. Economic Injustice

   Most of the profits from sand exports tend to flow to large companies and governments, while the most affected coastal communities receive only limited or no benefits. This can increase economic and social disparities among coastal communities.

Seeing the impact that will occur above, there is a need for action by the authorities to be able to prevent these concerns. In fact, it cannot be denied that this regulation has caused rejection from the fishermen. An example of this is the case where dozens of fishermen from Suka Damai Village, North Rupat District held a demonstration around Beting Aceh and Babi Island, North Rupat. In their action, the fishermen demanded to save Rupat Island from the threat of sea sand mining. Andre, a fisherman from Suling Hamlet, also expressed his

[15] Kholifah, S. (2023). "Dampak Ekspor Pasir Laut terhadap Lingkungan dan Masyarakat Pesisir". Kompasiana.com. Dampak Ekspor Pasir Laut terhadap Lingkungan dan Masyarakat Pesisir Halaman 2 - Kompasiana.com.

objection to the existence of sea sand mining in his area. According to him, the presence of PT Logomas Utama in the waters of North Rupat is very worrying.[16]

It is sad if the policies that have been passed have an impact that is not proportional to what is happening for the welfare of the community. Considering the impact caused by the opening Seeing the events that occurred should be reconsidered against this existing policy. There should be justice and further action so that no party is harmed.

The government needs to conduct a study as the basis for the formation of technical regulations for the export of sea sand by considering various aspects ranging from the environment and the economic aspects of the surrounding community. In addition, it is necessary to educate the public about the impact of illegal sand mining which has an impact on environmental damage and a decrease in fish productivity in the sea in the long term. Developing sustainable policies to protect marine resources and communities requires the government to collaborate with fishermen, coastal communities and other stakeholders.[17]

D. Conclusion

After the dismissal of the sea sand export policy in 2003, it is now being re-enacted in 2023 in accordance with Government Regulation (PP) Number 26 of 2023 concerning Management of Sedimentation Results in the Sea. In this case, many responses have been raised from various groups. As well as having implications for negative impacts from various aspects, especially on the country's economy and negative impacts on coastal communities. From the economic impact of the country itself, although this policy has advantages and disadvantages, it provides greater benefits for entrepreneurs. The potential export value of sea sand is Rp 733 billion. On the other hand, the potential state revenue from the sea sand export policy is only Rp 74 billion. The implementation of the sand export policy is not worth the risk of damage to the marine ecosystem because the potential value of state revenue is relatively low. Then, from the negative impacts on coastal communities themselves, namely decreased productivity of fishermen, disruption to the livelihoods of coastal communities, threats to cultural heritage, and economic injustice.

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16 Ridhwan, N. (2023). "Ramai Penolakan Ekspor Pasir Laut dari Nelayan, Berikut Ragam Alasannya". Ramai Penolakan Ekspor Pasir Laut dari Nelayan, Berikut Ragam Alasannya - Bisnis Tempo.co. Diakses pada 2023.

17 Amri, I.F et.al. "Sinkronisasi Vertikal PP No. 26/2023 dengan UUD NRI Tahun 1945 Legal Policy Ekspor Pasir Laut". *UNES Law Review*, Vol. *6* No.1, 2023, p.2338-2350.

E. Advice

The main problem is not the aspect of reopening the sea sand export policy regulated in PP No. 26 of 2023 concerning Management of Sedimentation Results in the Sea. However, how to make the existence and role of the government felt for the benefit of all aspects, both the country's economy and the coastal communities in particular (fishermen). Therefore, the main thing that must be improved is to prioritize impacts that do not cause harm in it. It is also necessary to be able to synchronize legal certainty in it, especially for small fishermen. The country's economy and the welfare of the community need to be considered in depth so that no party feels burdened by the opening of the policy.

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INDONESIA'S STRATEGIC ROLE IN THE DEVELOPMENT OF INTERNATIONAL LAW IN THE ASEAN COMMUNITY

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ABSTRACT:

The purpose of this study is explicitly to analyze Indonesia's strategic role in the development of International Law in the ASEAN Community and to understand Indonesia's contribution since the beginning of the formation and development of ASEAN, Indonesia when analyzed its role is significant because during the ASEAN leadership in certain years (1976, 2003, 2011 and 2023) this is very fundamental, where Indonesia's strategic efforts to continue to strengthen ASEAN as a unity in the Southeast Asian region that is growing rapidly, inclusive and sustainable, that the ASEAN Community has the capacity to resolve problems between member countries through the mechanism of International Law. Normative research methods are used to analyze the various strategies used in Indonesia's interactions as a country and part of the ASEAN community. Indonesia sees the opportunities in the ASEAN region as a space that can support Indonesian cooperation. Indonesia's success in including maritime issues in the ASEAN agenda is also an initial step that will help pave the way for Indonesia to realize its vision of the World Maritime Axis. Indonesia's significant role certainly promotes stability and security in the ASEAN Southeast Asia Region and it is important to remember Indonesia's commitment to the principles of International Law and peaceful resolution of disputes.

***Keywords**; Role of Indonesia, ASEAN, International Law.*

A. Introduction

For 57 (fifty seven years), the Association of Southeast Asian Nations (ASEAN) is a regional organization of the Southeast Asian region established on August 8, 1967 and its cooperation covers the political and economic fields between countries in the Southeast Asian region itself. When ASEAN was first established, there were only five member countries: Indonesia, the Philippines, Malaysia, Singapore, and Thailand. Ten countries have become members and recognize the importance of cooperation to overcome these challenges in various fields. The ASEAN Charter adopted in 2008 includes several aspects of broad regional cooperation, including accelerating economic growth, social progress and cultural development, promoting regional peace and stability, enhancing cooperation and mutual assistance, enhancing cooperation to address common challenges, improving the lives of the ASEAN people, maintaining common interests at the regional and international levels,

maintaining the principles of the UN, increasing trade and investment and strengthening ASEAN identity.

Before the formation of ASEAN, various initiatives were carried out in Southeast Asia to establish regional cooperation. One of them was the Association of Southeast Asia (ASA), which in 1961 only had three member countries: the Philippines, Malaysia, and Thailand. So ASA was called the basis for the formation of ASEAN which was continued in 1963 by the establishment of Malaysia, the Philippines, Indonesia (MAPHILINDO). However, due to the conflict between Malaysia and the Philippines, MAPHILINDO then replaced ASEAN, although it must be admitted that MAPHILINDO did not last long at that time. This second effort then ended with Sukarno's confrontational policies. ASEAN has introduced various policies and mechanisms to address a number of phenomena such as migration and preventing cross-border crime.[1]

Indonesia has been viewed as the natural leader of perceived organizations such as the Association of Southeast Asian Nations (ASEAN), a construct that is justified by its geographic dimensions, large population, strategic location, and natural resources. This has led to Indonesia feeling entitled to a leadership position and being generally recognized by other ASEAN members as first among equals. Indonesia's de facto leadership has traditionally been accepted as conventional wisdom, but little attention has been paid to the extent to which Indonesia's Jakarta-based executives have actually succeeded in exercising leadership in ASEAN and how their efforts to do so have been perceived by other Southeast Asian states. This paper explores these questions by focusing on Indonesia's ability to provide international public goods in the areas of security and economics, engage in conflict management, and promote institution-building.

Since its inception, the ASEAN community has been a means to further strengthen ASEAN integration. The ASEAN community was built through 3 (three) pillars, namely the ASEAN Political-Security Community Pillar which aims to enhance cooperation in the political and security fields in order to maintain peace in Southeast Asia, as well as uphold human rights (HAM) and democracy in Southeast Asia. Until now, ASEAN has held many meetings that have resulted in agreements on efforts to cooperate in the fields of economics,

[1] Karunia *et al.*, "Kebijakan Asean Dalam Merespon Fenomena Migrasi Dan Pencegahan Kejahatan Transnasional Melalui Lembaga Sektoral Asean." Journal of Law and Border Protection, Depok, 2023, p. 72.

education and security stability in the Southeast Asia region, although it is recognized that there are various principles that in their implementation are still obstacles such as the principle of non-intervention. The increasingly complex problems in the ASEAN region, if no immediate steps are taken to resolve them, it is feared that various interventions will emerge from countries outside ASEAN which endanger the sovereignty of the ASEAN countries themselves. The idea of ASEAN regional cooperation to maintain peace or peacekeeping was first raised in 1994 after the 1991 Abuja Treaty which was the initiation of the formation of regional security cooperation for the African Union (African Union). Therefore, in 2003 the Indonesian Government submitted a suggestion to ASEAN to form a peacekeeping force. Unfortunately, this has not become a special concern among ASEAN member countries themselves. This is due to the perception of the principle of non-intervention among fellow ASEAN member countries.[2]

However, over time, the perception of the principle of non-intervention has changed due to the following factors: First, the increasing role of ASEAN countries in maintaining international peace has made them more aware of the benefits of multilateral action in addressing cross-border challenges; Second, the regional challenges currently facing Southeast Asia have also changed, leading to a reconsideration of the benefits of regional power. Therefore, to address these issues, ASEAN is expected to further strengthen cooperation between member countries in the field of regional security. Serious threats to ASEAN regional security can come from transnational crimes, such as human trafficking, narcotics and drug trafficking, money laundering, terrorism and other crimes that cross national borders in the ASEAN region. These crimes often involve complex cross-border networks and are difficult for one country to overcome alone.[3]

This association will always carry out transparency and participation of all countries in the Southeast Asian region in accordance with the goals and principles of life. It proclaims ASEAN as a representative of "the collective will of the countries of Southeast Asia to bind themselves in friendship and cooperation and, through common efforts and sacrifices, ensure their peoples and children through peace, freedom and prosperity" It has been mentioned previously that ASEAN has made various efforts to strengthen cooperation between its

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[2] Saptono *et al.,* "Kerjasama Indonesia Dan Amerika Serikat Mendukung Peran Indonesia Sebagai Leading Sector Dalam Pembentukan Asean Counter Terrorism And Peacekeeping Task Force." *Op. Cit.* p. 568.

[3] Karunia et al., "Kebijakan Asean Dalam Merespon Fenomena Migrasi Dan Pencegahan Kejahatan Transnasional Melalui Lembaga Sektoral Asean.", *Loc. Cit.,* p. 72.

members in the field of law enforcement and security, such as one example is the establishment of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children or ACTIP in 2015, which aims to combat human trafficking in the ASEAN region or the establishment of the ASEAN Peacekeeping Force because it is realized that at the regional level, Southeast Asia is a region that faces quite serious challenges in the field of security.*Pilar Kedua* adalah Komunitas Ekonomi ASEAN atau ASEAN Economic Community atau di Indonesia disebut Masyarakat Ekonomi Asia (MEA). MEA memiliki tujuan untuk menjadikan kawasan Asia Tenggara menjadi sebuah pasar bersama/pasar tunggal (*single market*) dan basis produksi[4] yang implementasi dari MEA ini diharapkan kawasan Asia Tenggara akan menjadi kawasan yang berdaya saing dan dinamis, memiliki pembangunan yang merata dan setara serta mempercepat keterpaduan ekonomi di kawasan Asia Tenggara dan dengan kawasan di luar Asia Tenggara (ASEAN). Pilar ketiga adalah Komunitas Sosial-Budaya ASEAN. Pembentukkan komunitas ini diharapkan akan meningkatkan kesadaran, kesetiakawanan, kemitraan, dan rasa memiliki masyarakat Asia Tenggara terhadap ASEAN.[5]

Political and security cooperation in ASEAN, especially the ASEAN Political and Security Community (APSC), was established with the aim of accelerating political and security cooperation in the Southeast Asia (ASEAN) region and peace among Southeast Asian countries. To realize the region. The ASPC pillar is an important element as a tool for building peace in the region. APSC operates in the context of political and security cooperation. The existence of the pillars of the ASEAN Political-Security Community is an important part, because this community is a vehicle for creating regional peace. APSC is expected to build better coordination between ASEAN member countries to respond to global challenges and threats that arise in the region. However, the implementation of APSC in ASEAN is not easy. APSC continues to face internal obstacles regarding the commitment of Member States to comply with the standards that this Pillar (APSC) wants to create. Once formed, APSC is expected to be able to overcome political and security problems that arise inside and outside the Southeast Asia region. This description shows that along with the

4 Sari, "Peran Indonesia Dalam Implementasi Asean Political Security Community.", Jurnal Dinamika Global, Cimahi, 2019, p. 20.
5 Sari., *Ibid*, p. 21.

continued development of ASEAN through its member countries, it is expected to be able to form a strong and independent Southeast Asia region that will become the next global axis.

B. Research Method

This study aims to analyze Indonesia's strategic role in the development of International Law towards the ASEAN Community and understand Indonesia's contribution since the beginning of the formation and development of ASEAN ASEAN international law. Various studies have been written in national and international literature, politically, economically and legally, the perspective on Indonesia's role that is different from this study is Indonesia's strategic role in discourse, explicitly using International Law by looking at the practice of the ASEAN community, this is important to develop the role of Indonesia and ASEAN more comprehensively and sustainably.

C. Discussion

1. Indonesia's Strategic Role in the Development of International Law in the ASEAN Community

ASEAN as an international organization is the holder of rights and implementer of obligations according to International Law, ASEAN was formed by an international agreement by more than two countries, in this organization there are various functions, objectives, authorities, principles and organizational structures, as a regional organization ASEAN is closed because ASEAN membership is only countries included in the Southeast Asia Region, this regional organization is very competitive and is taken into account globally, this is influenced by geopolitical and geoeconomic shifts in Southeast Asia due to increasing competition between countries such as America and the People's Republic of China (PRC). To examine these interrelated capacities, it is necessary to provide several illustrations that will be explained in the ASEAN Charter and other important international rules.

a. ASEAN Charter

The existence of ASEAN as an international organization when viewed from several perspectives is less than satisfactory, this can be seen at the internal (regional) and external (international) levels. Its international level and integrity are very low compared to other regional organizations, especially the European Union. ASEAN has a High Council that resolves international disputes between member countries. However, this facility has never been used. For example, in resolving the Sipadan-Ligitan dispute, Indonesia and Malaysia preferred to resolve it through the International Court rather than the High Council. The issue

of human rights violations in Myanmar has also never received serious attention in ASEAN. This is partly due to the implementation of the very strict principle of non-intervention and the absence of a regional human rights court like other regional organizations. The issue of trade liberalization at the regional level also raises a number of problems. Considering all of the above problems, the 10 member countries are trying to strengthen ASEAN by drafting the ASEAN Charter. Some parties argue that ASEAN will receive greater consideration based on the Charter. However, a number of other parties are pessimistic that the Charter will not bring much change. ASEAN will continue to exist as before, without the authority to take action against member countries that violate international law. By the end of the year, all 10 member states had ratified the Charter as a prerequisite for its entry into force.[6]

The ASEAN Charter as an international agreement emerged from a series of long negotiation processes. The subsequent harmonization and agreement of the interests of the ten ASEAN countries in a legally binding Joint Forum is only one of the many diplomatic efforts that must be made for the birth of the ASEAN Charter. Most importantly, peace, stability, progress and shared prosperity in the region are fundamental interests that can ultimately unite Southeast Asian countries into the ASEAN Forum. A series of long-term negotiation processes can be seen, among others, in the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter on 12 December 2005, the emergence of the Group of Eminent Persons or EPG3 and the High-Level Task on the ASEAN Charter. ASEAN Charter. The Mandatory Reading Draft of the ASEAN Charter or HLTF 4 process on 12 December 2005 resulted in the Travaux Preparatoirs or Preparatory Documents for the ASEAN Charter. This includes, but is not limited to, the EPG, HLTF, the final notes or Bali summary notes. Kuala Lumpur Declaration on the Establishment of the ASEAN Charter II and the Cebu Declaration on the Draft ASEAN Charter.[7]

The length of the negotiation process can be said to be such as, from the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter on December 12, 2005, the Eminent Persons Group on the ASEAN Charter or EPG, namely a series of long negotiation processes, among others, seen in the formation of the Kuala Lumpur Declaration of the Terms of Reference or TOR EPG which was agreed upon at the 11th ASEAN Summit in

6 Pratomo, "Prospek Dan Tantangan Hukum Internasional di Asean Dan Indonesia Pasca Piagam Asean Dari Sisi Perjanjian Internasional.", Jurnal Hukum Ius Quia Iustum No. 1, Yogyakarta, 2009, p. 61

7 Pratomo.Pratomo., *ibid*, p. 62

Kuala Lumpur, Malaysia in December 2005. Based on the TOR, the EPG, which consists of "highly respected and honored citizens" from each ASEAN country, is tasked with carrying out the following: ("…*examine and provide practical recommendations on the directions and nature of the ASEAN Charter relevant to the ASEAN Community as envisaged in the Bali Concord II and beyond, taking into account, but not limited to, the principles, values and objectives contained in this Declaration*": Furthermore, "…*examine ASEAN in all areas of its cooperation activities, codify and build upon all ASEAN norms, principles, values and goals as contained in ASEAN's milestone agreements, treaties and declarations, as well as undertake a thorough review of the existing ASEAN institutional frame work and propose appropriate improvements if so required. It will put forth bold and visionary recommendations on the drafting of an ASEAN Charter, which will serve as the legal and institutional framework for ASEAN, aimed at enabling the building of a strong, prosperous, and caring and sharing ASEAN Community that is cohesive, successful and progressing in the 21st century*"

Besides that *High Level Task Force on the Drafting of ASEAN Charter* or HLTF is *Terms of Reference* or TOR HLTF agreed at the 11th ASEAN Heads of State Meeting or ASEAN Summit in Kuala Lumpur, Malaysia, December 2005; In the TOR, the HLTF, which consists of senior officials from each ASEAN country, was given the mandate to "…*draft the ASEAN Charter based on the directions given by the Leaders as reflected in the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter and the Cebu Declaration on the Blueprint of the ASEAN Charter and in consideration of the recommendations made by the EPG and other relevant ASEAN documents*". The long negotiation process also resulted in the Travaux Preparatoirs in the form of various documents for the Establishment of the ASEAN Charter including the EPG, HLTF, Bali II Agreement, Kuala Lumpur Declaration on the Implementation of the ASEAN Charter, and the Draft ASEAN Charter.[8]

Going through the negotiation process at the regional level resulted in the signing of the ASEAN Charter followed by ratification by each ASEAN member country as stipulated in Article 47 Paragraph 2 of the ASEAN Charter. ("*This Charter shall be subject to ratification by all ASEAN Member States in accordance with their respective internal procedures*"). The process of ratification was not easy because it was found that there were

[8] Pratomo, "Prospek Dan Tantangan Hukum Internasional di Asean Dan Indonesia Pasca Piagam Asean Dari Sisi Perjanjian Internasional." Pratomo. *Loc. cit.* p. 62

3 (three) ASEAN member countries, namely the Philippines (November 12, 2008), Indonesia (November 13, 2008) and Thailand (November 14, 2008) who submitted the ratification instruments at such a close time to the deadline for the initial plan of the effective date of the ASEAN Charter, namely December 14, 2008 at the 14th Meeting of ASEAN Heads of State in Thailand. Indonesia ratified the charter through a process in Commission I of the DPR with a deep meaning.

Several themes of the ASEAN Charter highlighted by Commission I of the DPR include decision-making mechanisms, sanctions, human rights institutions, and community participation, but these have received little attention. The active and important role of members of Commission I of the DPR in analyzing the ASEAN Charter has provided input to the Government for further preparation of follow-up to the ASEAN Charter. 8 Finally, after a long discussion, on November 6, 2008, the ASEAN Charter became part of Indonesia's domestic law through Law Number 38 of 2008 concerning the Ratification of the Charter of the Association of Southeast Asian Nations.

The ASEAN Charter which came into force on 14 December 2008, signed on 20 November 2007 and ratified by all ASEAN member states has de jure transformed ASEAN from a loose regional organization into a rules-based organization. The existence of the ASEAN Charter provides a legal and institutional framework for ASEAN to develop towards a common community that prioritizes, among others, peace, security, stability, sustainable economic growth, prosperity and social progress in accordance with the Terms of Reference or TOR HLEG agreed at the ASEAN Foreign Ministers' Retreat Meeting in Singapore, 20 February 2008; In the TOR, HLEG is asked to "…*address the implementation of legal matters in the ASEAN Charter*…".[9]

For Indonesia, the formation of the ASEAN Community, whose constitution is the ASEAN Charter, is also in line with the unity of national interests. Indonesia is actually a new regional order that is part of the world order as regulated in the Preamble to the 1945 Constitution of the Republic of Indonesia. In other words, "participation in maintaining world order based on freedom and eternal peace and social justice." As a follow-up to the signing of the ASEAN Charter, the Foreign Ministers of each ASEAN member country

[9] Pratomo, "Prospek Dan Tantangan Hukum Internasional Asean Dan Indonesia Pasca Piagam Asean Dari Sisi Perjanjian Internasional." *Op.cit*, p. 63

agreed to form a working group whose duties include discussing legal issues that may arise in the implementation of the ASEAN Charter. The Working Group is a group of high-level legal experts for the Follow-up to the ASEAN Charter (HLEG) and consists of legal experts representing ASEAN member countries.[10]

When comparing the ASEAN Charter with the charters of other regional organizations that are non-supra-national in character such as the Organisation of African Union 1963 (OAU) Organisation of American States 1948 (OAS) and Organisation of Islamic Conference 1974 (OIC), it can be said that based on the issues regulated, the ASEAN Charter tends to be more comprehensive. For example, of the three other regional organizations, only the ASEAN Charter regulates in detail the provisions on how to resolve disputes even though in terms of the number of member countries it is the least, around 32 member countries for the OAU, 146 member countries for the OAS and 14 member countries for the OIC which are added to by a number of other interesting aspects such as the number of objectives and principles contained in the ASEAN Charter which can be said to tend to be general, for example the ASEAN Charter 15 Objectives and 14 Principles, the OAU Charter 5 Objectives and 7 Principles, the OAS Charter 8 Objectives and 14 Principles and the OIC Charter 7 Objectives and Principles.[11]

The enactment of the ASEAN Charter has an impact on the development of international law at the ASEAN level, including Indonesia. The form of the ASEAN Charter, which is an agreement, makes the ASEAN Charter one of the sources of international law for all ASEAN member countries as per Article 38 of the Statute of the International Court of Justice and this is for the ASEAN region. Realizing the substantial aspects of the things agreed upon, the ASEAN Charter is not only an international agreement in its usual form, but an international agreement that has a special character to be used as a basis for international agreements or other instruments. The character of the ASEAN Charter is as a law maker for other ASEAN agreements or instruments, whether derivatives with a position as a subordinate or parallel coordination.

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[10] Pratomo. "Prospek Dan Tantangan Hukum Internasional Asean Dan Indonesia Pasca Piagam Asean Dari Sisi Perjanjian Internasional." *loc.cit*, p. 63

[11] "Prospek Dan Tantangan Hukum Internasional Di Asean Dan Indonesia Pasca Piagam Asean Dari Sisi Perjanjian Internasional." *loc.cit*, p. 63.

The ASEAN Charter is the most important legislative document in the ASEAN region because, among other things; 1) it provides general rules, 2) it was developed multilaterally in the context of the ASEAN regional structure, and 3) the Object (traitslois) is considered to have personality. This fulfills the obligations of other agreements and does not eliminate them. For example, in category a) the ASEAN Charter establishes basic principles for ASEAN member states to interact within ASEAN. Category b) the ASEAN Charter is the result of regional negotiations that bring together the interests of all ASEAN member states into a legally binding agreement. On the other hand, in category c) the ASEAN Charter does not eliminate other agreements and instead recognizes and states that previous agreements before the ASEAN Charter came into effect are valid unless they conflict with the agreement.

In contemporary times, ASEAN countries have agreed to more than 300 types of agreements since 1967. These types of documents come in various formats, ranging from declarations and joint declarations to memoranda of understanding and international agreements in various fields, with economics being the most widely regulated field. Regarding the existence of documents such as those mentioned above, the ASEAN Charter recognizes their legislative nature and states that the status of documents made before the ASEAN Charter comes into force will remain valid unless they are in conflict with the document. At first glance, the application of this principle is valid as long as it does not conflict with previous documents. Although the ASEAN Charter does not have an impact on ASEAN, if examined carefully, it has the potential to cause problems in the future. For example, of the more than 300 legal instruments that exist, the eligibility of legal instruments that can give rise to rights and obligations has not been determined.

The issue of the adequacy of legal documents is closely related to the dispute resolution mechanism, because disputes are generally based on similar documents. If a deed does not clearly regulate its legal rights and obligations and one of the parties to the deed fails to fulfill its obligations, can this be a basis for initiating a dispute? Another example: Is there a hierarchy among the more than 300 financial institutions? financial instruments, or do all financial instruments have the same status? ASEAN must address these issues to avoid potential conflicts in the future. This requires immediate attention.

The ratification of the ASEAN Charter by Indonesia officially becomes part of the domestic law of Indonesia. Some legal implications of the ASEAN Charter for Indonesia.

The main purpose is to recognize ASEAN as an international organization that has legal capacity based on the rules of domestic law of Indonesia. Such legal capacity includes, among others, the right to 1) enter into contracts, 2) buy and sell real estate, and 3) sue and be sued in court. The extent to which international organizations can be sued in Indonesian courts, or whether international organizations can own land in Indonesia, are some fundamental questions that currently cannot be answered by Indonesian law.

ASEAN instruments based on the ASEAN Charter must follow a system consistent with the ASEAN Charter. Qualifications must be agreed upon, especially those covering the hierarchy and status of each legal and political instrument. In addition to a good qualification system, there are several derivatives of the ASEAN Charter that are challenges for ASEAN. namely, the Agreement on Immunities and Privileges under Chapter VI of the Charter and the Agreement on ASEAN Human Rights Institutions under Article VI. The Agreement on Dispute Settlement Mechanisms under Article 14 of the Charter and Article 25 of the Charter, among others. In addition, the role of the ASEAN Secretariat as the center of ASEAN activities, including the ASEAN Instruments Center which was later established, will also be very important. The ASEAN Charter has provided greater legal certainty to international law, especially in the ASEAN region, than before. It is interesting to observe the implementation of the ASEAN Charter in the future in the form of agreements or derivative documents of subordination or parallel coordination. The biggest prospects and challenges of international law in the ASEAN context are the classic problems that have become the scourge of international law: the political will of ASEAN member states to implement the provisions of the ASEAN Charter. There are further legal implications regarding ASEAN immunities and privileges in Indonesia.

Indonesian laws on the immunities and privileges of international organizations have been in line with more general regulations such as Law Number 24 of 2000 on International Agreements, Law Number 37 of 1999 on International Relations and Host Agreements, or agreements related to host countries scattered throughout. Something that at one time conflicts with other regulations, such as taxation or immigration regulations. Given that Indonesia in the ASEAN context is recognized as the host country of ASEAN, the urgency of laws governing international organizations becomes very important. Like the United States, Switzerland, and Austria which host the UN. The intensity of the ASEAN meeting in Jakarta will be very high. Therefore, the conflict with Indonesian legal regulations is not

unreasonable, especially if Indonesian law does not regulate international organizations clearly and specifically.

Furthermore, each ASEAN member state will place an additional mission that includes an Ambassador-level official like the permanent representative of a United Nations member state in New York, United States and this does not include non-ASEAN countries that have certain relations with ASEAN such as ASEAN dialogue partners. For example, Australia has sent a special ASEAN Ambassador to Jakarta. For Indonesia, the implication of being a host is the prospect and challenge itself both for Indonesian law and the relationship between Indonesian law and international law considering the character of the international agreement of the ASEAN Charter. For Indonesia, the prospects and challenges of international law after the ASEAN Charter can be viewed from two aspects, namely the internal and external aspects. For the internal aspect, Indonesian law will be influenced by international law, especially the law of international organizations. Indonesian law must be able to bridge the interests of international law and the interests of international law. In addition, ASEAN countries will appoint additional missions, including ambassador-level officials, such as the permanent representatives of UN member states in New York and the United States. This does not apply to non-ASEAN countries that have certain relations with ASEAN as ASEAN dialogue partners. For example, Australia sends a special ambassador from ASEAN to Jakarta.

For Indonesia, given the nature of the international agreement in the ASEAN Charter, the implications for the host are the prospects and challenges faced by Indonesia itself, both in terms of Indonesian law and the relationship between Indonesian law and international law. Indonesia specifically examines the prospects and challenges of international law based on the ASEAN Charter from two aspects: internal and external. From an internal perspective, there is a tendency for Indonesian law to be influenced by international law, especially the law of international organizations. Indonesian law in its existence must be able to combine the interests of international and domestic law. On the external side, Indonesia's practice as the host of ASEAN will attract the attention of the international world, especially the ASEAN community, and it is possible that it will achieve international equality, and ultimately will lead to the birth of international conventions that will follow. The ASEAN community is recognized and imitated by the international community. In this case, it can be said that Indonesia is directly involved in the formation of international law through

international law customs or customary international law. The main legal issues discussed include ASEAN's legal capacity, ASEAN's dispute resolution mechanism, and ASEAN's immunities and privileges. The follow-up to the ASEAN Charter, especially the implementation of all provisions of the ASEAN Charter, is both a prospect and a challenge for ASEAN and Indonesia itself. The ASEAN Charter may be reviewed in 2013, as stipulated in Article 50 of the ASEAN Charter. *"This Charter may be reviewed five years after its entry into force or as otherwise determined by the ASEAN Summit*" This is in line with the implementation of the ASEAN Charter which has also been confirmed to be able to color the development of international law, both in ASEAN and Indonesia.

1. *Mutual Legal Assistance* (MLA)

The 56th anniversary of ASEAN cooperation is a sign that the problems that arise between ASEAN member countries will become increasingly dynamic. This problem is escalating, not only in the socio-cultural field, but also in the legal field. As the largest country in ASEAN, Indonesia is ready to become a barometer for international law enforcement for other ASEAN countries. Indonesia must set a good example for ASEAN countries. Indonesia's actions in ASEAN will have a major international impact. In addition, legal issues are often discussed among ASEAN member countries. Therefore, legal cooperation must be a sustainable step for other ASEAN member countries.

One form of cooperation is Mutual Legal Assistance (MLA) which was signed by ASEAN countries. In fact, Indonesia is one of the pioneers of reciprocal criminal cooperation in ASEAN. Intra-ASEAN cooperation does not only focus on security and other social cooperation, because ASEAN countries realize the importance of increasing solidarity, cohesion and the effectiveness of cooperation. Cooperation in the field of international law such as MLA is one part of the work of the Indonesian International Legal and Legal Headquarters (OPHI), as well as Indonesia's main function through the Deputy Directorate General of the Indonesian Criminal Division and the Directorate General of Legal Support. Ministry of Law and Human Rights (Ditjen AHU) and Ministry of Law and Human Rights (Kemenkumham).

Currently cooperation in the field of international law such as MLA is the main task and function of the OPHI Directorate which aims to strengthen MLA and realize cooperation with similar institutions in ASEAN countries to ensure the continuity of its functions. Likewise, according to international relations expert Raden Maisa Yudno, international

relations between ASEAN countries can be seen based on the current status and history of regional integration efforts. In building cooperation in the legal field, it is also necessary to combine different approaches from ASEAN countries. The ASEAN MLA Agreement was signed by six ASEAN member countries (Brunei, Cambodia, Laos, Malaysia, Indonesia, the Philippines, and Vietnam) and recognizes that each country has a different story. Indonesia itself is a supporter of the ASEAN MLA Treaty.

The current development of international law, especially international criminal law, is marked by the development of violations of the law, transnational crimes, and international crimes. The development of crime not only has a broad and fundamental impact on human life, but also on the principles, norms, and legal institutions related to the application of criminal law to eradicate these crimes. The authority to make international agreements is stated in the UN Charter, and there are no provisions governing it. Judging from the development and origin of international crimes, international crimes can be divided into three groups:

1. International crimes arising from the development of customs in the practice of international law.
2. International crimes based on international agreements.
3. International crimes arising from the development of the history of human rights agreements.

Contemporary era, state borders have become very virtual in the sense that international relations have become very dynamic and state borders seem easy to cross in a very short time. In today's international society which is in the era of globalization, the occurrence of international-dimensional crimes is expected to increase both quantitatively and qualitatively, supported by technological advances in the fields of information technology, telecommunications, transportation and others. To overcome this, cooperation between countries alone will not be enough. Integrated cooperation is needed at the bilateral and multilateral levels. One of the legal mechanisms that is believed to be able to eliminate international crimes is extradition. Therefore, at first glance, the extradition authority seems to be an effective legal institution to resolve this issue. Law enforcement provisions have an international dimension.

The perpetrators of criminal acts who are processed, tried, or executed must be in the territory of another country and not in the territory of the country where the trial is taking place. Therefore, there are several models of international law that can eliminate obstacles

in combating transnational crime, such as extradition. The difference between the two forms of law enforcement cooperation agreements is that the extradition agreement aims to extradite a person (criminal), while the MLA agreement aims to carry out criminal justice such as investigation, prosecution, search, and confiscation, the purpose is support. Return of criminal assets. This kind of cooperation is possible because of several international agreements ratified by the Indonesian government.

The efforts of the international community to enforce the law to eradicate international crime are not enough to implement the extradition agreement. It is also important to review the tendency of countries to prioritize other agreements that are equally important and closely related to cases in combating international crime. Indonesia always has the potential for problems in handling criminal cases between countries. Differences in national legal systems and lack of understanding of substantive law create obstacles that are difficult to overcome. If seen from the ASEAN region alone, Indonesia seems powerless to face the interests of other countries despite being its chairman.

2. *Counter Terrorism and Peacekeeping Task Force*

At the regional level, Southeast Asia is a region that faces major challenges in the field of security. Terrorist incidents are incidents that many Southeast Asian countries face. The number of terrorist attacks in Southeast Asia reinforces the need for ASEAN to play a greater role in resolving this problem. Indonesia has experienced many bombings and other terrorist attacks, starting on May 14, 1962 with an attempt to assassinate President Sukarno by blowing up Cikini University in Central Jakarta. After that, the Bali bombing on October 12, 2002, the JW Marriott Hotel bombing in Jakarta on August 5, 2004, and the Australian Embassy bombing in Jakarta on September 9, 2004 and similar attacks continue to this day, namely the suicide bombing of himself in front of the Astana Anyar Police Station in Bandung which occurred on December 12, 2022, namely the suicide bombing in front of the Astana Anyar Police Station in Bandung. There are three types of terrorist groups in Southeast Asia on a global, regional, and national scale. These terrorist groups in Southeast Asia are interconnected and often have the same leaders, members, tactics, and goals. Global terrorist organizations such as Al-Qaeda recruit and train agents throughout the region and have maintained ties with Southeast Asian terrorist organizations since the anti-Soviet jihad in Afghanistan. Regional terrorist organizations such as Jemaah Islamiyah (JI) based in Indonesia aim to establish an Islamic state in Southeast Asia. In addition, nationalist groups

such as the Abu Sayyaf Group (ASG) in the Philippines seek to establish an Islamic separatist state in southern Mindanao.

Al-Qaeda's continued presence in Southeast Asia and its continued contacts with regional and nationalist terrorist groups in Indonesia and the Philippines have led the United States to actively support Indonesian and Philippine counterterrorism efforts in recent years. The extent of the United States' influence throughout the world is evident in the cooperation of several countries, particularly in the Southeast Asian region, to address global security challenges disrupted by acts of terrorism. This is evidenced by the example of US military operations in Afghanistan and Iraq following the terrorist attacks on the World Trade Center on September 11, 2001 (the War on Terror), which demonstrates that the use of US force is an example of a system that has had a major impact in addressing these Terrorist attacks are terrorist attacks. Legally, this operation was based on a decision by Congress authorizing the use of US military force to combat terrorists (Authorization for the Use of Military Force Against Terrorism).

As is known later, the US-led coalition military operation succeeded in overthrowing the Taliban regime in Afghanistan in 2011 and cornering al-Qaeda in a relatively short time. The leader of the Al-Qaeda group, Osama bin Laden, was successfully eliminated in 2011 in a special operation involving US Special Forces (Saptono et al., 2023). The problem that has emerged so far is that the ASEAN Peacekeeping Force which was expected to be formed, turned out not to have been formed in 2011, and is often forgotten, even the Indonesian government has not followed up. This is not the case. Therefore, 20 years ago (2003), researchers wanted to study the phenomenon further. Previous research on regional security cooperation has been conducted by researchers from the Faculty of International Relations, FISIP, Padjadjaran University, namely Arifin Sudirman and Daisy Silvija Salih, in "Overcoming the Threat of Terrorism". The results of the study are presented under the title ``Building regional security in ASEAN." Regional Security Cooperation is needed to address terrorism and regional security issues. On the other hand, this shows the strength of the bilateral relations between Indonesia and the US which have been harmonious for a long time, most recently with the holding of a large-scale joint military exercise between Indonesia and the US in August 2022.

The Indonesian Army and the Indonesian Army were named Perkasa Super Garuda Shield by the TNI Commander General TNI (ret.) Andika. This shows that Indonesian diplomacy with the United States can provide positive value for national resilience both internally and externally and of course provide a deterrent effect that influences Indonesia's presence in the eyes of the international world. Actively contributing to security in the ASEAN region. Researchers examine opportunities and initiatives regarding strategies for strengthening security stability in the ASEAN region, as well as ideas to further develop and strengthen cooperation in the field of regional security, especially in addressing the threat of terrorism in the region, this is what I want to convey. Active support and great influence from the United States to the Southeast Asia region.

c. *Asean Outlook on The Indo-Pacific* (AOIP)

Regarding Indonesia's cooperation with other ASEAN countries, in June 2019 ASEAN leaders adopted the "ASEAN Perspective on the Indo-Pacific (AOIP)". This aims to express a collective voice in the Indo-Pacific debate. This was previously actively promoted by countries in the United States, India, Japan, and Australia, and was also called the Quadrilateral Security Dialogue. The United States will certainly welcome the AOIP. To build a safer region, the United States is not only trying to strengthen maritime cooperation and comply with international law and standards to resolve geopolitical challenges, including in the South China Sea. Indonesia is one of the ASEAN member countries that has witnessed the US-China conflict in the Indo-Pacific region and is uncomfortable with the US approach that isolates China. Jakarta views the Quad as a potential strategic alliance of external powers without ASEAN participation. Jakarta (Indonesia in this context) has developed an Indo-Pacific strategy that focuses on ASEAN and prioritizes the principle of ASEAN inclusiveness, including towards China. Unlike Indonesia, the United States does not use the word "inclusive" but rather "freedom". Given the increasing diversity and number of actors interacting in the international world, Indonesia seeks to reconcile the growing challenges of international development with the Indo-Pacific vision. Based on the statements of Indonesian President Joko Widodo and Foreign Minister Retno Marsudi, the Indo-Pacific Initiative in question focuses on developing a comprehensive regional or regional dialogue system that is more efficient than creating components. To realize a peaceful and free region. The entry of major countries such as China, the United States and India into the Indo-Pacific region has turned out to bring benefits to the region, namely increasing the level of the regional economy. However, in addition, the emergence of these

great powers also poses a threat to the stability and security of the Indo-Pacific region. Basically, threats in the Indo-Pacific region include the seizure, attack, or demarcation of territory from the dispute and maritime security. The security stability that is currently a security problem is expected to increase. The struggle for power over the region between existing and involved actors will "disturb" regional peace. After going through several diplomatic and negotiation processes regarding the dynamics of the organization, Indonesia's Indo-Pacific initiative was approved by ASEAN. ASEAN adopted this concept and named it the ASEAN Perspective on the Indo-Pacific (hereinafter referred to as AOIP). The AOIP was agreed upon at the ASEAN Summit held in Bangkok on June 22, 2019. The agreement on the AOIP shows that Indonesia's diplomatic strategy has succeeded in providing a view of the Journal of Global Transformation. This is an important issue for Indonesia because it plays an important role in maintaining regional stability, peace and cohesion. As the initiator of the ASEAN AOIP, Indonesia realizes the importance of the Indo-Pacific approach to ASEAN from a defense perspective, especially defense cooperation with ASEAN dialogue partners. The Deputy Minister of Defense stated that the AOIP serves as a guide for ASEAN in the field of defense cooperation from a defense perspective. "Countries in the Indo-Pacific region maintain security, peace and prosperity with the centrality and strategic role of ASEAN. AOIP is an idea of the Indonesian government based on the potential of the region. Former Indonesian Foreign Minister Marty Natalewaga was the first to create AOIP in 2013. This concept was further developed in 2017. At the 2018 ASEAN-India Summit, Joko Widodo directly conveyed more or less the general idea of AOIP. In the presentation of the concept proposed by Indonesia, ASEAN is a central organization in the Asia-Pacific and Indian Ocean regions. AOIP explicitly speaks about Indonesia's defense diplomacy, especially in the field of maritime defense. AOIP will be a forum or platform to enable comprehensive cooperation and will become a Maritime Defense Strategy.

The proposal of several concepts to support Indonesia's diplomacy strategy is enough to highlight the value of ASEAN's centrality and create a significant domino effect in the Indo-Pacific region. Indonesia implements a national defense strategy through diplomacy and international cooperation, and the strategy continues to develop further. This is supported by a liberal and active foreign policy, with regional security management that is managed more tightly. Of course, the implementation of foreign defense policy is a challenge

in itself, given the complexity of the issue of defense threats in the Indo-Pacific region. By creating a strategic environment with all points.[12]

The AOIP initiative initiated by Indonesia is a general theme on how security cooperation can be implemented. The implementation of defense diplomacy includes defense strategies in the field of cooperation, military and non-military defense strategies, and maritime defense strategies. Defense diplomacy for confidence-building measures (CBM), defense diplomacy for defense capabilities, and defense diplomacy for the defense industry are separate elements in the implementation of defense diplomacy. Indonesia is one of the countries in the Indo-Pacific region and provides guidance for developing diplomacy around the concept of the "Indo-Pacific Framework for Mutually Beneficial Cooperation." The emphasis on this concept is one of the ways used by Indonesia in developing its defense diplomacy. This idea was born with the aim of building (trust building) and promoting (dialogue habits) a regional system of mutual trust among countries in the region. As explained in the concept above, the realization of Defense Diplomacy involves several factors, including the formation of the Indo-Pacific Framework for Mutually Beneficial Cooperation which is included in the Defense Diplomacy for Confidence Building Measures (CBM) element. This will minimize potential tensions between countries in the region, eliminate mistrust by providing transparency regarding each country's military developments, and allow each country to reduce security dilemmas.

Furthermore, as part of defense diplomacy of defense capabilities, Indonesia has made progress in improving its military capability items by strengthening its defense posture, including strengthening its military capabilities in land, sea and air dimensions. In addition, the Consensus began as a general model concept and became a separate implementation for Indonesia in , thereby increasing military capabilities. Military development is also carried out through cooperation between countries, and one of the methods used is the purchase of defense equipment. Security cooperation in the military field has a positive impact on efforts to overcome non-traditional threats such as piracy and maritime terrorism in the region. As regional problems become increasingly complex with the emergence of non-traditional

[12] Setyorini et al., "Diplomasi Pertahanan Indonesia Dalam Asean Outlook On The Indo-Pacific (AOIP).", Transformasi Global, Vol. 9 No. 2, 2022, p. 105.

issues such as maritime, human and drug smuggling, Indonesia needs to focus its defense diplomacy on strengthening its military capabilities.

And the defense diplomacy of the defense industry carried out by Indonesia in to strengthen its defense diplomacy is abstracted by strengthening the defense of the industrial sector. Sales of products from equipment exported by Indonesia reached a record of USD 284.1 million or IDR 4.5 trillion in the 2015-2018 period. PT had sales of $ 161 million. Dirgantara Indonesia. In addition, PT. Pindad provides Anoa tank products, combat vehicles, weapons and ammunition, serving the needs of many countries in Southeast Asia, Africa, the United Arab Emirates, South Korea, Nigeria and Timor-Leste. Various industrial improvements carried out by Indonesian companies in the defense sector continue to contribute to improving defense within the framework of national interest strategies. Indonesia's defense diplomacy in the Indo-Pacific region is seen in Indonesia's cooperation with South Korea in the KFX / IFX fighter jet development program. The broad scope of Indonesia's diplomacy process can be identified as several categories such as the initiation phase of cooperation until it is agreed upon for the CSA and WAA size of 80; 20 and the license to use intellectual data. After approximately two years, Indonesia has successfully overseen the implementation of the Framework by AOIP which was finally approved and launched in 2019. The AOIP created by Indonesia has strong characteristics in describing the region. Indonesia initiated this view so that ASEAN in general and Indonesia in particular can utilize this view without eliminating ASEAN's centrality. This is related to ASEAN's position in Indonesia. Indonesia, with its free and active foreign policy, makes ASEAN an important basis in foreign policy, thus enabling Indonesia to advance its national interests through ASEAN. Indonesia sees the opportunities in the ASEAN region as a space that can support Indonesian cooperation. Indonesia's success in including maritime issues in the ASEAN agenda is also an initial step that will help pave the way for Indonesia to realize its vision of the World Maritime Axis. Indonesia's current maritime problems include important issues related to problems that threaten Indonesia's economy, defense, and security, such as border problems, piracy and illegal fishing problems, and geopolitical changes that threaten the centrality of the region.

Through this AOIP, one of Indonesia's Nawacita related to the World Maritime Axis is the realization of a maritime economy that can lead to increased shipping capacity and increased effectiveness of the economic process. This is expected to make Indonesia a center

for global trade routes. In addition to improving domestic infrastructure, Indonesia also needs to improve safety in Indonesian waters to ensure that shipping is not threatened. Although the AOIP agreement will help Indonesia meet development investments within its own country, the AOIP can address security and stability issues outside its borders. Therefore, the issue of maritime infrastructure used as a tool for economic development by Indonesia is expected to continue to develop in addition to Indonesia also establishing relations with other ASEAN member countries with the aim of facilitating the expansion of investment in Indonesia. Furthermore, the AOIP is used as Indonesia's defense strategy to protect the security architecture of the Southeast Asian region. Given concerns about the stability and peace of Southeast Asia, especially the future of ASEAN and East Asia as a whole, it is clear that the world's geoeconomic and geopolitical center of gravity is shifting from West to East. China is increasingly emerging as a new power along with the United States' efforts to assert its dominance in the world. China threatens Indonesia's security situation through the Belt and Road Initiative (BRI) and the dynamics of border disputes in the South China Sea. Through the AOIP, we are committed to ensuring that ASEAN maintains its central role in managing the changing regional structure of Southeast Asia and beyond. From this perspective, ASEAN (the leading role) will be the determinant of the strategic scope and interests involved. The AOIP is a response to the increasing challenges from external pressures that may threaten ASEAN unity. The ASEAN Indo-Pacific Outlook is expected to be a foundation for major countries.

"ASEAN Perspective on the Indo-Pacific from a Defense Perspective" will guide ASEAN in the field of defense cooperation with dialogue partners. In addition, the AOIP aims to connect the interests of Indo-Pacific countries with ASEAN's central and strategic role in maintaining peace, security, and prosperity. This is a response to the current geopolitical dynamics to ensure stability, peace, and prosperity in the Region. With the AOIP, ASEAN countries prioritize dialogue, mutual trust, and win-win solutions. Meanwhile, the objectives and principles of the AOIP encourage ASEAN's external partners to carry out practical cooperation in the areas identified in the areas covered by the AOIP, Asia-Pacific and India for ASEAN's involvement in the Pacific region as important.

AOIP seems to be preparing to face the increasingly developing geopolitical dynamics. In terms of defense, AOIP also plays a role in maintaining regional stability and maintaining a peaceful and prosperous region. AOIP allows ASEAN countries and the Indo-Pacific

region to emphasize mutual trust, dialogue, and mutually beneficial solutions. Collaboration involving AOIP encourages external partners in the region to collaborate on four main areas of cooperation or areas owned by AOIP. Since its establishment, AOIP has had four priority areas of cooperation that serve Indonesia's national interests. The four areas of cooperation included are Maritime Cooperation, Connectivity, Sustainable Development Goals (SDGs), Economic and Other Areas of Cooperation (ASEAN Outlook). For Indo-Pacific maritime cooperation or maritime cooperation includes prevention efforts, and development of problems in a more targeted, peaceful and comprehensive manner related to related issues such as geopolitical challenges and emerging maritime disputes that are being faced by countries in the Region by managing and ultimately resolving them, unsustainable exploitation of marine resources, strengthening maritime security and so on. Then the second workspace is as much as connections. Connectivity includes exploring priority areas of cooperation to strengthen the existing MPAC 2025 and promote prosperity and development in the Indo-Pacific region and regional public-private partnerships (PPPs). The Development Agenda includes Building resources for connectivity projects, especially including infrastructure projects in the Indo-Pacific region.

The third area of AOIP cooperation is the Sustainable Development Goals (SDGs). SDGs achieved through AOIP include contributing to the achievement of SDGs through the utilization of the digital economy, and aligning and enhancing regional development agendas such as the ASEAN Vision 2025 and the UN Sustainable Development Agenda 2030 with the SDGs. Promoting cooperation with the Development Research Dialogue Center and other relevant institutions for a sustainable ASEAN. Finally, the fourth area of cooperation is in the economic sector. On the contrary, this sector will contribute to deepening economic integration, financial stability by supporting the implementation of other free trade agreements, including the ASEAN Economic Community Blueprint 2025 and the Regional Comprehensive Economic Partnership Agreement (RCEP), as well as ensuring resilience, strengthening and promoting trade and investment. In addition, this area also includes the development of the private sector, including micro, small and medium enterprises (MSMEs), which will be further explored to enable their participation in regional and global value chains.

d. *Customs Enforcement and Compliance Working Group*

In addition, cooperation in the field of ASEAN Customs Administration which is incorporated in the Customs Enforcement and Compliance Working Group (CECWG) in the context of law enforcement and Customs compliance. The development of the implementation of activities in the Strategic Plan for 2021-2025 related to customs audits; law enforcement and mutual assistance; as well as public security and community protection are important and prominent agendas of this institution which is under the Directorate of International Customs and Excise Cooperation, Directorate General of Customs and Excise, Ministry of Finance which also serves as the Co-Coordinator of the Strategic Plan. The role of this institution is in the context of Indonesia's Chairmanship of ASEAN in 2023, the Ministry of Finance holds activities in the form of increasing cooperation between customs administration and tax authorities in ASEAN. This activity is carried out through the preparation of the ASEAN Guideline On Cooperation Between Customs Administration And Tax Authority As One of the Expected Outputs Under the Priority Economic Deliverables (PED) "Fostering Recovery And Ensuring Economic And Financial Stability And Resilience". Indonesia as the Country Coordinator for Post Clearance Audit has initiated increased cooperation between customs and tax administrations in ASEAN as one of the activities in the Strategic Plan since 2021 and has drafted a Guideline concept related to this to be used as a guideline or best practices in ASEAN. This initiative was proposed by Indonesia with the aim of encouraging a synergy program that has been initiated by the Ministry of Finance since 2013 through the implementation of a Joint Audit between the Directorate General of Customs and Excise and the Directorate General of Taxes to the international realm in the ASEAN regional scope.

Through the implementation of cooperation between customs administrations and tax authorities in ASEAN, we will optimize government revenues and increase revenue collection by encouraging tax compliance in fulfilling taxpayer tax obligations and strengthening supervision without taking additional actions. Losses and improving services to taxpayers. Costs will increase. This synergy program will implement five pillars of reform, namely laws and regulations, business processes, organizational structures, human resources (HR) including incentives and discipline, information technology and databases, and will be the foundation for building a reliable information system. Tax data processing with technology-based accuracy. Synergy between customs and tax authorities includes data exchange, joint analysis, joint inspections, and even joint investigations if there is sufficient

initial evidence of fraud. This policy is expected to help improve the cooperation mechanism of customs authorities in ASEAN member countries that can be adjusted to certain situations and conditions to cooperate with stronger tax authorities.

Universal jurisdiction is a relatively rare but important form of jurisdiction. This is more about international criminal law than domestic law as well as a state contribution to international law enforcement. In some cases, its implementation is an obligation under international law whether it is part of an international agreement or part of the state's obligation to provide access to justice for every individual. Universal jurisdiction as a permission from the international community to universalize the right to access justice for victim communities related to crimes that have attracted the attention of the international community. It also does not affect the legitimate interests of the prosecuting state. Thus, this is not only about the role played by the prosecuting state in the international community but also related to the rights and interests of the state. This can be done through the implementation of universal jurisdiction. Regarding universal jurisdiction, this is not an absolute right or obligation but can be balanced with international obligations and other interests of a country. So a country can refuse to implement universal jurisdiction if it is not allowed by international law or is limited by other interests. To give an example of the limitation of universal jurisdiction, namely when it concerns the principle that a person cannot be tried for one crime in another place for the same crime. Another principle is the principle of immunity and in implementing universal jurisdiction, the court must respect the immunity in international law which states that high-ranking public officials such as heads of state, heads of government, foreign ministers are immune from the jurisdiction of other countries both in civil and criminal matters and there are no exceptions in international crimes.

The new Criminal Code allows for universal jurisdiction for crimes under international law. ASEAN countries all accept the validity of the importance of universal jurisdiction. ASEAN representatives have repeatedly stated before the UN that they recognize the validity and importance of universal jurisdiction. In 2022, at the Sixth UN Committee, Indonesia stated that the principle of universal jurisdiction is one of the important and crucial tools to end impunity for serious violations of international humanitarian law and other international crimes. Indonesia is not alone because Vietnam has recognized that universal jurisdiction is

one of the important instruments to combat international crimes and immunity. Thailand has also recognized this principle of jurisdiction as one of the useful tools to end impunity.

2. Indonesia's Contribution to the Scope of ASEAN Community Empowerment Based on International Law

Indonesia is developing maritime-based development as one of the goals of the world's maritime axis, which includes 5 (five) pillars of maritime policy, including maritime culture, maritime resources, maritime infrastructure and connectivity, maritime diplomacy and maritime defense. When connected to Indonesia's strategic role in several ASEAN chairmanship initiatives carried out in the context of the country, it should be closely related to three approaches, namely defense, security, economy and socio-culture.

Southeast Asia is located at the crossroads of the Indo-Pacific, this region has some of the most important straits and sea communication routes in the world. The security perspective should be supported by the ASEAN community that minimizes the vulnerability carried out by the Regional Cooperation Agreement, for example in terms of eradicating piracy and armed robbery against ships in Asia and the Malacca Strait Patrol, and using regulatory instruments such as the International Ship and Port Facility Security Code to encourage solid participation from policy makers to be motivated and contribute proactively to maritime security equality.

In the economic approach as a sovereign state, for Indonesia this is not only interpreted and includes a broad pattern of a state that has the right to rule without having to submit to the power of another state, but also the connotative meaning of power. The ideal of sovereignty was achieved through the process of the Proclamation of Independence, therefore the line between colonial and national legal policies becomes clear. The welfare state, as the antithesis of the concept of a night watchman state, certainly has a goal. The state is obliged to fulfill, meet the needs, serve, and protect its citizens. All of that is then reduced and included in the concept of civil, social, and political human rights (HAM) in the form of the right to freedom. This includes, for example, the right to live a decent life, free from fear and threats. Regarding competition with other countries, this can also be traced from the role of the state in protecting its citizens to prevent the occurrence of a disease called Hobbes as "homo homini lupus" so that it is stated that this is the challenge of a welfare state where the state must not fail.

Free trade, countries compete for economic development through trade. The implementation of free trade occurs in certain regional areas, including ASEAN countries. Indonesia needs to prepare itself to participate in the ASEAN Economic Community (AEC) which will be launched at the end of 2015. The context included in the 2015 AEC is the context of a free market, where barriers that can hinder trade are "prohibited", or a broader context where the economic sector must be free from barriers. The world will be borderless. There is no doubt that Indonesia will take the largest part in the AEC in 2015. This is inevitable because Indonesia is the largest democratic country in ASEAN with a population of 240 million. Moreover, if we look at history, Indonesia is one of the five countries that founded ASEAN in 1967. ASEAN has 10 member countries, including Cambodia which joined in 2009. The purpose of establishing ASEAN is to regulate economic cooperation. This Preferential Tariff Agreement (PTA) began in 1977. One of the agreements that led to the vision of the formation of the ASEAN Economic Community (AEC) 2015 or MEA 2015 is the Common Effective Preferences Agreement - ASEAN Free Trade Agreement, established in the region (CEPT-AFTA) in 1992 with initial implementation in 2008. The role of ASEAN has also become very important, and the world pays great attention to the countries in the ASEAN Region. With the globalization of the world economy, ASEAN countries, including Indonesia, have been brought into the free trade zone. In the field of trade, we need the willingness of each country if we do not want to become prey to developed countries. The author's analysis, this opens up the opportunity for contradictions related to the theory of state sovereignty. Although Indonesia and other countries are sovereign countries, these sovereign countries cannot "violate" the "free trade" agreement.

The world has a huge interest in countries in the ASEAN region. An indication of this can be seen from the implementation of the ASEAN Free Trade Agreement (AFTA) agreed in 1992 and started to be implemented in 2002. Since January 2010, ASEAN-6 has removed all tariffs in the "Inclusion List" category. Thus, since 2010, there have been no more trade barriers in ASEAN countries. In 2010, 99.11% of ASEAN-6 tariffs were 0%, and 98.86% of ASEAN-4 tariffs were in the range of 0-5%. The framework for cooperation in trade in goods, services and investment has been running since the 1990s: CEPT-AFTA 1992; ASEAN Framework Agreement on Services (AFAS, 1995) and ASEAN Investment Area (1998). In fact, ASEAN regional centralism was then expanded towards regionalism which also includes increasing ASEAN's competitiveness with the PRC and India. The above

conditions are in line with the ASEAN Vision 2020, namely "A stable, prosperous and competitive region with equitable economic development and reduced poverty and socio-economic disparities". Since then, the achievement of the 2020 goal has been accelerated. Its achievement in 2015 was agreed at the 2007 ASEAN Summit Forum. Many of the agreements leading up to the 2015 AEC are based on the 2003 Bali Agreement II, with the ASEAN Economic Community Edition "Free Flow of Goods, Services, Investment, Skilled Labor and Capital", with the aim of ensuring that Bali is in a favorable condition by 2020 at the latest. Conducted on the island. The themes to be achieved include several main themes of Agriculture and Forestry, trade competition, consumer protection, intellectual property rights, energy, transportation, tourism, small business development and ASEAN connectivity. The implementation of the 2015 AEC requires strategy and preparation, but Indonesia's infrastructure conditions are still inadequate. Data includes 34,000 km of highways, most of which were built during the Dutch era. Toll roads only cover 1.82% of the total highways. PLN's electricity balance is in the red zone at 10.95GW. The ratio between the length of roads and the number of ports is 4,500 km/port and must be taken into account.

The rule of law is a state formula for organizing national government legally. This concept is called so because it is the opposite of a state that governs based on pure power. The purpose of the supremacy of law is for national administration to function with planning and certainty, and not based on the momentary intuition of the ruler. Thus, the rule of law guarantees the rights of its citizens, especially in free competition through the MEA. The existence of cases where the state does not protect its citizens, especially in free trade, is a disaster for society. People who are unable to participate in free trade will only be spectators and are unable to act as actors who benefit from free trade. Government efforts in this sense are a manifestation of the implementation of the functions and roles of government as stipulated in state laws and regulations. The government is understood as an institution that organizes the government of a nation. The role and function of government arise from the power inherent in state institutions as state apparatuses. This power arises because it is in the hands of the law or is delegated authority.

Protection of the people is related to the role of the state in realizing the ideals of Indonesian law which are formulated as follows: a) this country protects the weapons of the Indonesian nation and all Indonesian bloodshed based on the Unit; b) this country wants to

build social justice for all people; c) a country that has people's sovereignty based on citizenship and representative deliberation; c) this nation is based on God Almighty based on the principle of just and civilized humanity. According to Thomas Aquinas, the ideal of protection for all Indonesian people is the principle of cumulative justice, namely providing protection to all citizens. The role of the government is realized through diplomacy, especially in international agreements regarding freedom of trade, free competition and others. One form of government protection is to make regulations that can protect its citizens. However, this is impossible because countries comply with international agreements such as not being allowed to install trade barriers. Regulatory tastes must also be considered when facing the 2015 MEA, and this cannot be separated from the government's ideals to protect the community. Another form of protection is the recognition that Indonesia is one of the countries with the highest level of public consumption. This consumer behavior is assessed by other countries and gives Indonesia a market share for all traded goods and services. For example, regulations on the use of domestically produced products can be used as a political choice to "protect" citizens. This is realized through Presidential Instruction Number 6 of 2009 concerning the Creative Industry Program. For future considerations, efforts are made to improve people's welfare through economic growth. Indonesia can also enforce regulations to better monitor the use of Certificates of Origin (SKA) from AEC 2015 member countries related to controlling imported goods. Another possible initiative is to create healthy trade and a supportive business environment. Reforming investment promotion policies, developing free trade areas and special economic zones, and improving trade licensing services for the business world. In addition, steps can be taken to protect domestic products and monitor the movement of goods and services, as well as implementing an early warning system for possible increases in imports. This is accompanied by an increase in exports which increases trade volume and ultimately benefits the trade balance. The enactment of Law Number 39 of 2009 concerning Special Economic Zones (KEK) can also be understood as a government initiative. With such national will and efforts, the national mission to ensure the welfare of the people will be easily realized.

The AEC concept was first introduced on December 15, 1997, at an informal meeting of the Heads of State and Government of ASEAN Countries in Kuala Lumpur. Furthermore, at the 9th ASEAN Summit held in Bali in 2003, the Bali Concord II was adopted which agreed to establish the ASEAN Community to strengthen ASEAN integration. The ASEAN

Community has three communities: the ASEAN Political-Security Community, the ASEAN Economic Community, and the ASEAN Socio-Cultural Community. The AEC is the ultimate goal of economic integration declared in the ASEAN Vision 2020/DLWX. The goal is to build a prosperous and competitive ASEAN economy with a stable supply of goods, services, investment and labor by 2020, as well as reduce poverty and socio-economic disparities.

The implementation of the AEC began in 2015 and focuses on generally regulating several main subjects such as goods, services, investment, capital, and skilled labor. All of this is needed to ensure unhindered traffic between ASEAN member countries and to ensure unhindered traffic, several international agreements have been agreed upon which basically regulate (related) have been carried out. This is the most important transportation issue). Goods, services, investment, capital and skilled labor in the Southeast Asian region and beyond. (Documentation et al., 2014) Although there are several parties who are suspected of liberalizing through the MEA, but with the Pacta Sunt Servanda Principle. Indonesia must continue to comply with (bind and implement) the contents of international agreements made within the framework of the MEA. These international agreements include the ASEAN Trade in Goods Agreement, the ASEAN Framework Agreement on Services, and the ASEAN Comprehensive Agreement on Investment. Pacta Sunt Servanda generally requires countries that have ratified or acceded to multilateral international agreements or bilateral agreements based on International Law to implement the agreement (1969, *Vienna Convention on the Law of Treaties*) (P. G. S. Sari, 2022).

The ASEAN-China Free Trade Agreement (ACFTA) is a follow-up to the Agreement between ASEAN Member States and the People's Republic of China on the Framework Agreement for Comprehensive Economic Cooperation among the Association of Southeast Asian Nations 1DWLRQV DQG WKH 3HRSOH ·V 5HSXEOLc (Framework Agreement) China, signed on November 4, 2004 in Phnom Penh. (Kurniastuti, 2013) This law was also issued based on an executive order. International agreements ratified by Presidential Decree are agreements whose substantive content is not related to the sovereignty of the state of Indonesia, national defense and security, human rights, the environment, or the substance of foreign loans, as in Article 10 of Law Number 24 of 2000 concerning International Agreements. Furthermore, Law Number 12 of 2011 concerning the Formation of Legal Regulations states that international agreements that are the important contents of the

Presidential Decree do not have broad legal consequences and are the basis for the livelihood of the Community. normatively determined that the agreement will occur This becomes a burden on the people and is not directly related to the national financial burden and/or without requiring changes or stipulation of laws approved by the House of Representatives.

ACFTA adheres to the principle of free trade. Free trade is defined as the absence of trade barriers. The existence (and implementation) of the MEA and ACFTA also seems to have an impact on the applicable legal system, both at the domestic level (domestic relations) of each ASEAN member country, and at the level of relations between ASEAN Member States (external). Domestically, especially in the context of Indonesia, the implementation of the MEA and ACFTA has an impact on several areas (aspects) of life, including law. To accommodate the MEA and ACFTA, the Indonesian legal system has made several adjustments. In particular, Law Number 7 of 2014 concerning Trade and Coordination of Law Enforcement. This must increasingly support efforts to eradicate related crimes. Carrying out economic activities, including the eradication of criminal acts of corruption. Because, criminal activity can hinder the rate of economic activity in a country as stated in the Ministry of Trade of the Republic of Indonesia entitled Strategy for Facing the MEA in 2015 in Warta Ekspor pp. 9-10.

The points of explanation regarding the need for coordination in the Indonesian legal system are mostly in line with Kusumaatmadja's opinion stated in the background section of this study, the point emphasizes the need for modernization and harmonization of the Indonesian legal system. Related to the field of international relations, if Indonesia wants to participate in the fields of economics and trade, according to Kusumatmadja, it is necessary to harmonize the Indonesian legal system so that Indonesian society can continue to live in an orderly manner in accordance with international instruments as part of the international community. However, this arrangement can also be achieved through the restrictive attitude of the Indonesian nation towards the sovereignty of the Indonesian state.

Externally, the formation of the MEA and ACFTA seems to have given birth to several forms of sources of international law, in a formal sense, especially in the form of international agreements. In international law, international agreements have a strong position as a source of international law. Therefore, the party that created it must comply with it. Furthermore, international law is also a legal system in the coordination channel

between members of the international community. As members of the international community, ASEAN member countries have an obligation to comply with the legal system which is a set of principles and rules that are accepted and binding on international relations. If we review the processes carried out by the MEA and ACFTA, what actually happens is the liberalization of the economic sector (legal), namely by fulfilling the requirements of legislative power, by complying with the form and hierarchy of laws and regulations, and by complying with certain procedures by Hans Kelsen.

However, from a philosophical, ideological, and sociological perspective, this certainly deserves criticism. This is because each country has a different perspective on the need for legal design to build a legal system. For example, the development of the Indonesian legal system requires scientifically grounded research on the application of values in the formation of legal norms of a particular law. To provide peace of mind to sponsors in drafting legal regulations, it is important to be able to scientifically prove that the values contained in the legal norms do not conflict with other legal regulations. Legally binding or similar to the discussion in this research, the liberal values carried by the MEA and ACFTA must also be questioned, in line with other laws and regulations.[13]

Pancasila translates norms related to values into constituent and operational legal norms. Pancasila is considered a pioneer that emphasizes the value of mutual cooperation (unity) over liberalism (leading to individualism). Therefore, the existence of MEA and ACFTA today certainly deserves careful consideration and wisdom. Meksasai Indra explains well his understanding of legal ideals in his study of people's sovereignty in the legal ideals of Pancasila. This study explains that in the structure of A. Hamid S. Atamimi's thinking, it is a "legal ideal" which is a translation of "legal idea", and that ideals are an idea, a feeling, a creativity, a thought, this term is more appropriate considering that it is average. On the other hand, ideals are a desire. A hope that is always in your head or heart. Attamimi then quotes Radbruch to distinguish the meaning of legal ideals from the understanding or concept of law. The ideals of law are in the mind, but the understanding or concept of law is the reality of life in relation to the desired values, with the aim of serving (serving wetly) the values to be achieved.

[13] *Ibid*, p. 1.

Internally, the context refers to Pancasila which is referred to as the legal ideal. The legal ideals of Pancasila are contained in the Opening of the 1945 Constitution of the Republic of Indonesia, Article (2). An independent, sovereign, just and prosperous nation and advancing Indonesia's path to independence. Based on these legal ideals, it can be understood because the goal is to realize the sovereignty and welfare of the people. Therefore, in the process of enacting the law that currently regulates foreign values entering through the ASEAN door, at least the following things need to be considered: First, the process is the creation of national regulations. Alternatively, the law must continue to reflect the doctrine of Indonesian national sovereignty, which must be assessed based on the values of the Pancasila principles. Second, the method must prioritize deliberation and consensus based on the spirit of family and mutual cooperation. And third, it must be designed to direct the Indonesian state towards national sovereignty and prosperity.

Conflict resolution mechanisms where Indonesia has had a strategic role in the ASEAN community can be clearly perceived as:

a. ASEAN Way, Indonesia takes a consensus approach, namely every decision is taken through deliberation and consensus to reduce the potential for open conflict and promote informal dialogue, Indonesia's intensity has been active in facilitating informal dialogue between member countries to discuss sensitive issues before being raised to an official forum, including the ASEAN Extradition Treaty Negotiations (2007), ASEAN Intergovernmental on Human Rights (AICHR), Code of Conduct (COC) in the South China Sea, Crisis Management Initiative (CMI) Aceh Peace Process, although the main focus is conflict resolution in Indonesia's domestic territory, the experience of facilitating this informal dialogue at the ASEAN level is useful for the practice of conflict resolution and peace, informal discussions on the Non-Interference Principle, maritime security cooperation, all of these processes, although informal, make Indonesia's contribution to strengthening ASEAN cohesion and promoting peaceful resolution of various complex issues in Southeast Asia;
b. Treaty of Amity and Cooperation (TAC), Indonesia is one of the countries that promotes and signs the TAC which emphasizes the principle of non-intervention, peaceful settlement of disputes and closer cooperation among ASEAN countries;
c. ASEAN Regional Forum (ARF), Indonesia actively participates in the dialogue and consultation platform on political and security issues in the Asia-Pacific, the purpose of ARF is to build trust and prevent conflict through dialogue and cooperation;
d. ASEAN-China Code of Conduct (COC), Indonesia is involved in the COC negotiations between ASEAN and China regarding the South China Sea, the purpose of COC is to manage maritime disputes and avoid open conflict through mutually agreed rules;
e. ASEAN Institute for Peace and Reconciliation (AIPR), Indonesia plays a role in the establishment of AIPR focusing on research, training and dialogue to promote conflict resolution and reconciliation in the ASEAN Region;

f. Use of International Law, Indonesia supports the use of International Law, especially the UN Convention on the Law of the Sea 'UNCLOS' in resolving maritime disputes, Indonesia's role in encouraging ASEAN member countries to follow the norms of International Law in claims and dispute resolution.

Indonesia utilizes UNCLOS as the legal basis for establishing and managing its maritime boundaries, as well as ensuring its rights and obligations at sea. These contributions include the establishment of the Exclusive Economic Zone (EEZ) and continental shelf, which support legitimate maritime claims and sustainable management of marine resources. With the Global Maritime Fulcrum policy, Indonesia encourages regional cooperation in terms of navigation safety, marine environmental protection, and sustainable management of marine resources. These efforts aim to improve the welfare of ASEAN communities that depend on the maritime sector. Strengthening Maritime Security: Indonesia plays an active role in promoting maritime security in the ASEAN region through various initiatives and cooperation, such as joint maritime patrols, intelligence sharing, and joint exercises to combat piracy, smuggling, and other illegal activities at sea. These initiatives not only improve maritime security but also provide a sense of security to coastal communities and maritime industries in ASEAN, which has a direct impact on economic and social stability in the region. Empowering Communities through Maritime Resource Management: Indonesia promotes sustainable management of marine resources, including fisheries and marine biodiversity conservation, by utilizing the provisions of UNCLOS. These efforts support food security and livelihoods of coastal communities in ASEAN. These programs also involve empowering local communities through education and training, ensuring they have the skills and knowledge needed to effectively manage maritime resources.

Contributions to Socio-Cultural Issues are made by Indonesia by utilizing the international legal framework to promote maritime cultural exchange and education in ASEAN. This includes maritime training programs and scholarships offered to ASEAN member states. These initiatives help strengthen ASEAN's shared identity and promote sustainable maritime values among ASEAN communities. Cooperation on Maritime Environmental Issues is carried out by Indonesia, which leads in various regional initiatives to combat marine pollution and climate change affecting marine ecosystems, including cooperation in coral reef and mangrove rehabilitation projects involving local communities. Indonesia's significant role certainly promotes stability and security in the ASEAN Southeast Asia Region and is important to remember.

D. Conclusion

Indonesia plays a strategic role in the development of International Law in the ASEAN community through an inclusive and comprehensive approach, several indicators show Indonesia's success in articulating its role as a mediator and regional leader, Indonesia's ability to act as a leader of organizations in the Southeast Asian Region that are committed to promoting regional cooperation and stability amidst diversity and the many interacting actors, reconciliation efforts make Indonesia focus on several important aspects of developing and implementing various International Law instruments within the ASEAN framework such as the Treaty of Amity and Cooperation (TAC) and the ASEAN Charter, promoting regional security and stability, advocating for Human Rights, on the issue of climate change and natural resource management Indonesia supports regional agreements such as the ASEAN Agreement on Disaster Management and Emergency Response (AADMER) for a commitment to environmental sustainability, Indonesia actively promotes intra-ASEAN trade and investment and supports closer economic integration to improve the economic welfare of the ASEAN people, Indonesia's role in the Indo-Pacific is pursued through the World Maritime Axis policy and active involvement in Indo-Pacific discussions, Indonesia's initiative seeks to ensure that the Region remains a peaceful and stable space, facilitating free trade and rules of International Law that can exist and be more coherent in ASEAN. Indonesia's Contribution to Empowering ASEAN Communities Based on International Law related to the 1982 Law of the Sea Convention, the World Maritime Axis, Security Issues, and Socio-Cultural Issues, Indonesia has a central role in empowering ASEAN communities by utilizing the international legal framework, especially the 1982 Law of the Sea Convention (UNCLOS), to manage maritime, security, and socio-cultural issues.

E. Suggestion

1. Indonesia's idealism in diplomatic capacity and enforcement of International Law must continue to be improved, Indonesia's consistency in advocating for Human Rights is also very important to pay attention to because in several ASEAN countries the issue is still ongoing so it must be a concern in addition to Indonesia's ability to be more proactive in sustainable environmental policies. This is not easy, because in the territory of the Republic of Indonesia there is still a dilemma in handling the issue of environmental exploitation and exploration. Indonesia as a country does not have to

wait but must take the initiative to develop International Law that is in accordance with the culture of Southeast Asian society because there are fundamental differences formed from the polarization and comprehensiveness of ASEAN society.

2. Indonesia has an interest in optimizing maritime patrols in ASEAN waters for threats on trade routes, this requires the development of closer cooperation through military exercises, intelligence cooperation, and increased collective capabilities, to compile and implement a comprehensive maritime security protocol, agreements and responses to potential conflicts are needed.

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KEKEBALAN DIPLOMATIK: KENDARAAN DIPLOMATIK DALAM TUGAS PERWAKILAN DIPLOMATIK

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ABSTRACT:

Diplomatic law is an international custom that has been codified to facilitate the implementation of diplomatic duties. Diplomatic representatives in the receiving country are in a situation assigned by the sending country as an official task executor in the receiving country. conceptual thinking results in the section. Based on the provisions contained in the 1961 Vienna Convention, diplomatic representatives who carry out duties in the receiving country have the right to immunity and privileges. Diplomatic immunity is basically an international custom of not being able to be disturbed by someone who officially holds diplomatic office in carrying out duties as a representative of a foreign power. Protection of diplomatic representatives includes diplomatic support facilities such as diplomatic vehicles as a standard of diplomatic behavior between countries that have diplomatic relations, diplomatic facilities are used effectively for the interests of the sending country's duties in carrying out diplomatic functions. This is stated in the Functional Necessity theory. The approach method used is normative juridical, namely legal research carried out by examining library materials and statutory regulatory documents. The normative juridical approach method in this study focuses on determining diplomatic immunity, especially diplomatic vehicles in carrying out diplomatic immunity. Diplomatic immunity is the inviolability of a person officially holding diplomatic representation in carrying out the duties of a representative of power. The rules as a receiving country to strengthen and prevent the misuse of the Convention rules. Technical rules in continuing to implement the principle of reciprocity and mutual consent that have diplomatic relations.

***Keywords**: Diplomatic Law, Diplomatic Immunity, International Law.*

ABSTRAK:

Hukum diplomatik merupakan kebiasaan internasional telah dikodifikasi untuk memberikan kemudahan dalam pelaksanaan tugas diplomatik. Perwakilan diplomatik pada negara penerima berada dalam situasi ditugaskan oleh negara pengirim sebagai pelaksana tugas resmi di negara penerima. hasil pemikiran konseptual dalam bagian. Berdasarkan ketentuan yang ada dalam Konvensi Wina 1961, perwakilan diplomatik yang menjalankan tugas di negara penerima memiliki hak kekebalan dan keistimewaan. Kekebalan diplomatik pada dasarnya suatu kebiasaan internasional atas tidak dapat diganggu seorang secara resmi mengemban pejabat diplomatik dalam menjelankan tugas sebagai perwakilan kekuasaan asing (foreign power). Perlindungan terhadap perwakilan diplomatik termasuk fasilitas pendukung diplomatik seperti kendaraan diplomatik sebagai standar prilaku diplomatik antara negara yang memiliki relasi diplomatik, fasilitas diplomatik digunakan secara efektif untuk kepentingan tugas negara pengirim dalam menjalan fungsi diplomasi. Hal ini yang tertuang dalam teori Functional Necessity. Metode pendekatan yang digunakan yuridis normatif yaitu penelitian hukum yang dilakukan dengan cara meneliti bahan pustaka dan dokumen peraturan perundang-undangan. Metode pendekatan yuridis normatif pada peneliian ini memiliki fokus untuk mengetahui kekebalan diplomatik khususnya mobil diplomatik dalam menjalankan kekebalan diplomatic. Kekebalan diplomatic merupakan tidak dapat diganggu seorang secara resmi mengemban perwakilan diplomatik dalam menjalankan

tugas perwakilan kekuasaan. Aturan sebagai negara penerima untuk memperkuat dan pencegahan atas salah penggunaan aturan Konvensi. Aturan teknis dalam tetap melaksanakan dengan asas resiprositas dan mutual consent yang memiliki relasi diplomasi.

***Kata Kunci**; Hukum Diplomatik, Kekebalan Diplomatik, Hukum Internasional.*

A. Pendahuluan

Intensitas relasi antar negara dalam hukum diplomatik semakin meningkat dan memiliki urgensi dalam menjaga kepentingan setiap negara. Urgensi relasi antar negara untuk membantu tanggungjawab negara dalam memastikan warga negaranya di negara asing terlindungi. Hukum diplomatik menjadi *guidelines* negara membuat aturan jelas dan saling tidak merugikan negara satu sama lain. Negara mengirimkan perwakilan tetap pada negara penerima tidak hanya untuk tanggungjawab menjaga relasi negara tetapi juga relasi kepentingan ekonomi bahkan melindungi dan membantu warga negaranya di negara penerima. Perwakilan diplomatik dianggap sebagai wakil dari negara yang diwakilinya dan kedudukannya dipersamakan dengan kedudukan seorang kepala Negara pengirim di Negara penerima.[1] Hukum internasional telah memberikan suatu pedoman Dengan beberapa kewajiban yang dibebankan negara pengirim kepada perwakilan tetap dan perwakilan diplomatik resmi lain, negara penerima memberikan keistimewaan dan kekebalan diplomati sebagai bentuk penghormatan dan etikad baik dalam relasi kedua negara.

Relasi pergaulan internasional sangatlah penting bagi suatu negara dalam era globalisasi yang sangat kompleks. Hal ini dikarenaka tidak ada suatu negara yang dapat memenuhi kepentingan negara sendiri. Dengan relasi internasional pencapaian tujuan negara dimungkinkan kemudahan dilakukan dan menjaga perdamaian dunia akan mudah diciptakan. Realitas menunjukkan bahwa setiap negara memiliki kebutuhan mempertahankan kepentingan negara dan tidak selalu dapat dipenuhi oleh potensi internal setiap bangsa. Keadaan yang demikian mendorong untuk saling mengadakan relasi antar negara. Relasi negara dalam hukum diplomatik dimulai dari praktek kebiasan bangsa, semakin berkembang kemudian dirasa perlu untuk dikodifikasi dalam konvensi yang disusun dalam *Convention on Diplomatic Relation 1961* kemudian dalam tulisan ini disebut Konvensi Wina 1961. Konvensi Wina 1961 menyusun prinsip kebiasaan diplomatik salah satunya kekebalan dan keistimewaan diplomatik.

[1] Putut Gunawarman, Tinjauan Hukum Internasional Atas Insiden Penundaan Upacara Credential Duta Besar Republik Indonesia Di Brasil, Jurnal IUS Vol.02 No.01, Maret 2015, hlm. 27.

Tindakan negara dalam pengakuan perwakilan negara pengirim pada hakikatnya mewakili negara dan pemerintahnya, sehingga negara penerima tidak mencampuri tindakan tugas perwakilan negara. Praktik ini telah diterima oleh banyak negara dalam relasi internasional dalam hukum diplomatik. Semakin banyaknya pihak yang menerima praktek ini relasi diplomatik dan konsuler dalam aturan yang mengatur melembaga menjadi kebiasaan internasional. Hukum kebiasaan internasional di bidang hubungan diplomatik dan konsuler menjadi panduan negara-negara dalam melaksanakan hubungannya dengan bangsa lain.

Definisi diplomasi dalam relasi antar negara di definisikan .... *Diplomacy comprises any means by which states establish or maintain mutual relations, communicate with eachother, or carry out political or legal transactions. In each case through their authorize agents.*[2] Pentingnya relasi internasional dikarenakan setiap negara memiliki sumber kekuatan berbeda. Salah satu negara kuat akan sumber daya alam dan memiliki kepadatan penduduk tinggi, sementara negara lain potensi terkait kualitas ilmiah tinggi hingga jumlah ilmuwan, tetapi kekurangan yang ada dapat diatasi dengan saling membangun relasi antar negara dengan yang lain. Tantangan inilah yang memicu relasi internasional antar negara.

Hubungan antara bangsa untuk merintis kerjasama dan persahabatan, hubungan tersebut dilakukan melalui pertukaran misi diplomatik termasuk para pejabatnya. Dengan demikian, hukum diplomatik pada hakikatnya merupakan ketentuan atau prinsip hukum internasional yang mengatur hubungan diplomatik antar negara yang dilakukan atas dasar kesepakatan bersama dan ketentuan atau prinsip tersebut dinormakan pada instrumen hukum sebagai hasil dari kodifikasi hukum kebiasaan internasional. Relasi diplomatik dan keterwakilan negara dalam melaksanakan tanggungjawab memiliki implikasi hukum. Para perwakilan atau diplomat perlu diberikan kekebalan dan keistimewaan diplomatik dalam kerangka hukum internasional dibidang diplomatik. Fungsi perwakilan diplomatik yang tetap yakni negosiasi, observasi dan proteksi. Disamping fungsi-fungsi tersebut, perwakilan diplomatik dapat ditugaskan yang lainnya dan bermacam-macam fungsi lainnya.[3]

Perwakilan diplomatik pada negara penerima berada dalam situasi ditugaskan oleh negara pengirim sebagai pelaksana tugas resmi di negara penerima. Keadaan khusus ini

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2 Syahmin Ak, Hukum Internasional Publik, Binacipta, Bandung, 1992, hlm 228.

3 L. Oppenheim, International Law A Treaties, Vol 1 8th.ed, London, Longmans Green & Company, 1960, hlm 769.

dalam kebiasaan diplomati diberikannya kepada perwakilan tersebut jaminan. Jaminan ini menjadikan perwakilan tersebut dapat membantu dan mempermudah dalam melaksanakan tugas dari negara pengirim. Diplomat memiliki hak kekebalan (*immunities*), keistimewaan (*privileges*), dan kemudahan (*facilities*) yang dapat membamtu menjalankan tugas diplomasi sebagai perwakilan negara pengirim di negara penerima.

Relasi antar negara dalam perkembangan terjadi dapat memberikan peluang dan tantangan di tingkat internal negara penerima karena dinamika relasi di luar hukum yang lebih besar. Pentingnya kekebalan dan keistimewaan para diplomat ini diatur dalam konvensi Wina 1961 tentang kompentensi pemberiannya. Ketentuan kekebalan dan hak istimewa dalam menghormati yurisdiksi wilayah negara penerima telah diakui dalam hukum kebiasaan.[4]

Seiring dengan perkembangannya di dalam dinamika hubungan diplomatik kejadian yang tidak dapat dihindari yaitu pelanggaran-pelanggaran terhadap ketentuan-ketentuan hukum internasional, terutama yang berkaitan dengan perlindungan pejabat diplomatik.[5] Adanya relasi diplomatik dengan kekebalan dan keistimewaan tersebut dapat mengambil peran yang berarti dalam peningkatan tujuan dari kepentingan membagun relasi diplomatik. Tujuan tersebut dalam dimaknai;

> *Dalam meningkatkan relasi diplomatik dengan negara lain termasuk tidak bisa dikenakannya yuridiksi negara penerima baik kekebalan terhadap diplomat asing yang bertugas baik yuridiksi hukum perdata, hukum administrasi negara, maupun hukum pidana itulah makna dari kekebalan bagi seorang diplomat. Sedangkan keistimewaan adalah berbagai hak istimewa yang melekat pada perwakilan diplomatik asing (sebagai individu) di negera penerima. Contoh keistimewaan diplomatik adalah pembebasan dari pajak, bea cukai, pemberian jaminan sosial, wajib militer di negara penerima.*[6]

Pemberian hak kekebalan dan keistimewaan pada pejabat diplomatik di negara lain seringkali menjadi alasan oleh pejabat diplomatik agar terbebas dari tuntutan hukum atas tindakan yang dilakukannya. Pada prinsipnya pemberian kekebalan dan keistimewaan perwakilan negara sebagai diplomat Perwakilan diplomat juga tidak seharusnya berlindung kepada hak para diplomat. Hak kekebalan tersebut juga berlaku untuk keluarga yang tinggal

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4 Ade Maman Suherman, Organisasi Internasional dan Integrasi Ekonomi Regional Dalam Perspektif Hukum & Globalisasi, Jakarta, PT Ghalia Indonesia, 2003, hlm. 89.

5 Anggraeni, Shelvie Christine. (2020), Pelanggaran Hak Kekebalan Pejabat Diplomatik Ditinjau Dari Hukum internasional: Studi Kasus Pencegahan Duta Besar Italia oleh India. Journal education and development Vol.8 No.1 edisi Februari 2020.

6 Widodo, *Hukum Diplomatik Era Globalisasi,* CV Aswaja Pressindo, Yogyakarta, 2012, hlm 115.

bersama, harta milik, gedung dan komunikasi serta dokumentasi. Yang mana hal ini melindungi mereka dari segala macam gangguan dan tentu saja dari atau penahanan oleh penguasa setempat.[7] Hak yang dinikmati tersebut dapat juga memiliki tantangan dengan penyalahgunaan bukan tugas diplomatik tetapi kepentingan pribadi diluar tanggungjawab diplomatik. Kekebalan dan keistimewaan yang tetap menghormati ketentuan negara penerima memiliki aturan dan prosedur berlainan pada tiap negara secara teknis. Upaya menunjang tugas dan fungsi diplomatik perwakilan negara pengirim berdasarkan asas timbal balik. Perlakuan yang sama akan diberikan hak istimewa dan kekebalan terhadap perwakilan dari negara penerima.

Permasalahan terkait penyalahgunaan kewenangan terhadap hak kekebalan dan keistimewaan oleh pejabat diplomatik diantaranya kasus seorang diplomat Republik Georgia di Amerika yang menabrak sebuah mobil dan menewaskan seorang anak kecil, kemudian pejabat diplomatik tersebut mengajukan kekebalan diplomatik sebagai alasan untuk menghindari tuntutan atas tindakan yang dilakukannya tersebut. Berdasarkan ketentuan yang diatur dalam Konvensi Wina 1961 negara pengirim sudah seharusnya turut bertanggung jawab atas tindakan pejabat diplomat yang melakukan tindak pidana di negara penerima.[8] Salah satu menjadi isu terkait kendaraan yang digunakan oleh perwakilan diplomatik. Aturan teknis kendaraan diplomatik adanya kode kendaraan tertentu dalam plat kendaraan. Khususnya kekebalan diplomatik melekat pada pemakaian kode kendaraan diplomatik atau tugas dan fungsi diplomat secara universal. Keakuratan pemahaman kekebalan atas kendaraan diplomatik perlu dikaji secara ilmiah dalam kerangka hukum diplomatik. Penulis akan mengkaji terkait aturan teknis terhadap kendaraan yang digunakan oleh perwakilan diplomatik khususnya terkait kekebalan yang dimiliki oleh perwakilan diplomatik apakah melekat pada kendaraan diplomatik atau tugas dan fungsi diplomat secara umum.

B. Metode Penelitian

Penulisan artikel ini dilakukan sebagai hasil pemikiran konseptual dalam bagian bab awal sebagai pendahuluan. Metode penelitian dilakukan dengan jenis deskriptif analitis. Paradigma hukum mendapat gambaran secara utuh secara teori positivisme hukum dan teori

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7 Lasut, Windy. (2016), Penanggalan kekebalan diplomatik di negara penerima menurut konvensi wina 1961, lex crimen, vol.V/NO.4/Apr-jun/2016, hlm. 263.

8 Ali Sentosa, Tinjauan Hukum Internasional Terhadap Diplomat yang Melakukan Tindakan Melawan Hukum dihubungkan dengan kekebalan diplomatik, Jurnal Hukum Universitas Sumatera Utara, Medan, hlm. 2.

realisme hukum tidak mampu menjawab tentang kebutuhan hukum. Metode penelitian yang digunakan penulis dalam penelitian ini adalah penelitian yuridis normatif. Soerjono Soekanto mendefinisikan penelitian hukum normatif merupakan penelitian hukum yang dilakukan dengan cara meneliti bahan pustaka dan dokumen peraturan perundang-undangan. Metode pendekatan yang digunakan yuridis normatif dalam penelitian ini terfokus untuk mengetahui kekebalan diplomatik khususnya mobil diplomatik dalam menjalankan kekebalan diplomatik. Sumber hukum terdiri dari *Convention on Diplomatic Relation 1961* sebagai sumber hukum primer dan sumber hukum tersier dari artikel jurnal dan buku hukum relevan.

C. Pembahasan

1. Pengaturan Kekebalan Perwakilan Diplomatik Dalam Hukum Diplomatik

Hukum diplomatik, secara kebiasaan internasional digunakan untuk merujuk norma yang berlaku dalam Hukum Intemasional. Hukum tersebut mengatur tentang kedudukan fungsi perwakilan diplomatik negara pengirim untuk membina relasi diplomatik. Para perwakilan pejabat diplomatik dalam hukum diplomatik menikmati kekebalan hukum negara penerima. Pemberian kekebalan dikarenakan oleh negara yang mempunyai relasi diplomatik dikarenakan (1) Para diplomat adalah wakil negara; (2) Para diplomat tidak dapat menjalankan jika tidak diberikan hak kekebalan; (3) Jika ada gangguan komunikasi mereka tugas diplomat tidak akan berhasil. Hak kekebalan diatur dalam Konvesi Wina 1961 secara terkelompok sebagaimana diatur Pasal 29, Pasal 30, Pasal 41 juga Pasal 31 kekebalan perwakilan diplomatik atas yuridiksi administrasi negara penerima. Terkait kekebalan kediaman perwakilan diplomatik; properti lainnya di atasnya dan sarana transportasi dalam Pasal 22 Konvensi Wina 1961 menikmati hak kekebalan. Hukum diplomatik, secara kebiasaan internasional digunakan untuk merujuk norma yang berlaku dalam Hukum Intemasional. Hukum tersebut mengatur tentang kedudukan fungsi perwakilan diplomatik negara pengirim untuk membina relasi diplomatik. Para perwakilan pejabat diplomatik dalam hukum diplomatik menikmati kekebalan hukum negara penerima. Pemberian kekebalan dikarenakan oleh negara yang mempunyai relasi diplomatik dikarenakan (1) Para diplomat adalah wakil negara; (2) Para diplomat tidak dapat menjalankan jika tidak diberikan hak kekebalan; (3) Jika ada gangguan komunikasi mereka tugas diplomat tidak

akan berhasil[9]. Hak kekebalan diatur dalam Konvesi Wina 1961 secara terkelompok sebagaimana diatur Pasal 29, Pasal 30, Pasal 41 juga Pasal 31 kekebalan perwakilan diplomatik atas yuridiksi administrasi negara penerima. Terkait kekebalan kediaman perwakilan diplomatik; properti lainnya di atasnya dan sarana transportasi dalam Pasal 22 menikmati hak kekebalan.

Kekebalan diplomatik pada dasarnya suatu kebiasaan internasional atas tidak dapat diganggu seorang secara resmi mengemban pejabat diplomatik dalam menjelankan tugas sebagai perwakilan kekuasaan asing (*foreign power).* Pejabat tersebut harus diberikan jaminan keamanan dan kesejahteraan ketika aktif menjalankan tugas kediplomasian secara asas resiprositas. Pembukaan relasi diplomatik dalam Pasal 2 Konvensi Wina 1961 harus memenuhi persayaratan adanya kesepakatan dari negara penerima dan negara pengirim *(Mutual Consent).* Prinsip resiprositas dan kesepakatan bersama tersebut menjadi aspek utama terlaksana juga penegakan hukum diplomasi. Prinsip tersebut dilaksanakan berlaku secara universal.[10]

> Pemberian hak-hak tersebut didasarkan prinsip resiprositas antar negara dan prinsip ini mutlak diperlukan dalam rangka Mengembangkan hubungan persahabatan antar negara, tanpa mempertibangkan sistem ketatanegaran dan sistem sosial mereka yang berbeda. Bukan untuk kepentingan perseorangan tetapi untuk menjamin terlaksananya tugas para pejabat diplomatik secara efisien terutama dalam tugas dari negera yang diwakilkannya.[11]

Perlindungan terhadap perwakilan diplomatik termasuk fasilitas pendukung diplomatik seperti kendaraan diplomatik sebagai standar prilaku diplomatik antara negara yang memiliki relasi diplomatik, fasilitas diplomatik digunakan secara efektif untuk kepentingan tugas negara pengirim dalam menjalan fungsi diplomasi. Hal ini yang tertuang dalam teori *Functional Necessity*.[12] Pemikiran mendasar atas pejabat perwakilan diplomatik agar perlu diberikan ruang kesempatan sebesar mungkin untuk melakukan tugas mewakili kekuasaang asing di negara penerima dengan kinerja terbaik.

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9 G. Sri Nurhartanto, "Kekebalan Yuridiksi Hukum Pidana, Hukum Perdata, dan Hukum Acara Para Diplomat di Peradilan Negara Penerima", Jurnal Hukum Pro Justicia, Volume 27, Nomor 1, April, 2009, hlm. 85.

10 Dewa Gede Sudika Mangku, "Pelanggaran terhadap Hak Kekebalan Diplomatik (Studi Kasus Penyadapan Kedutaan Besar Republik Indonesia (KBRI) di Yangon Myanmar berdasarkan Konvensi Wina 1961, Perspektif, Volume 25, Nomor 3, Juli 2010, hlm. 227.

11 Suryokusuma Sumaryo, *Hukum Diplomatik dan Konsuler Jilid I*, Tatanusa, Jakarta, 2013, hlm. 132.

12 Edy Suryono, Hukum Diplomatik (Kekebalan dan Keistimewaan), Penerbit Angkasa, Bandung, hlm. 36.

Keberlakuan kekebalan diplomatik bagi pejabat perwakilan diplomatik masih ada beberapa caara memahami. Pemahaman kekebalan diplomatik mulai dapat dinikmati oleh perwakilan diplomatik semenjak menyetujui *agreement* dari negara penerima. Adapula pemahaman lain menegaskan kekebalan diplomatik bila telah terlaksana penerimaan formal perwakilan diplomatik terakreditasi. Kecenderung ketiga memahami kekebalan diplomatik dimulai pejabat diplomati yang ditugaskan negara pengirim masuk ke wilayah negara penerima. Dalam Konvensi Wina 1961 pada pokoknya mengatur perwakilan diplomatik akan dinikmati semenjak memasuki wilayah perbatasan negara penerima juga untuk perjalanan penerima. Pejabat perwakilan diplomatik akan dinikmati sejak pemberitahuan kepada pihak terkait baik Kementerian Luar Negeri bahkan Presiden sebagai kepala negara.[13]

Pejabat perwakilan diplomatik untuk menciptakan itikad baik kedua negara. Kegiatan diplomatik dalam memimpin para diplomat lainnya dengan terbatas dan kritis. Pengalaman diplomatik dan pemahaman pngetahuan hukum diplomatik mendalam tentang kepribadian juga tantangan menggunakan alat diplomatik tersedia juga berusaha untuk meningkatkan kepercayan. Tindakan kerjasama diplomatik secara hukum internasional antara pemerintah dan warga kedua negara perlu dijaga. Tugas diplomatik sudah ditentukan oleh negara pengirim secara garis besar.[14]

Mengetahui hak-hak atau kekebalan diplomatik yang diperoleh oleh seorang agen diplomat, perlu juga diketahui terlebih dahulu mengenai pengertian dari kekebalan diplomatik itu sendiri, yang mana secara umum pengertian dari Kekebalan diplomatik adalah jenis kekebalan hukum yang memastikan bahwa diplomat dapat bertugas dengan aman dan tidak dapat dituntut atau ditangkap oleh aparat negara di tempat ia bertugas. Pejabat diplomat memiliki hak kekebalan dan keistimewaan tersebut Konvensi Wina 1961, pejabat diplomat wajib mematuhi hukum negara penerima dan tidak boleh mencampuri urusan negara penerima.[15] Diketahui bahwa pemberian kekebalan dan keistimewaan diplomatik tergantung pada kewajiban internasional yang pelaksanaannya dilakukan menurut hukum nasional masingmasing negara. Perlindungan terhadap diplomatik beserta fasilitas-fasilitasnya

13 Lihat Pasal 39 Konvensi Wina 1961.
14 Siahaan, S. M. 2000, Komunikasi, Pemahaman dan Penerapannya, BPK Gunung Mulia, Jakarta.
15 Lihat Pasal 41 Konvensi Wina 1961.

merupakan salah satu tatakrama antara dua negara, sehingga pelaksanaan fungsi diplomatik dapat berjalan secara efektif dan efisien.

Konvensi Wina 1961 tentang Hubungan Diplomatik hak kekebalan perwakilan diplomat tidak dapat diganggu gugat. Hak kekebalan diberikan dan didapatkan untuk menjamin terlaksananya tugas dan tanggung jawab pekerjaan diplomatik negara pengirim secara efisien.

Hak dan kekebalan tersebut juga berlaku untuk keluarga yang tinggal bersama, harta milik, gedung dan komunikasi serta dokumentasi. Kekebelan ini mengakibatkan terlindunginya perwakilan diplomatik dari gangguan juga pastinya proses penahanan oleh kekuasaan negara penerima. Tidak jarang hak diplomatik tersebut dapat menjadi ancaman bertolak belakang bagi perwakilan diplomat karena adanya perwakilan diplomatik menyalahgunakan hak kekebalan itu sendiri untuk kepentingan pribadi mereka sendiri.[16]

Pengetahuan mengenai dengan kekebalan diplomatik mencakup dua pengertian yaitu *iniviolabilitas* dan imunitas. *iniviolabilitas* sebagai kekebalan atas kekuasaan dari negara penerima dan gangguan yang merugikan tugas diplomatik para perwakilan negara pengirim. Dari argumentasi diatas merupakan defenisi kekebalan perwakilan diplomatik memiliki hak kekebalan untuk mendapat perlindungan dari negara penerima. Imunitas diartikan sebagai kekebalan terhadap yurisdiksi dari negara penerima, baik hukum pidana maupun hukum perdata. Pejabat perwakilan diplomatik mendapatkan kekebalan diartikan tidak dapat ditangkap dan ditahan oleh kekuasaan negara pengirim. Gangguan yang merugikan atas perwakilan diplomatik diartikan bila perwakilan diplomatik untuk mempunyai hak untuk mendapat perlindungan dari negara penerima, dengan adanya sikap pengambilan tahapan yang dianggap dibutuhkan negara penerima dalam tindakan mencegah serangan penghinaan kehormatan, kebebasan diri pribadi seorang pejabat diplomatik. Sehingga ia kebal terhadap gangguan yang merugikan pribadinya.

Konvensi Wina 1961 Pasal 32 tentang Hubungan Diplomatik terdapat ketentuan penanggalan kekebalan dari kekuasaan hukum negara pengirim. Ketentuan tersebut menegaskan kekebalan diberikan oleh negara pengirim kepada perwakilan diplomatik dan seluruh staff pendukung diplomatik bisa dilaksanakan tetapi bisa ditanggalkan oleh negara

[16] Lasut, Windy, 2016, Penanggalan Kekebalan Diplomatik Di Negara Penerima Menurut Konvensi Wina 1961, lex crimen, vol.V, No.4, hlm. 27.

pengirim. Dijelaskan juga bahwa proses penanggalan kekebalan diplomatik tersebut harus dinyatakan negara pengirim dengan tegas dan jelas.

Kekebalan diplomatik bersumber pada hukum internasional, dalam menjalankan hukum internasional yang memiliki hak tersebut merupakan subjek hukum internasional. Pelaksanaan saat ini perwakilan diplomatik secara ilmu hukum bukan subjek Hukum Internasional, mereka hanya alat perlengkapan negara. Negara berperan penting sebagai subjek hukum internasional sendiri. Negara pengirim sebagai pihak juga subjek hukum internasional dapat dan atau berwenang untuk melepaskan dan atau menanggalkan kekebalan diplomatik tersebut. Akibat hukum setelah kekebalan perwakilan diplomatik negara pengirim tersebut ditanggalkan oleh negara pengirim, seharusnya pula maka pejabat diplomatik negara pengirim tidak bebas dari kekuasaan pengadilan negara penerima tentu dengan syarat adanya keterangan jelas dari negara pengirim yang memperbolehkan hal tersebut.[17]

Kekebalan dinikmati para diplomat dapat diawali sejak negara penerima memberikan kekebalan dan keistimewaan kepada perwakilan dan staff pendukung yang berhak memperolehnya pada waktu kedatangan mereka di wilayah negara pengirim atau setelah pemberitahuan mengenai pengangkatan perwakilan diplomatik. Kekebalan tersebut itu akan tetap dinikmati hingga waktu layak setelah berakhirnya tugas diplomatik para perwakilan negaara pengirim tersebut. Kekebalan diplomatik akan tetap berlangsung sampai diplomat beserta keluarganya mempunyai waktu sepantasnya menjelang keberangkatan setelah menyelesaikan tugas di negara penerima.

Pelaksanaan imunitas perwakilan diplomat akan berlaku dalam tindakan kegiatan diplomasi apabila perwakilan diplomatik tersebut bisa menunjukan tanda sebagai staf diploamtik dikeluarkan oleh Kementerian Luar Negeri bidang Direktorat Fasilitas Diplomatik kepada aparat hukum di negara penerima. Perwakilan diplomatik mendapatkan kekebalan bagi para perwakilan diplomatik pada hakikatnya merupakan kebiasaan diplomasi para negara yang sudah lama sekali, dimana kekebalan semacam itu meupakan kebiasaan hukum internasional. Perwakilan diplomatik diberikan kekebalan sebagai dasar hukum bagi kegiatan diplomatik pada keputusan permasalahan tersebut di komisi hukum internasional

[17] Nurhartanto, Sri, 2009, "Kekebalan Yuridiksi Hukum Pidana, Hukum Perdata, Dan Hukum Acara Para Diplomat Di Peradilan Negara Penerima", Jurnal Hukum Pro Justitia,Vol. 27 No.1, hlm. 264.

tahun 1957 telah diperdebatkan mengenai tiga teori., yaitu; Teori eksterritorialitas, Yurisdiksi eksteritorial ini diartikan sebagai kepanjangan secara semu (*Quasi Extentio*) dari yurisdiksi suatu negara di wilayah yurisdiksi negara lain.[18] Demikian menunjukan yuridiksi negara bisa melewati diluar teritorialnya kemudian hingga dan batas negara. Hal ini juga membahas teori memberikan teritorial kepada perwakilan diplomatik dianggap berada diwilayah teritorial dan tidak meninggalkan negaranya, perwakilan diplomatik realitas berada di luar batas negara penerima. Kegiatan perwakilan diplomatik diluar negara pengirim untuk sedang melaksanakan tugas negara yag mengirim dan perwakilan ditempatkan. Sehingga, ketentuan hukum dan peraturan perundang-undangan suatu negara tidak berlaku terhadap warga negara asing yang tingal di negaranya masing-masing. Teori ini mendapat kritikan dari banyak pihak karena dianggap tidak realistis.

Teori representatif, Teori ini berpendapat bahwa pejabat diplomatik maupun perwakilan diplomatik, mewakili negara pengirim.[19] Dalam kapasitas perwakilan diplomatik negara pengirim dapat menikmati kekebalan diartikan bahwa negara penerima menghormati dan melaksanakan kekebalan negara pengirim, dan melaksanakan kedaulatan. Namun, masih memiliki kritikan pemberian kekebalan diplomatik karena batas hukum belum jelas hingga menimbulkan kebingungan hukum.

Teori kebutuhan fungsional, Teori ini mengatur bahwa kekebalan diplomatik dan misi diplomatik didasarkan pada kebutuhan fungsional agar para pejabat diplomatik tersebut dapat melaksanakan kewajiban tugas diplomatik. Teori ini menganggap kekebalan diplomatik perlu diberikan kepada perwakilan diplomatik agar perwakilan diplomasi melaksanakan fungsinya secara maksimal. Dengan kepentingan fungsi secara terbuka kerja diplomatik bagi pembatasan kekebalan diciptakan keseimbangan antara kebutuhan negara pengirim dan hak-hak negara penerima. fungsional. Perwakilan pejabat diplomatik menikmati kekebalan diplomatik adalah demi untuk kelancaran yang efisien dari tugas-tugas perwakilan diplomatik yang mewakili negara pengirim.[20]

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18 Sumaryo Suryokusumo, Yurisdiksi Negara vs. Yurisdiksi Ekstrateritorial", Jurnal Hukum Internasional, Lembaga Pengkajian Hukum Internasional Fakultas Hukum Universitas Indonesia, Vol.2, No. 4 Juli 2005, hlm. 685.

19 Lihat Pasal 3 Konvensi Wina 1961.

20 Sentosa, Ali, et al. "Tinjauan Hukum Internasional terhadap Diplomat yang Melakukan Tindakan Melawan Hukum Dihubungkan Kekebalan Diplomatik." Sumatra Journal of International Law, vol. 1, no. 1, 2013, hlm. 25.

2. Status Hukum Kendaraan Diplomatik Atas Kekebalan Dalam Menjalankan Tugas Diplomatik

Landasan teoritik pemberian fasilitas tugas diplomasi atas kemudahan kekebalan yang diberikan hukum diplomasi kepada perwakilan diplomatik negara penerima hal ini memperlancar untuk memudahkan pelaksanaan kegiatan negara pengirim para pejabat diplomatik. Pemberian fasilitas kendaraan dimulai perizinan pengadaan kendaraan bagi kegiatan diplomatik bertugas. Pemberian ini juga dalam rangka kemudahan kerja dan kinerja perwakilan diplomat dalam bertugas hukum diplomatik pada negara penerima. Indonesia salah satu negara dalam proses pengadaan kendaraan bagi pejabat perwakilan diplomatik masuk dalam *previlages*. Kegiatan perwakilan diplomat dibebaskan dari perpajakan seperti warga negara atau warga negara asing yang akan pengadaan kendaraan. Tentu dalam tindakan kendaraan diplomatik tersebut ada beberapa pilihan teknis negara penerima.

Teknis negara pengirim mendapatkan nomor plat kendaran *corp diplomatic* perwakilan diplomatik secara otomatis ada serangkaian hak dan kewajiban diplomatik yang melekat pada pengendara kendaraan diplomatik tersebut. Dalam *protocol guide* di Indonesia tidak dijelaskan dan diatur secara jelas mengenai hak dan kewajiban dari pengendara kendaraan diplomatik. Konvensi Wina 1961 mengatur hal tersebut dalam Gedung misi, perlengkapannya dan barang-barang lainnya serta alat-alat transport misi kebal terhadap penyelidikan, pengambilan, pengambilalihan, perlengkapan atau eksekusi.[21] Ketentuan tersebut dimana terkait mengenai kendaraan diplomatik perlindungan terhadap dalam hukum diplomatik, ketentuan tersebut hanya tersirat terkait kekebalan diplomatik. kekebalan kendaraan langsung melekat dengan bersama perlindungan gedung perwakilan diplomatik termasuk barang dan arsip diplomatik. Pemaknaan kewajiban atas kekebalan diplomatik atas kendaraan diplomatik diatur pada Pasal 22 ayat 3 atau penyelidikan dan eksekusi; bebas dari kewajiban membayar pajak pada Pasal 23 Konvensi Wina 1961. Dalam menggunakan jalan umum kekebalan diplomatik dari kendaraan yang digunakan dalam kegiatan diplomasi seharus dan selaknya atas kegiatan sesama pengguna jalan tetap harus menghormati hukum berlalu lintas negara penerima. Kewajiban bagi kendaraan diplomatik agar menghormati dan patuh atas aturan di negara penerima bukan berati mengurangi kekebalan diplomatik. Kewajiban negara penerima kondisi tertentu seperti konflik wajib berbeda dalam mengadakan sarana transportasi termasuk kendaraan diploamatik bagi perwakilan

[21] Lihat Pasal 22 ayat 3 Konvensi Wina 1961.

diplomatik beserta keluarga barang dan arsip berdasar hukum diplomatik atas tugas resmi diplomasi.[22]

Penting dan banyak tugas diplomasi dari perwakilan diplomatik atas kekebalan diplomasinya seperti yang bertugas di Indonesia dikeluarkan aturan sebagai negara penerima untuk memperkuat dan pencegahan atas salah penggunaan aturan Konvensi Wina 1961. Kementerian Luar Negeri sebagai pemandu hal terseubt mengeluarkan Surat Edaran No. 41/65/03 tertanggal 5 januari 1965. Surat Edaran ini untuk memperkuat kerjasama diplomasi dan negara penerima dapat menjalankan kekebelan perwakilan diplomasi negara pengirim dengan standar sesuai hukum internasional Kendaraan milik keduataan besar maupun pribadi yang digunakan perwakilan diplomatik yang memakai tanda CD pada plat kendaran. Kendaraan tersebut dalam keadaan apapun tidak diberikan hak untuk diijinkan dilakukan peminjaman kepada pihak yang tidak memiliki tugas diplomatik dan selain perwakilan diplomatik yang memiliki kekebalan diplomatik. Kendaraan lain yang bukan dimiliki pihak pribadi bukan perwakilan diplomatik memakai plat nomor polisi untuk keadaan tertentu dapat dipinjamkan kepada pihak yang berkerja pada perwakilan diplomatik asing bersangkutan. Tanda nomor perwakilan diplomatik hanya diizinkan dipakai oleh kendaraan diplomatik yang mendapat nomor polisi melalui Kementerian Luar Negeri sesuai dengan Perkapolri Nomor 7 Tahun 2021 Tentang Registrasi dan Identifikasi Kendaraan Bermotor. Dasarnya relasi diplomatik asas resiprositas secara formil aturan ditetapkan Konvensi Wina 1961, namun pelaksanaan relasi diplomasi negara pengirim dan negara penerima yang memiliki aturan teknis tidak melanggar norma Konvensi Wina 1961 secara aturan teknis. Aturan teknis tersebut wajib tidak mengurangi atau menghilang kekebalan diplomatik tetapi penghormatan dan teknis semata. Konvensi Wina 1961 pada dasarnya telah menjadi dan memberikan acuan, namun teknis tetap bisa dikembalikan kepada negara penerima dan pelaksaan asas resiprositas dan *mutual consent* relasi diplomasi para negara yang memiliki hubungan diplomatik itu sendiri.

D. Kesimpulan

Hukum diplomatik merupakan kebiasaan internasional yang digunakan dengan merujuk kodifikasi Konvensi Wina 1961. Hukum tersebut mengatur tentang kedudukan fungsi perwakilan diplomatik dari negara pengirim kepada negara penerima dalam relasi

[22] Lihat Pasal 44 dan Pasal 45 Konvensi Wina 1961.

diplomatik. Para perwakilan pejabat diplomatik tunduk pada hukum diplomatik menikmati kekebalan hukum negara penerima. Pemberian fasilitas kekebalan pada kendaraan diplomatik digunakan untuk tugas diplomasi atas kemudahan para perwakilan diplomatik. Kekebalan yang diberikan hukum diplomasi kepada perwakilan diplomatik oleh negara penerima hal ini memperlancar untuk memudahkan pelaksanaan kegiatan negara pengirim para pejabat diplomatik. Penggunaan kendaraan diplomatik pada wilayah jalan umum dilaksanakan pada kegiatan diplomasi seharusnya dan selaknya menghormati sesama pengguna jalan juga menghormati hukum berlalu lintas negara penerima. Kewajiban bagi kendaraan diplomatik agar menghormati dan patuh atas aturan di negara penerima bukan berati mengurangi kekebalan diplomatik. Kewajiban negara penerima kondisi tertentu seperti konflik wajib berbeda dalam mengadakan sarana transportasi termasuk kendaraan diploamatik. Kekebalan atas kenderaan diplomatik melekat pada tugas dan fungsi perwakilan diplomatik bukan pada nomor atau plat kendaraan. Ketentuan nomor dan plat kendaraan diplomatik untuk teknis dalam tetap pada koridor pelaksaan asas resiprositas dan *mutual consent* relasi diplomasi para negara yang memiliki hubungan diplomatik itu sendiri.

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MOTIVES OF EXTREMISM MOVEMENTS OF SUDAN RAPID SUPPORT FORCES IN THE SUDAN CONFLICT 2023

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ABSTRACT:

The conflict between the Sudanese Armed Forces (SAF) and the Sudanese Rapid Support Forces (RSF) is a purely internal conflict because both parties want to fight for civilian leadership. Since Leader General Abdel Fattah Al-Burhan together with the Sudanese Rapid Support Forces (RSF) took over the power of al-Bashir's government. The struggle for power continues, marked by extremist movements from the Rapid Support Forces and the Sudanese Armed Forces Coup Movement. Since al-Burhan demonstrated the 2019 Constitutional agreement regarding political transition, extremist movements have been carried out by the Rapid Support Forces and in 2023 in the capital Khartoum to seize power from Abdel Fattah al-Burhan. This article aims to analyze 1) The influence of the Sudanese Rapid Support Force movement; 2) RSF's reasons for fighting SAF; 3) Impact on Sudanese State Security; 4) International laws violated in the RSF-SAF conflict. The method used in this paper is explanatory historical by collecting data on past events and using appropriate theories to explain the RSF-SAF conflict. Sudan is a failed state category where previous governments were unable to maintain Sudan's security and prosperity. The impact of attacks by RSF troops have intensified in the capital Khartoum, causing forced evacuations, damage to infrastructure, various looting of business shops, and difficulty in accessing humanitarian aid. Behind all the RSF's aggressive actions, Hemedti and his troops intended to overthrow Al-Burhan because he had betrayed the 2019 Constitution. As a result of the war between the RSF and SAF, Sudan turned into a country that contributed to immigrants and triggered a humanitarian crisis.

***Keywords**; Rapid Support Force, Sudan Armed Force, Sudan*

A. Introduction

RSF (Rapid Support Force) is a Sudanese paramilitary group led by Mohamed Hamdan Dagalo usually called Hemedti. He currently serves as deputy head of the Sovereign Council of Sudan. The number of RSF troops is estimated at around 100,000 soldiers spread across the world. The Sudanese Rapid Support Forces are a paramilitary group used by the Sudanese government in 2003 in its battle in Darfur against the rebellion. RSF is recorded as having contributed to the country and has been recorded as having violated human rights. One of RSF's achievements is that RSF troops participated in the Yemen War in 2015 together with Saudi and UAE troops. Since then, the RSF's relations have been very close to

the Gulf countries. On the other hand, RSF troops have committed human rights violations such as coups in the democratic process and violence against several pro-democracy groups.[1]

As Sudan's economy worsens, Sudanese civilians demonstrate in mass protests. They demand economic reform and the removal of President al-Bashir. A military-civilian government was soon established, but that too was overthrown in 2021 when General Abdel Fattah al-Burhan took over. RSF is recorded as having participated in President al-Bashir's coup along with SAF, NISS (National Intelligence and Security Service), and several other police forces. The movement to equalize President al-Bashir itself is purely the desire of the Sudanese people to demand political reform, namely a transition from authoritarian power to power that is in the hands of the people. Initially, this movement was inspired by the worldwide phenomenon of the Arab Spring. The Arab Spring is a revolutionary movement to overthrow authoritarian rule if social and economic chaos occurs. In President al-Bashir's case, his policies are always contrary to the welfare of society. The Sudanese people's dislike of Bashir is due to his prioritization of the loyalty of the security forces over his party and society.[2]

Since then, the country has been controlled by a council of generals headed by two military figures at the center of the conflict, namely General Abdel Fattah al-Burhan who heads the Sudanese Armed Forces (SAF) and is the country's president. His deputy, General Mohamed Hamdan Dagalo, leads the Rapid Relief Forces (RSF), a paramilitary group. An agreement was signed by the military council to transition Sudan back to civilian rule in 2023, but debate between the two generals about the transition process led to increased tensions that erupted into conflict between their military groups on April 15.

According to the Washington Post, the Rapid Support Force was originally a paramilitary force formed and controlled by the Sudanese government. Originally named the Janjaweed, the RSF militia was deployed to the battlefield on behalf of the Sudanese government during the war in Darfur, western Sudan. They were used by the authoritarian leader at the time, Omar al-Bashir, to help the military put down a civil uprising. At that time, the Sudanese military only had a strong air force and heavy weapons but was less able

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1 Umaya. (2023). "Profile of the Rapid Support Forces, a Paramilitary Group that Clashes with the Sudanese Army - Part 2". inews.id. https://www.inews.id/news/internasional/profil-rapid-support-forces-kelompok-paramiliter-yang-bentrok-dengan-tentara-sudan/2.

2 Hassan, M & Kodouda, A. "Sudan's Uprising: The Fall of a Dictator", Journal of Democracy, Vol. 30 No. 4, 2019, p. 89-103. https://www.journalofdemocracy.org/articles/sudans-uprising-the-fall-of-a-dictator/.

to mobilize for war as effectively as the arid rural areas of Darfur.[3]

In the 2010s, the Janjaweed transformed into a more formal rapid reaction unit and was named the Rapid Support Force (RSF). Bashir even provided them with financial support, so that the RSF commanders became rich and powerful. RSF was also sent outside Darfur to deal with tribal conflicts on the Sudanese border. In 2019, civil demonstrations forced Bashir's dictatorship out of power in Sudan. Two years later, the Sudanese military and RSF collaborated to carry out a coup, but due to international pressure, they gave power to the civilian-led government, as reported by Reuters. However, the agreement has not ended well to date.[4]

Deputy Leader of Sudan's Sovereign Council, Mohamed Hamdan Dagalo, or Hemedti, leads the Rapid Support Forces. Hemedti has been recruiting rapidly over the past two years to improve the RSF's reputation, and analysts estimate the militia group already has around 100,000 members. RSF troops come mostly from western Sudan, near Darfur, and areas long ignored by the government, such as near the Red Sea and on the border with South Sudan.[5]

On April 15, 2023, military clashes occurred between the Sudanese Armed Forces (SAF) and the paramilitary Rapid Support Forces (RSF) in Sudan. Even after three months, the battle was not over. In contrast, the capital, Khartoum, has suffered extensive damage, and fighting has spread, displacing more than 3 million people across the country and abroad. This is the first time that large-scale fighting has occurred in the Sudanese capital, although there have been many armed clashes since its independence in 1956. Unless the current armed clashes are stopped as soon as possible, Sudan will suffer irreparable damage and the political situation in the surrounding region become unstable.[6]

The beginning of the conflict between the SAF and the RSF stems from fighting in the Sudanese capital, Khartoum, between the Sudanese Armed Forces (SAF) and the Rapid

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3 Ziff, D.R. (2023). "Who Are the Rapid Support Forces Fighting in Sudan? Who Is Hemedti?". The Washington Post. https://www.washingtonpost.com/world/2023/04/15/sudan-fighting-paramilitary-hemedti-khartoum/.

4 *Ibid.*

5 *Ibid.*

6 Sakane, K. (2023). "What Will the Military Clash in Sudan Bring about? – Intervention by the International Community Is Required". Sakaka Peace Foundation. https://www.spf.org/iina/en/articles/sakane_07.html.

Support Forces (RSF), quickly spreading throughout the country. SAF leader General Abdel Fattah al-Burhan and RSF leader General Mohamed Hamdan Dagalo, known as "Hemedti," jointly carried out a coup against the country's transitional government in October 2021. Both forces have a history of violating international humanitarian and human rights law, especially in Darfur and during the crackdown on protesters. In 2022, the trial of Ali Kosheib, the former leader of the Janjaweed militia, who was charged with 31 counts of war crimes and crimes against humanity, began at the International Criminal Court. An arrest warrant for former president Omar al-Bashir and two of his associates has still not been issued.[7]

After fighting in the capital Khartoum, the Sudanese army claimed the paramilitary group Rapid Support Forces (RFS) were rebels. The Sudanese army in a statement accused the RFS of attacking its troops in Khartoum and several other cities. The army said, "RSF rebels spread lies about our troops allegedly attacking them to cover up their defiant behavior." On Saturday morning local time, fighting broke out in Khartoum between the Sudanese army and RSF forces. According to the Anadolu report, gunshots and bomb explosions were heard near the army headquarters and the presidential palace. The RSAF said it had taken over Khartoum airport and the Merowe military base in northern Sudan. Since Thursday, the Sudanese army has stated that recent RSF movements were carried out illegally and without coordination, leading to conflict between the two sides. Amid proposals to establish a civilian government in Sudan, the dispute arose.[8]

In October 2021, the military overthrew the transitional government led by Prime Minister Abdalla Hamdok, resulting in a state of emergency in Sudan. To resolve the months-long crisis, an agreement was signed between political parties and the Sudanese military last December. Civil society opposed the deal for military rule, and PM Hamdok briefly served again but then resigned.[9]

The urgency of creating this journal is to identify the problems behind the conflict

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7 Human Rights Watch. (2023). "First ICC Trial on Darfur Crimes: Ali Mohammed Ali, Known as Ali Kosheib or Kushayb, Janjaweed Leader". https://www.hrw.org/news/2022/03/29/first-icc-trial-darfur-crimes-ali-mohammed-ali-known-ali-kosheib-or-kushayb.

8 Antara News. (2023). "Sudanese Army Declares RSF a Rebel Force". https://www.antaranews.com/berita/3490557/tentara-sudan-nyatakan-rsf-pasukan-pemberontak. Diakses Mei 2024.

9 *Ibid.*

between the SAF and RSF and the consequences for the security of the Sudanese state. The clash of interests between the SAF forces led by Al-Burhan and the RSF forces led by Hemedti has brought a humanitarian disaster to the Sudanese population. Human rights have been completely lost for the Sudanese population due to the civil war. Meanwhile, the international organization in this case, namely the International Court of Law (ICC) under the supervision of the United Nations (UN), has established the rules of war jurisdiction along with the treatment of civilians. This journal aims to determine the form of conflict between the SAF and RSF by analyzing the origins of the root causes of the conflict. Apart from discussing the origins of the Sudanese Civil War conflict, acts of war crimes involving both parties to the conflict will be analyzed using the law of war standards published by the ICC. Humanitarian violations committed by the RSF extremist movement will be fully discussed in this journal

B. Research Method

The research method that will be used in this paper is explanatory historical. Historical means research is carried out by collecting data from past events to be used as material for analysis. Meanwhile, the explanatory research method is a method for explaining the causal relationship of existing variables based on the use of appropriate theory. The findings in this paper will be based on qualitative analysis methods. The data that will be searched is descriptive or non-numerical from online journals, online books, and other articles that are easy and accessible. The results of this research will then be interpreted by researchers in this paper.

C. Discusssion

1. Effect of Rapid Support Force

Belligerent is a term that is frequently mentioned during a conflict event. This term usually refers to a rebel group or party in conflict to overthrow the government in power. Belligerent groups usually fight against a government they feel is carrying out acts of oppression against belligerent groups.[10] Belligerence groups have the right to determine their destiny and have the rights and obligations given by the state in a war situation. There are certain legal conditions in deciding whether a belief group is a subject of international law

[10] Azizah, N.R et.al, "Recognition of the Existence of Belligerents in International Law (OPM Case Study)", Jurnal Petitum, Vol. 9 No. 2, 2023, p. 151-160.

or not. The requirements include having an organized group, obeying the laws of war, having a controlled territory, having the ability to establish relations with other countries, determining one's destiny, choosing one's own economic, political, and social system, and having natural wealth in the area they occupied. [11]

In the case of the extremist Rapid Support Force (RSF) led by Mohammed Hamdan Dagalo or Hemedti, can be called a belief group that is fighting the Al-Burhan government. RSF troops have fulfilled several requirements, such as being an organized group because they have leaders and troops, have their territory, namely the Darfur region which the RSF once controlled in the 2003 rebellion, and have the right to determine their fate. Moreover, RSF received support from the United Arab Emirates, led by Mohammed bin Zayed. The purpose of the UAE supporting Hemedti is due to the influence of Saudi Arabia which supports Al-Burhan's government in Sudan.[12] Even though the RSF committed many violations such as attacking densely populated areas and carrying out acts of discrimination, the RSF is subject to the principle of State responsibility for Violations of International Law of 2001 in Article 4 of the Draft Article. [13] In the contents of the Draft Article, subjects of international law, including belligerent groups, are responsible for all violations of international law, including international humanitarian law. Belligerent groups such as the RSF are responsible both individually and as commands as stated in Article 5 Paragraph (1) of the Rome Statute. [14]

RSF deployments to Merowe appeared to be reduced when the SAF dispersed RSF convoys. However, three days later, on the morning of April 15, fighting suddenly erupted in Khartoum, with the RSF not only taking over Khartoum International Airport,[15] but also raided the private residence of SAF Supreme Commander Burhan.[16] This resulted in the

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11 *Ibid.*

12 Mohammad, Talal. (2023). "Sudan's Conflict Is Turning into a Saudi-UAE Proxy War for Gulf Hegemony". Foreign Policy. https://foreignpolicy.com/2023/07/12/sudan-conflict-saudi-arabia-uae-gulf-burhan-hemeti-rsf/. Diakses Juli 2024.

13 Novianty, R & Irawati. "Responsibilities of the Houthis Who Recruit Children as Soldiers in the Armed Conflict in Yemen Judging from International Law", Jurnal Prosiding Ilmu Hukum, Vol. 7 No. 2, 2021, pp. 623-627.

14 *Ibid.*

15 Abdelaziz, K & Eltahir, N. (2023). "Sudan's Army Says Paramilitary Mobilisation Risks Confrontation". Reuters. https://www.reuters.com/world/africa/sudans-army-warns-rsf-movements-khartoum-other-cities-2023-04-13/.

16 Abdelaziz, K. (2023). "How Sudan's Paramilitary Forces Took Parts of Khartoum, Stormed Army Chief's Quarters". Reuters. https://www.reuters.com/world/africa/how-sudans-paramilitary-forces-took-parts-khartoum-stormed-army-chiefs-quarters-2023-05-10/.

bombing of Khartoum International Airport by the air force's planes. Although fighting is concentrated in the country's capital, Khartoum, the conflict has impacted other regions of the country. In Darfur, mass killings and displacement have led to reports of ethnic cleansing. More than 14,000 people have been killed, and around 6.4 million people have been internally displaced, making it the world's largest internal displacement crisis. More than 8 million people have fled their homes, seeking refuge at home and abroad, with children representing about half of the displaced. Sudan is now the country with the largest number of refugees and the largest child displacement crisis in the world.[17]

The expansion of conflict within Sudan has displaced more than 500,000 people and exacerbated the country's food crisis. Meanwhile, looting businesses, markets, and humanitarian aid warehouses are adding to food shortages.[18] While the conflict in Sudan continues to expand, humanitarian access is increasingly limited. Intense violence and movement restrictions on humanitarian actors have hampered the delivery of aid, especially in southern Sudan where needs are highest. ACAPS has rated humanitarian access constraints in Sudan as extreme (5 out of 5). As the conflict continues despite failed diplomatic efforts, humanitarian needs will continue to increase – and the ability to meet them will decline.[19]

Damage was caused to the capital's functions, major facilities and infrastructure in the capital were destroyed by gunfire and airstrikes, and 2 million people were evacuated in Khartoum State alone. This is equivalent to 40% of Khartoum's population of around 5 million people. RSF soldiers who have been living in empty houses will not be easy to move, even if the armed clashes end. Khartoum is home to wealthy Sudanese people and intellectuals, but these groups who fled the country may not return to Sudan even after the ceasefire. Many of the RSF soldiers who started living in empty houses have been recruited from Darfur and neighboring countries, but if their stay is prolonged, they could become a major part of Khartoum's population in the future.[20]

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17 International Rescue Committee. (2023). "Crisis in Sudan: What Is Happening and How to Help". https://www.rescue.org/article/fighting-sudan-what-you-need-know-about-crisis.

18 *Ibid.*

19 *Ibid.*

20 Sakane, K. (2023). "What Will the Military Clash in Sudan Bring about? – Intervention by the International Community Is Required". Sasaka Peace Foundation. https://www.spf.org/iina/en/articles/sakane_07.html.

The impact of armed clashes that will occur in the surrounding area. 700,000 people have fled to neighboring countries; 250,000 to Egypt, 240,000 to Chad, and 170,000 to South Sudan. Egypt has long had a tolerant policy towards Sudan as its former colony but has tightened restrictions on the entry of Sudanese citizens into the country as the country's economy deteriorates. Chad is at risk of destabilization as a large influx of Sudanese citizens could lead to changes in its ethnic composition. In addition, Wagner, which already operates in Sudan as well as the Central African Republic, could take advantage of the unstable situation in Sudan to strengthen its influence in these regions. Eritrea has strengthened its ties with Russia, which has been a source of concern as the situation across the "Horn of Africa" becomes more fluid.[21]

2. Reason why The RSF is Fighthing Against The SAF

Since President al-Bashir's leadership fell in 2019, an agreement regarding the future of Sudan's leadership has begun to be discussed by the former militant groups that carried out the coup. The agreement was made in the FFC (Force Freedom of Coalition) forum, which is a coalition formed by Sudanese militants to overthrow al-Bashir's leadership. The agreement includes policies that conflict with President al-Bashir. The first point in the FFC agreement is to give full power to the people, with the understanding that the Sudanese people have the right to participate in the Sudanese political environment. The second point is to create a political-free atmosphere, meaning that no leadership prioritizes personal interests. The third point in the FCC agreement is the most important and final, namely providing the widest possible opportunity for political participation. The points of the FCC agreement are entirely the wishes of the Sudanese people when protesting against President al-Bashir.[22]

President Abdel Fattah al-Burhan himself once promised to safeguard the desires of the Sudanese people to become a more democratic country. This promise was stated in the agreement between the military leadership and civil society regarding the distribution of power in the political sector after the ouster of President al-Bashir. The agreement between the military and civilians includes a schedule for Sudan's national elections which are

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21 *Ibid*.

22 Abdelaziz, K and Eltahir, N. (2022). "Sudan Generals and Parties Sign Outline Deal, Protesters Cry Foul". Reuters. https://www.reuters.com/world/africa/sudanese-civilian-parties-sign-framework-deal-new-political-transition-2022-12-05/.

planned for 2022. This agreement is valid from 2019 to 2022 after the new president has been elected. In preparing for the political transition toward democratization, Sudan's political parties have elected eleven Council members to oversee and ensure the continuity of the political transition.

During the political transition process, the vacancy in the interim government was filled by President Abdalla Hamdok as a replacement for the interim president. All guarantees regarding the political transition are guaranteed in the 2019 Constitution between the TMC (Transnational Military Council) and the FCC. This guarantee did not last long when in 2021, Sudanese Military General al-Burhan fired Abdalla Hamdok from his seat of government and detained him. As a reason, al-Burhan said Hamdok's arrest was intended to prevent fraudulent election results and prevent civil war.[23] As a result of al-Burhan's betrayal of the 2019 Constitution, elections planned for 2022 were canceled.

During President Abdel Fattah al-Burhan's reign, the SAF military group committed many immoral acts against civilians who were supported by the RSF. President al-Burhan has strong ambitions to become President and in addition, the SAF military group under al-Burhan's leadership has control over several economic and social sectors that are the needs of the Sudanese people. With the coming to power of Abdel Fattah al-Bashir as the new oligarchic president, al-Bashir himself wants to erase some traces of his evil past. Al-Bashir's elimination of bad traces is intended so that the SAF and Bashir gain legitimacy and public trust in the Sudanese people.[24] The 2003 Darfur massacre was one of al-Bashir's accusations to RSF that these troops carried out acts of genocide. In response, RSF said that al-Bashir's statement was presented as distorted information.

In a statement from the chairman of the RSF, Mohamed Hamdan Dangalo, or Hemedti, said that the RSF was involved in the Sudanese civil war due to SAF and Bashir's betrayal of the 2019 Constitution which contained Sudan's peace and guaranteed the right to power the people in politics. RSF makes claims that the SAF is an extremist military group that is trying to destroy the security and stability of the Sudanese military unification process (Incorporation of the RSF into the Sudanese armed forces). RSF deeply regrets the policy

[23] Hasan, I & Hamdan, B. "OLIGARKY AND THE DELAY OF THE 2022 ELECTIONS IN SUDAN AFTER THE OMISSION OF PRESIDENT BASHIR", Jurnal Penelitian Politik, Vol. 19 No. 1. 2022, pp. 23-40.

[24] Hamza, A. (2023). "Sudan: Not Exactly a Fight between Good Guys and Bad Guys". Responsible Statecraft. https://responsiblestatecraft.org/sudan-conflict/.

taken by SAF by accusing RSF of being an extremist group and the actor behind attacks on SAF troops. However, RSF remains on its main path in upholding the 2019 Constitution which guarantees Sudan's democratization. Dagalo or Hemedti emphasized that the RSF is committed to achieving stability and security in Sudan and expressed its support for the Sudanese people.[25] Even though the RSF is fighting for the consistency of the 2019 Constitutional agreement, President al-Burhan still blames the RSF as a rebel group that has disrupted Sudan's democratic process. Burhan views the RSF as war criminals so the democratization process presented by Hemedti is very different from the reality on the ground. What was conveyed by Hemedti as the head of the RSF also did not match reality, where he emphasized that the RSF wanted the Sudanese people to return to their homes and that humanitarian assistance would be guaranteed. The RSF's hopes of becoming the legitimate leader of Sudan in public were destroyed by the arrogance of the RSF itself. RSF militants have always acted discriminatorily against local communities in Sudan. The non-Arab population of Masalit became one of the victims of the RSF genocide. RSF militants massacred the non-Arab Masalit group due to accusations from the RSF of their collaboration with the SAF.[26] What was conveyed by Hemedti as the head of the RSF also did not match reality, where he emphasized that the RSF wanted the Sudanese people to return to their homes and that humanitarian assistance would be guaranteed. The RSF's hopes of becoming the legitimate leader of Sudan in public were destroyed by the arrogance of the RSF itself. RSF militants have always acted discriminatorily against local communities in Sudan. The non-Arab population of Masalit became one of the victims of the RSF genocide. RSF militants massacred the non-Arab Masalit group due to accusations from the RSF of their collaboration with the SAF.[27]

Previously, the RSF and SAF had been trusted by Abdel Fattah al-Burhan as the composition of the Sudanese armed forces. The task of the two militants is to ensure the implementation of the 2019 Constitution. RSF was appointed as a security trust by al-Bashir as head of the Sovereign Council. Bashir's trust in the RSF could not be maintained when RSF troops began using Arab soldiers to massacre non-Arab groups. As a result of

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25 The Sudan Times. (2024). "RSF Leader Calls for Peace, Justice on Anniversary of Sudan Conflict.". https://thesudantimes.com/sudan/rsf-leader-calls-for-peace-justice-on-anniversary-of-sudan-conflict/

26 Africannews. (2023). "Sudan's Burhan Accuses Rival RSF of 'war Crimes'". Africannews. https://www.africanews.com/2023/08/14/sudans-burhan-accuses-rival-rsf-of-war-crimes//.

27 Gouja, A. (2023). "As Darfur Falls to the RSF, Where Is the Outrage at Their Atrocities?". The New Humanitarian. https://www.thenewhumanitarian.org/first-person/2023/12/11/sudan-war-darfur-rsf-atrocities.

aggression from the Arab army, many local non-Arab residents began to flee on a large scale to neighboring countries. Apart from that, the RSF often controls and destroys important sectors in Darfur such as agricultural land.[28]

The origins of the internal conflict between the RSF and SAF in Sudan were caused by the previous government's failure to maintain state security. The events in Sudan are related to the Failed State theory introduced by Robert. I. Rotberg in the book "When State Fails: Causes and Consequences". The basic argument of the theory is that a country can be said to have failed if the government in power fails to overcome rebel groups which usually consist of one or more groups with the status of opposition to the government. In a failed state, the government is considered to have failed to control public satisfaction, giving rise to differences of opinion with the government. There are several main indicators of why a country can be said to have failed. First, violence is the main key to defining the condition of a failed state. This form of violence is often directed at the government or regime in power. Worse yet, rebel groups often brand their violent actions against the government as justified and reasonable. Second, attitudes of disharmony in the context of religion, ethnicity, language, and certain groups (SARA). Robert said that civil war occurs because there is an imbalance between one group and another, which can trigger conflict between groups which leads to regime resistance. Third, failed countries are considered unable to properly guard their borders with other countries. Robert believes that the less the geographic area of a country is controlled by the government, the more unsafe the country is because the potential for rebellion from other countries increases. Apart from that, Robert categorized the increase in crime, corruption, and decline in GDP as other indicators of a failed state.[29]

3. Impact on Sudan's Security

The power struggle between the Sudanese Armed Forces (SAF) and Rapid Support Forces (RFS) erupted into a large-scale conflict in April 2023 and has since impacted humanitarian needs in the country. Even after 3 months, the fighting still has not stopped, resulting in the capital, Khartoum, suffering serious damage and the fighting becoming more widespread. After the conflict first occurred, approximately 14,700 people were killed and almost 30,000 were injured. Sudan was already experiencing a severe humanitarian crisis before the conflict between the Sudanese Armed Forces and the Rapid Support Forces led

[28] Reeves, E. (2023). "What Will Be Remembered? History and the Darfur Genocide.". Sudan Research, Analysis, and Advocacy. https://sudanreeves.org/2023/07/22/9441/.

[29] Rotbert, R. "State Failure and State Weakness in a Time of Terror". Brooking Institution Press, 2006.

to long-term political instability and economic pressure, causing 15.8 million people to need humanitarian assistance. Sudan has become the country with the world's biggest displacement crisis since more than 8 million people were forced to flee their homes last April. Amid mass displacement and reports of mass killings, humanitarian access is severely restricted, making aid very difficult to reach for the Sudanese people.[30]

Various more severe impacts were caused by armed clashes that previously occurred in Sudan. Sudan experienced damage to the function of its capital, especially since the main facilities in the capital were destroyed due to gunfire and air attacks.[31] Around 40% of the population in Khartoum, amounting to around 5 thousand people, has been evacuated. This was exploited by the RSF to stay in empty houses and would not be easily displaced, even after the armed clashes ended. Khartoum is home to Sudan's rich people and intellectuals, but the groups of people who fled Sudan are unlikely to return even after the ceasefire is over. RSF soldiers living in empty houses are recruited from Darfur and neighboring countries, but if their stay is extended, they could become a major part of Khartoum's population in the future. This means that if an election is held, they constitute a certain number of voters. The RFS was renamed after an armed group called the Janjaweed, which carried out massacres and burned villages in Darfur, to displace residents and settlers in their territory. The same approach is now being taken in the capital, Khartoum.[32]

Then, the consequences of the RSF attack in Sudan had an impact on the surrounding area, as up to 700,000 Sudanese citizens fled to other countries. There are 250,000 people in Egypt, 240,000 people in Chad, and 170,000 in South Sudan. For quite a long time, Egypt maintained a policy of tolerance towards Sudan, a former colonial country, but as the country's economy declined, Sudan's entry boundaries into Egypt were tightened. Destabilization is a worry for Chad because significant influxes from Sudan could change the country's ethnic makeup. Wagner, who has experience operating in Sudan and the Central African Republic, may also be able to increase his influence in the area by taking advantage of Sudan's unstable position. With the situation in the "Horn of Africa" increasingly unstable,

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30 International Rescue Committee. (2023). "Crisis in Sudan: What Is Happening and How to Help.", https://www.rescue.org/article/fighting-sudan-what-you-need-know-about-crisis

31 Malik, N. (2023). "All That We Had Is Gone': My Lament for War-Torn Khartoum". The Guardian. https://www.theguardian.com/world/2023/jul/18/all-that-we-had-is-gone-my-lament-for-war-torn-khartoum.

32 International Organization for Migration, 2023, "DTM Sudan - Situation Report (13)". IOM UN Migartion. https://dtm.iom.int/reports/dtm-sudan-situation-report-13.

Eritrea's closer ties with Russia are worth watching.[33]

Not only that, the armed clashes between RSF and SAF also had an impact on the decline of democratization and the development of government through violence in the Sudanese region. Sudan's democracy movement persists despite harsh crackdowns. However, the presence of pro-democracy groups has disappeared since the armed clashes that occurred on April 15 and global attention has focused on the ceasefire between the SAF AND RSF.[34] Most public opinion was more "in favor of democratic groups and disapproving of the military" before the military clashes in April. However, evidence circulating on social media and other platforms suggests that after April, public views appear to have shifted to "disapproving of the RSF and supporting the SAF". Even if the SAF wins the current armed conflict and the RSF emerges victorious, it remains unclear whether the long-term democratization process can continue. Islamists, who support Bashir's regime, are increasingly involved in the fighting. After the 2019 democratic revolution, Islamist groups were disbanded and prohibited from participating in politics; however, as a result of prolonged fighting between the SAF and RSF, Islamist groups have become more prevalent in the ongoing armed conflict and have gained significant influence throughout the conflict. One of the biggest challenges to advancing democratization is the emergence of Islamist organizations.[35] Not only in Sudan but also in neighboring countries and across the African continent, the spread of democracy is anticipated to be hampered by the decline of military and democratic rule. Noteworthy, several armed groups and security organizations in politically unstable African countries continue to monitor developments in Sudan, plotting coups and seeking opportunities to establish military control.

4. International Laws Violated in the RSF-SAF Conflict

The Civil War in Sudan is a violation of international humanitarian law or what is usually called the law of war. International humanitarian law was formed as a response to the uncertainty of when and what wars will be international or non-international. International humanitarian law not only regulates war to make it more humane but the rights

[33] Sakane, K. (2023). "What Will the Military Clash in Sudan Bring about? – Intervention by the International Community Is Required". Sasaka Peace Foundation. https://www.spf.org/iina/en/articles/sakane_07.html.

[34] Idrissa, R. (2023). "Sudan's Repressed Democracy". The New York Review. https://www.nybooks.com/online/2023/07/18/sudans-repressed-democracy/.

[35] Abdelaziz, K .(2023). "Exclusive: Islamists Wield Hidden Hand in Sudan Conflict, Military Sources Say.". Reuters. https://www.reuters.com/world/africa/islamists-wield-hidden-hand-sudan-conflict-military-sources-say-2023-06-28/

of civilians and property affected by war are protected in the law of war. Two main sources regulate international humanitarian law, namely Hague Law and Geneva Law. The Hague Law regulates more mechanisms in war so that the effects of war do not become barbaric. The rules in the Hague Law include the regulation of primary weapons permitted by combatants, the assessment of military activists, the targeting of military targets, and the treatment of prisoners of war. Meanwhile, the Geneva Law regulates more humanitarian principles in war. The rules in Geneva Law include the placement of incompetent combatants and non-combatants, continuity of humanitarian assistance, guarantees of protection, and others.[36]

Apart from the rules of international law which prioritize humanity in war, international institutions have the authority to intervene in civil wars. There are two ways to intervene in a civil war, namely by deploying special forces from the UN Security Council (United Nations) or unilateral intervention which usually involves other countries under the supervision of the UN Security Council. Intervention by the UN Security Council aims to create a peace agreement as stated in the UN Charter Article 7 Paragraph 39 which reads:

"*The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken following Articles 41 and 42, to maintain or restore international peace and security*."

In the quote from the UN article, all forms of conflict, whether in the form of international or non-international war, must be reconciled if the UN Security Council forces have permission to intervene.[37]

In the case of the RSF and SAF conflict in Sudan, the UN Human Commissioner for Human Rights has identified several violations of the laws of war. The first violation was that the SAF and RSF groups had committed violations in the form of brutal attacks on densely populated areas and attacks on residents who had no place to live as stated in the Rome ICC Statute Articles **8b (i)** and **8e (i)**. The second violation is that the RSF and SAF groups use deadly weapons because they contain large explosive power such as jet missiles, unmanned aerial vehicles, anti-air weapons, and artillery ammunition as stated in the ICC Rome Statute Article **8b (ii), (xx), (iv)**. As a result of the use of deadly weapons by the RSF

[36] Ardiata et.al. "INTERNATIONAL HUMANITARIAN LAW'S VIEW ON THE ISRAEL - PALESTINE ARMED CONFLICT.", Ganesha Law Review, Vol. 4 No. 2, 2022, pp. 24-32.

[37] Fox, G. H. "International Law and Civil Wars.", 1994, pp.633-645.

and SAF, several public service places such as markets were destroyed and caused the death of 70 civilians. The third violation, RSF has carried out acts of discrimination against non-Arab residents as stated in the Rome ICC Statute Article **8c (i)**. The location of the massacre occurred in the West Darfur region with 87 victims buried. The fourth violation, the civil war in Sudan has forced many Sudanese residents to forcibly flee to neighboring countries as stated in the Rome Statute ICC Article **8e (viii)**. The fifth violation, the SAF and RSF groups have recruited children and young people as militants who are ready to be sacrificed as stated in the Rome Statute ICC Articles **8b (xxvi)** and **8e (vii)**.[38]

Due to too many civilian casualties in the Sudanese civil war, the UN Security Council urged the conflict parties to cease fire and provide an opportunity for humanitarian aid to enter Sudan. In response to the conflict, the Security Council issued Resolution 2724 regarding Sudan requiring "all parties to ensure the removal of all obstacles to the delivery of aid and to enable full, rapid, safe and unimpeded humanitarian access, including cross-border and cross-border, and to comply with their obligations under international humanitarian law." The United Nations High Commissioner for Human Rights said that "the deliberate denial of safe and unimpeded access for humanitarian agencies in Sudan is itself a serious violation of international law and may constitute a serious violation of international war crimes law.".[39]

D. Conclusion

Sudan has recently experienced various coups involving extremist movements, especially RSF troops. RSF's aggression began with an attack on the capital city of Khartoum and began to cause a humanitarian crisis in the form of forced displacement, food crisis, etc. Trust between the SAF and RSF began to fade as a result of each military leader throwing bad narratives at each other regarding the betrayal of the 2019 Constitution which guaranteed the democratization process in Sudan. Both Al-Burhan and Hemedti have ambitions to control the seat of Sudan's government. Al-Burhan as president of Sudan suddenly failed to prevent and overcome the RSF movement. The fighting between SAF and RSF troops was a bad event for Sudan. Sudanese people mostly agree that the RSF's actions amount to

[38] Office of the UN High Commissioner for Human Rights. (2024). "Sudan: Horrific Violations and Abuses as Fighting Spreads." African Renewal. https://www.un.org/africarenewal/magazine/february-2024/sudan-horrific-violations-and-abuses-fighting-spreads-report.

[39] Human Rights Watch. (2024). "World Report 2024: Sudan.", https://www.hrw.org/world-report/2024/country-chapters/sudan.

military violence and ignore the democratic process. The war in Sudan brings with it several violations of international law. The RSF has committed so many violations of the Rome Statute regulations that the UN Security Council was forced to pass a resolution to enforce a ceasefire and expedite humanitarian assistance.

E. Suggestion

The conflict in Sudan is one of the conflicts that entered after 2020. Scientific data regarding the impetus that made the RSF carry out a rebellion against the SAF is still very rare. Most sources come from news reports and are not in journal form. The lack of sources for the results of scientific research in the form of journals, theses, and so on means that this conflict is classified as having very little interest in being discussed. Discussions regarding legal violations are also not yet widely discussed in scientific writing. For this reason, the researcher recommends that further research develop this topic.

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