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PROCEEDING

THE 3rd INTERNATIONAL CONFERENCE
ON LAW STUDIES

"LAW ENFORCEMENT IN PANDEMIC COVID-19 ERA: EXPERIENCE AND COMPARATION IN GLOBAL CONTEXT"

PROCEEDING BOOK OF

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(INCOLS)

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Jakarta, 23 April 2021

In collaboration with:

GREETINGS FROM DEAN

Ladies and Gentlemen,

It is a great honor that I welcome distinguished guest and participants to the **3rd International Conference on Law Studies.** Thank you for all your dedication and participation in making this conference happen amidst of Pandemic. As an academician we have a moral burden to actualize science and knowledge to be able to solve any challenges of the time. The theme for this ICOLS 2021 is "*Law enforcement in Pandemic Covid-19 Era: Experience and Comparation in Global Context".* It is aimed to dedicate our competence as a legal scholar to truly to contribute to the discourse on law by highlighting the current situation of health crisis.

Instead of continuously seeing pandemic as an obstacle, I urge you to also look for an opportunity that has been brought by this crisis. Pandemic has become the best time for us to reflect and take a step back to muse how long we have gone by? Particularly in law, it has been clearly showed us that the jargon of *het recht hinkt achter de feiten* – that the law was teetering along with the events is no longer relevant. The role of legal scholars is expected to be more active in anticipating any possibilities; to be more critical in observing a social phenomenon; and to be more vigilant with the progress of social science in general.

I also honored to welcome all of you, speakers and participants. Many of you have dedicated your time to participate in this Conference and share your valuable work with us. I hope that this Conference will serve as a platform for stimulation intellectual curiosity, triggering academic discussion and creating network among all of researcher, academics, professionals, across different background.

Dean,

Dr. Abdul Halim, M.Ag.

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ALTERNATIVE FOR FULFILLING THE RIGHTS OF THE VICTIMS OF PAST GROSS VIOLATION OF HUMAN RIGHTS IN INDONESIA

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Abstract

Fulfilling the rights of victims of human rights violations is the responsibility of the state. In practice, victims of human rights violations in Indonesia, especially gross human rights violations, cannot enjoy their rights. This research aims to provide an alternative fulfillment of the rights of victims of gross human rights violations and the obstacles faced in their implementation. This research uses empirical normative method. Based on the discussion, it is found that the rights of victims have been regulated in several laws, i.e., Law Number 26 of 2000 concerning Human Rights Courts, Law Number 13 of 2006 concerning Protection of Witnesses and Victims which has been amended by Law Number 31 of 2014 , Government Regulation Number 2 of 2002 concerning Procedures for Protection of Victims and Witnesses in Serious Human Rights Violations, and Government Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims as amended by Government Regulation Number 35 of 2020. The research concludes that the mechanism for restoring the rights of victims of past gross human rights violations can be carried out through judicial and non-judicial processes. The obstacles faced include juridical, sociological, political and philosophical constraints.
Keywords: *victims, gross human rights violations, compensation, restitution, rehabilitation*

INTRODUCTION

Background

Every human being has rights inherent in human beings, which are universal and enduring, so that they must be protected, respected, defended, and must not be ignored, diminished, and taken away by individuals.[1] These rights are protected by law so that government power does not occur by the state, especially by the government. Peter Malanczuk uses the word "individual" not "citizen" to ensure that human rights (HAM) are obtained because a person is a human being, not because he is a citizen.[2]

[1] *Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia*, n.d.
[2] Peter Malanczuk, *Akehurst´s Modern Introduction to International Law*, *Verfassung in Recht Und Übersee*, Vol. 31, 1998, 209.

One of the obligations of the state is to fulfill the rights of victims of human rights violations, especially gross human rights violations. State responsibility arises when there is a violation which is an international obligation to do or not to do something, whether this obligation is based on international treaties or international customs.[3] The state is obliged to provide protection, promotion and respect for human rights. This is a concern throughout the world today, a modern concept after World War II.[4] State responsibility is a fundamental principle in international law which originates from the doctrine of sovereignty and equal rights.

Even though there have been many instruments regulating human rights on a universal, regional, and national scale, human rights violations, especially gross human rights violations, still occur. Judging from the legal subject, human rights violations can be committed by individuals, groups of individuals, and/or the state.

In the context of law in Indonesia, the basis for protecting human rights is contained in the Preamble of the 1945 Constitution, first and fourth, in Article 27, Article 28, Article 28A to Article 28J of the 1945 Constitution and Article 31 paragraph (1) of Law No. 39 of 1999 concerning Human Rights, and Law Number 26 of 2000 concerning Human Rights Courts.

Several cases of gross human rights violations in the past have often left many problems, especially for the victims. This is because the position and the stance of the victims are so weak against the state or larger powers that have great power such as corporations.

Human rights violations committed by the state constitute a violation of the state's obligations arising from human rights instruments. These violations can be committed by active (commission) or due to passive state negligence (omission). Regardless of whether human rights violations committed by the state are either omissions or commissions, the state has the obligation to protect, promote and enforce human rights.

In the context of human rights protection, one of the obligations of the state is to fulfill the rights of victims of human rights violations. The state is obliged to provide protection, promotion and respect for human rights. This is the responsibility of the state which is a fundamental principle in international law.

Article 43 paragraph (1) of Law Number 26 Year 2000 concerning Human Rights Courts (hereinafter referred to as Law 26/2000) states "Gross human rights violations that occurred prior to the promulgation of this law were examined and decided by a human rights court. hoc". Meanwhile, human rights violations committed after the enactment of the law are carried out by a human rights court. What is meant

[3] Huala Adolp, *Aspek-Aspek Negara Dalam Hukum Internasional* (Jakarta: PT Raja Grafindo Persada, 2002), 255.
[4] Saafroedin Bahar, *Konteks Kenegaraan Hak Asasi Manusia* (Pustaka Sinar Harapan, 2002), 357.

by past gross human rights violations are gross human rights violations that occurred before the enactment of Law 26/2000 on Human Rights Courts. Article 47 paragraph (1) of Law 26/2000 affirms that "Gross human rights violations that occurred before the enactment of this law did not preclude the possibility of settlement being carried out by the Truth and Reconciliation Commission".

Viewed from the perspective of international human rights law, the term 'gross violation(s) of human rights, grave violation(s) of human rights, gross denial(s) of human rights) is not a juridical term and and there is no single international human rights law instrument that defines the term. The term 'gross human rights violations' is a general term used to refer to a number of criminal acts that are considered to be gross human rights violations, such as: torture, cruel, inhuman or degrading treatment or punishment, execution of the death penalty and arbitrarily, racial discrimination and apartheid, occupation by other countries, religious intolerance, terrorism, discrimination against women and others.

The commitment to protect, fulfill, and enforce human rights in Indonesia cannot be separated from past experiences that were full of gross human rights violations during the New Order era. At least, since the National Commission on Human Rights (Komnas HAM) was founded[5] until recently, it has registered fourteen investigations. The implementation of "investigations" referred to here is a series of Komnas HAM actions within the scope of *pro justitia*.[6]

From some of the Komnas HAM investigation files, up to now only three Komnas HAM investigations have entered the trial and inkracht (with permanent legal force): two in the ad hoc court, i.e. the East Timor and Tanjung Priok Incidents and and one human rights court, the Abepura Incident. Meanwhile, eleven other Komnas HAM investigation files are still back and forth between the Attorney General and Komnas HAM. This shows that the government's willingness to resolve gross human rights violations is still halfhearted.

The many of gross human rights violations that occurred in the period before the enactment of Law 26/2000 must be traced back to reveal the truth and uphold justice. The state also needs to cultivate a culture of respecting human rights. For gross human rights violations, it can be done through reconciliation solutions for national unity.

In the Truth and Reconciliation Commission Law which has been revoked by the Constitutional Court, truth disclosure is also in the interests of victims and/or victims' families who are their heirs to obtain compensation, restitution and/or

[5] *Keputusan Presiden Republik Indonesia Nomor 50 Tahun 1993 Tentang Komisi Nasional Hak Asasi Manusia*, n.d.
[6] *Undang-Undang Republik Indonesia Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia*, n.d., https://www.komnasham.go.id/files/1565071405uu-no-26-tahun-2000-$WBLQ.pdf.

rehabilitation.[7] The state must provide alternatives in fulfilling the rights of victims of gross human rights violations (non-judicial efforts) apart from judicial mechanisms (judicial efforts according to Law 26/2000). This alternative measure could be in the form of national reconciliation after the truth-telling was carried out by a commission appointed by the state. This effort is a breakthrough for resolving past gross human rights violations through non-judicial legal processes.

On August 11, 2006, the government together with the DPR RI passed Law Number 13 of 2006 concerning Protection of Witnesses and Victims (hereinafter written Law 13/2006). With the presence of this law, the government established the Witness and Victim Protection Agency (LPSK) which is assigned the task and authority to provide protection and rights to witnesses and / or victims.

In its journey and practice in the field, Law 13/2006 has not fulfilled the protection needs needed by victims. There are still many forms of protection that are needed by witnesses and / or victims but have not been regulated in this law so that the protection has not been maximally implemented, for example those related to the right to assistance for witnesses and victims, there is no specific mention of the difference in reporting requirements. with witnesses, and there was no mention of the legal protection provided by the LPSK to the reporter. In addition, the criteria for protection are very strict. Strengthening the regulation of the right to compensation for victims of gross human rights violations and the right to restitution for crime victims and institutional strengthening of the LPSK needs to be done. For this reason, LPSK together with the Ministry of Law and Human Rights proposes amendments to the law to the DPR. The proposed amendments emerged from the DPR and the government.[8] On October 17, 2014 President Susilo Bambang Yudhoyono passed the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

The reason for the need for protection and fulfillment of the rights of victims of human rights violations, among others, is that the victims and / or past human rights violations have suffered for decades. The victim is not clear when his case will be heard and an ad hoc court will be established by the government and when he will receive justice and get his rights, including the right to get restoration, compensation, compensation, restitution and rehabilitation. This is inconsistent with UN General Assembly Resolution 60/147 which affirms remedies for gross violations of international human rights law and serious violations of international humanitarian law including the rights of victims as regulated under international law: (a) Fair and effective access to justice; (b) Adequate, effective and prompt reparation for losses

[7] *Undang-Undang Nomor 27 Tahun 2004 tentang Komisi Kebenaran Dan Rekonsiliasi*, n.d., pt. Penjelasan Umum.

[8] "UU Perlindungan Saksi Dinilai Banyak Kelemahan," n.d., https://www.beritasatu.com/nasional/8171-uu-perlindungan-saksi-dinilai-banyak-kelemahan.html.

suffered; and (c) Access to relevant information regarding violations and reparation mechanisms.

Compensation for losses is a victim recovery mechanism that must be carried out by the state. Compensation can be in the form of material or non-material such as compensation or an official apology. In Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, the state mandates LPSK to exercise the right to compensation for victims. But in its journey LPSK often encountered obstacles in facilitating the provision of restitution and compensation or compensation and assistance to crime victims. For that, it is necessary to take tactical steps, such as intensive coordination with victims, victim organizations, medical personnel, psychologists, and law enforcement officers throughout Indonesia. Fulfilling the rights of victims in cases of gross human rights violations, LPSK has provided services to victims by referring to Komnas HAM's recommendation letter. The letter states that the person mentioned in the recommendation letter is the victim and / or family of victims of gross human rights violations. Victim recommendation letter issued by Komnas HAM is based on the investigation report (BAP) prepared by the Ad Hoc Team when conducting the investigation.[9]

Based on this description, this study aims to describe "**alternatives for fulfilling the rights of victims of past gross human rights violations."** In this case the author will explain two alternatives that can be provided by the state, namely: judicial and non-judicial as an effort to fulfill the rights of victims of past gross human rights violations.

Formulation of the problem

From this background, the problems of the research are formulated as follows, first, how is the mechanism for restoring the rights of victims of past gross human rights violations based on positive law? And second, what obstacles are faced by the institution mandated to provide restoration of the rights of victims of past gross human rights violations?

Research methods

Based on the research formulation and objectives, the method used in this study is empirical normative research. Normative-empirical legal research examines the implementation or implementation of positive legal provisions (legislation) in fact at any particular legal event that occurs in society in order to achieve predetermined

[9] Wawancara dengan Anggota Komnas HAM, M. Choirul Anam.

goals.[10] While the approaches used include: a statutory approach, a case approach, and a historical approach.

Data analysis technique

In accordance with the research methods used by the author, namely normative and empirical, the analysis techniques are: First, normative analysis, the main thing that is done is dissecting each related legal instrument and interpreting the material being studied.

The interpretation of the law is always related to its content. In this case language becomes important, the accuracy of understanding and the accuracy of translation are very relevant for law.[11]

The interpretation made refers to Law 39/1999 on Human Rights, Law 26/2000 on Human Rights Courts and Law No. 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

In assessing positive law, normative law science is not value-free but full of values, directly related to *rechtsidee* which is the goal of law. Dogmatic jurisprudence seeks to realize that goal in every judgment or opinion. Legal annotations are always loaded with *rechtsidee*.[12] A normative juridical analysis essentially emphasizes the deductive method as the main guideline, and the inductive method as a supporting work procedure. Normative analysis mainly uses library materials as a source of research data. The stages of a normative juridical analysis are:

a. Formulation of legal principles, both from written social data and positive legal data;
b. Formulation of legal definitions;
c. Establishment of legal standards; and
d. Formulation of pandect[13]

The series of activities above must be carried out in analyzing the data and legal materials that are collected. With these activities, it is known the background and purpose of a legal instrument which is the basis of law relating to the protection of victims of past human rights violations.

Second, empirical aspects that are more closely related to things that is sociological. The author looks at the extent of the practice and problems that occur in the field. To analyze data, it depends on the nature of the data obtained by the researcher (data collection stage). If the nature of the data collected is only a few,

[10] Abdulkadir Muhammad, *Hukum dan Penelitian Hukum* (Bandung: PT. Citra Aditya Bakti, 2004), 54.
[11] Ibid., 163–164.
[12] Ibid., 166.
[13] Ibid., 174–175.

monographical or tangible cases so that it cannot be arranged into an analysis classification structure, then qualitative is used.[14]

To obtain the intended qualitative data, the author conducted interviews with parties who were relevant to the problem that occurred. From the results of the interview, it will be re-analyzed with related legal norms. Then the author knows the synchronization of legal principles related to field implementation. In addition, the author also examines what are the shortcomings of the rule of law that regulates practice that occurs in the field, so that it can produce output in the form of evaluation and input on applicable legal principles.

DISCUSSION

Transitional Justice

Resolving gross human rights violations can not only be done through judicial mechanisms, both human rights courts and ad hoc courts. In Law 26/2000, there are provisions for resolving gross human rights violations through non-judicial mechanisms, namely through the Truth and Reconciliation Commission (KKR). Settlement of cases of violations through TRC is usually carried out in conditions of transitional government. A government transition from an authoritarian or repressive system to a state system that develops democratic principles. Demands for justice for victims of past human rights violations that are wanted to be achieved in a transfer of government like this are commonly termed transitional justice.

Currently, the Constitutional Court (MK) has declared Law 27/2004 on KKR invalid. The Constitutional Court's decision was based on the filing of a judicial review conducted by the Truth and Justice Advocacy Team against several articles in the KKR Law (Article 1 number 9, Article 27, and Article 44) which were deemed contrary to the 1945 Constitution. However, the Constitutional Court in its decision even considered that the material of the KKR Law is contradictory. There is no legal certainty in the norms of the KKR Law so it is impossible to reveal the truth and carry out reconciliation. Therefore, the Constitutional Court considered that the KKR Law as a whole contradicts the 1945 Constitution, so it must be declared that it has no longer binding power.[15]

The Constitutional Court is pushing for 'reconciliation' through a new legal policy (making new laws) to replace Law 27/2004 which has been declared to have no binding legal force. The Constitutional Court encourages the State / government to take political policy steps in providing rehabilitation and amnesty in general.

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[14] Ibid., 175.
[15] Fadli Andi Natsif, "Perspektif Keadilan Transisional Penyelesaian Pelanggaran Hak Asasi Manusia Berat," *Jurisprudentie Fakultas Syariah dan Hukum UIN Alauddin* 3, no. 2 (2016): 89.

From the recommendations of the Constitutional Court it can be interpreted that there are several alternatives that can be taken by the government and the DPR in providing protection and alternatives to fulfill the rights of victims of gross past human rights violations as follows:

1) The government and/or the DPR form a new law to replace Law 27/2004. This is in accordance with the mandate given by Law 26/2000;
2) Improve legal policies by revising Law No. 26/2000 on Human Rights Courts which are also aimed at resolving cases of gross human rights violations in order to better meet international human rights law standards and be more effective in law enforcement processes that can fulfill the accountability of the actors most responsible for the process. -the process from investigations to ad hoc human rights courts;
3) Renew laws that are considered to be detrimental to victims and / or the families of victims of gross human rights violations by revoking, changing, or forming new regulations that are more protective and fulfill the rights of victims and / or their families.

This might be done, for example: starting with an acknowledgment from the state (government) that there have been gross human rights violations in the past, such as the demands of victims of gross human rights violations, which are then followed by a statement of apology by the state, then issuing a policy to make room and opportunities for victims and / or their families to complain about past human rights violations, and then encourage reconciliation that can be seen as a manifestation of justice in a broad sense.

The perspective used by the Constitutional Court is more centered on the state-based perspective, not from the victim-based perspective. The impact is regarding the legal mechanisms available to resolve gross human rights violations.

Political policies in the context of rehabilitation and amnesty in general have very fatal implications for upholding justice for past human rights violations. Through the Constitutional Court's recommendation, it is important to uncover the truth as demanded by the victim, which is eliminated as the main idea in establishing a truth commission. On the other hand, this idea reinforces the meaning of the reconciliation idea promoted by the government and political elites in the past. In addition, the call for general amnesty has opened a wide way for blanket amnesty, which many fear will emerge in the idea of national reconciliation.[16]

From the victim's perspective, advice through the ad hoc human rights court mechanism will have obstacles in resolving cases of past gross human rights violations

[16] Indriaswaty D Samptaningrum et. Al., *Ketika Prinsip Kepastian Hukum Menghakimi Konstitusionalitas Penyelesaian Pelanggaran HAM Masa Lalu: Pandangan Kritis Atas Putusan MK dan Implikasinya Bagi Penyelesaian Pelanggaran HAM Di Masa Lalu* (ELSAM, 2006).

in ad hoc human rights courts. Victims feel that the ad hoc human rights court is unfair to them. In addition, victims also felt that the ad hoc human rights court process was fraught with intimidation. Another reason, namely related to the establishment of an ad hoc human rights court. The mechanism that must be followed, namely by asking for recommendations from the DPR, is felt to be difficult for victims to seek justice. According to IKOHI, the DPR is very political in looking at past human rights violations. And this of course actually complicates the process of establishing an ad hoc human rights court. In addition, the experience of the Tanjung Priok case which was resolved through the ad hoc human rights court, IKOHI said that the settlement of this case was felt to be unfair to the victim. The ad hoc human rights court verdict has convicted one of the perpetrators with a 10-year prison sentence; however the decision at the appellate level acquitted all the perpetrators.

Therefore, Diane F. Orentlicher stated that the failure of the state to further disclose actors of gross human rights violations, especially in the use of ad hoc human rights court mechanisms, must be responded to with a preference for recognition of legal instruments and / or by using international legal standards, as a form of the obligation of the state to protect its citizens and to awaken a civilized international social order.[17]

Restorative Justice

According to restorative justice theory, the purpose of punishment is not to satisfy the absolute demands of justice. A retaliation is carried out as a means of protecting the interests of the community. According to J. Andeneses, this theory is called the theory of social defense.[18]

Restorative Justice is a judiciary that is oriented towards efforts to make improvements or restore the effects of damage or loss caused by criminal acts. Thus, the construction of the thought of restorative justice is oriented towards protecting the rights and interests of victims of crime, not only in the form of treatment that respects the human rights of victims of crime in the criminal justice system mechanism, but also includes a systematic effort to repair and restore the impact of damage. or losses incurred by the perpetrator of the crime, both material and emotional.

The purpose of the crime is more focused on the perpetrator of the crime and does not provide justice to the victim. Likewise, the KUHAP (Law No. 8 of 1981) regulates the rights of suspects and defendants more than victims / witnesses. For the rights of victims (victim), the regulation is not explicit and not as much as the rights

[17] Joan Fitzpatrict & Frank Newman David weissbrodt, ed., *International Human Rights: Law, Policy, and Process*, 3rd ed. (Ohio: Anderson Publishing, 2001), 373.
[18] Muladi dan Barda Nawawi Arief, *Pidana dan Pemidanaan*, 14.

of suspects and defendants.[19] Victim neglect occurs starting from the stage of investigation, prosecution, examination in court, and subsequent processes.[20] In other words, the rights of the victim and / or the victim's family have not been given too much attention when compared with the rights of suspects and defendants in statutory regulations in Indonesia.

Definition of Victim

According to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[21] a victim is a person, either individually or in groups who has suffered harm, including physical or mental injury, emotional suffering, economic loss or actual deprivation of their basic rights, for acts or omissions that constitute a serious violation of international human rights law, or serious violations of humanitarian law. international. The term victim also includes, as far as it is appropriate, the immediate family or persons directly under the care of the victims and persons who have experienced suffering in assisting afflicted victims or in preventing persons from becoming victims.

Meanwhile, the definition of victims is based on the Basic Principles and Guidelines on the Right to A Remedy and Reparation for Victims of Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,[22] Victims are people who individually or collectively suffer harm, including physical or mental injury, emotional suffering, economic loss or substantial damage to their fundamental rights, through acts or negligence that constitute a gross violation of international human rights, or a serious violation. against international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependents of the immediate victim and persons who have suffered harm in interventions to assist victims in distress or to prevent victimization. A person must be considered a victim regardless of whether the perpetrator of the offense is identified, arrested, prosecuted, or punished and regardless of the family relationship between the perpetrator and the victim.

This is different from the definition of victim according to national legislation. According to Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, victims are people who have suffered physical, mental and / or economic loss as a result of a criminal act. Meanwhile, Law Number 5 of 2018 concerning Amendments to Law Number 15 of

[19] Waluyo, *Viktimologi Perlindungan Korban Dan Saksi*, 2.
[20] Ibid., 8.
[21] *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985*, n.d.
[22] *Basic Principles and Guidelines on the Right to A Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 2005.

2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism Into Law (Law No. 5/2018) also provides the same understanding of the victim.

Pro justitia Investigation of Gross Human Rights Violations

As it has been argued, since its inception based on Presidential Decree Number 50 of 1993 concerning Komnas HAM until now, Komnas HAM has completed fourteen *pro justitia* investigations[23] of gross alleged human rights incident. Three of them have permanent legal force. Meanwhile, eleven cases are still in the legal settlement process. The eleven cases are listed in Table 1 below.

Table 1. Incidents/Cases that have been Conducted in *Pro Justitia* Investigations by Komnas HAM

No	Cases	Komnas HAM Investigation
1.	Incidents of 1965 – 1966	Juli 2012[24]
2.	Mysterious Shooting Incidents (Petrus) Period of 1982 – 1985	Juli 2012[25]
3.	Talangsari Incident 1989	Juli 2008[26]
4.	Incidents of Enforced Disappearances, period 1997 – 1998	Oktober 2006[27]
5.	Incident in Papua Wasior–Wamena 2001	Juli 2014[28]
6.	Mei 1998 Riots	Juni 2003[29]
7.	Trisakti, Semanggi I, Semanggi II 1998	Maret 2002[30]
8.	Incident of "Jambu Keupok" In Aceh Province	Maret 2016[31]
9.	KKA Intersection Incident 3 May 1999 in Aceh Province	Juni 2016[32]

[23] *Undang-Undang Republik Indonesia Nomor 26 Tahun 2000 tentang Pengadilan Hak Asasi Manusia*, n. Penjelasan Pasal 19 UU 26/2000: Pelaksanaan "penyelidikan" dalam ketentuan ini dimaksudkan sebagai rangkaian tindakan Komisi Nasional Hak Asasi Manusia dalam lingkup projustisia.
[24] Firdiansyah & Dian Andi Nur Aziz, ed., *Ringkasan Eksekutif Laporan Penyelidikan Pelanggaran HAM Yang Berat* (Jakarta, 2012).
[25] Ibid.
[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Ibid., 293.
[30] Ibid., 330.
[31] *Keputusan Sidang Paripurna Komnas HAM Nomor 04/SP/III/2016 Tanggal 1 – 2 Maret 2016*, n.d.
[32] *Keputusan Sidang Paripurna Komnas HAM Nomor 08/SP/VI/2016 Tanggal 7 – 9 Juni 2016*, n.d.

10.	Romah Geudong Incident and other Pos Sattis in Aceh Province	Agustus 2018[33]
11.	The Murder of the Shaman Witchcraft.	Oktober 2018[34]

Source: compiled by the author

From Table 1, it can be seen that the legal process for incidents of gross human rights violations takes a very long time. Even for investigations carried out in 2003 for the May 1998 Incidents to date, 22 years have yet to show results.

The eleven Komnas HAM investigation files are still back and forth between the Attorney General and Komnas HAM. This shows that the government's willingness to resolve gross human rights violations is still halfhearted. There are only three incidents that have reached the trial stage. This is shown in Table 2 below.

Table 2. Events that have been examined by the court and *Inkracht*

No	Incident	Number of Cases	Information
1.	Timor Timur 1999 Incident	18[35]	*ad hoc Court*
2.	Tanjung Priok 1984 Incident	4[36]	*ad hoc Court*
3.	Abepura 2000 Incident	2[37]	*The Court*

Source: Bambang Waluyo, Kapita Selekta Tindak Pidana (Jakarta: Miswar, 2011)

Table 2 shows that of the three cases, 2 of them were incidents before 2000 and were referred to as past gross human rights violations. Meanwhile, there is only one incident after 2000 that was successfully examined at court level: the 2000 Abepura Incident.

With regard to victims of gross human rights violations, there is a mechanism for victims to get compensation. Compensation is submitted by the victim, the victim's family, or their legal counsel by submitting a written application in Indonesian to the court through the LPSK which contains at least: the identity of the applicant; a description of the incident of gross human rights violations; identity of the perpetrator of gross human rights violations; the form of compensation requested.

Requests for compensation must be accompanied by a photocopy of the victim's identity legalized by the authorized official; evidence of damage suffered by the victim or

[33] *Keputusan Sidang Paripurna Komnas HAM Nomor 09/SP/VIII/2018 Tanggal 20 Agustus 2018*, n.d.
[34] *Keputusan Sidang Paripurna Komnas HAM Nomor 14/SP/XI/2018 Tanggal 6 – 7 November 2018*, n.d.
[35] Bambang Waluyo, *Kapita Selekta Tindak Pidana* (Jakarta: Miswar, 2011), 117.
[36] Waluyo, *Kapita Selekta Tindak Pidana*.
[37] Ibid.

their family, made or legalized by the authorized official; evidence of costs incurred during treatment and / or treatment which is legalized by the agency or party conducting the treatment or medication; photocopy of death certificate, if the victim dies; a certificate from Komnas HAM showing the applicant as a victim or family of victims of gross human rights violations; a family relationship certificate, if the application is submitted by the family; and a special power of attorney, if the application for Compensation is submitted by the victim's power or family power.

LPSK checks the completeness of the application for compensation within a maximum period of 7 (seven) days from the date the application for compensation is received by LPSK. If the application file is not complete, the LPSK will notify the applicant in writing to complete it. The applicant must complete the application within 30 (thirty) days from the date the applicant receives notification from the LPSK. If the application is not completed within that period, it is deemed to have withdrawn the application. If the application file is declared complete, LPSK will immediately conduct a substantive examination.

International Human Rights Law Instruments related to the Rights of Victims of Gross Human Rights Violations

In the Universal Declaration of Human Rights IDUHAM) December 10, 1948.

Article 8

Everyone has the rights to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by constitution or by law.

The 1948 DUHAM is a 'declaration' in the form of a 'soft law', so the *stricto sensu*, the 1948 DUHAM do not have legally binding power. However, as the 'parent' human rights instrument, the DUHAM has become a reference for human rights instruments both nationally, regionally and internationally so that the international community does not only view the provisions contained in the UDHR as recommendations (as are the provisions contained in a declaration), but respects it as provisions of international law. Therefore it is not an exaggeration if the provisions contained in the UDHR have, at least, the weight of customary international law.[38]

Several other international instruments regulating the rights of victims are:

1. *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) 1965;
2. *International Covenant on Civil and Political Rights* (ICCPR) 1966;
3. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) 1984;
4. *Convention on Rights of Child* (CRC) 1989;

[38] Enny Soeprapto, *Kumpulan Beberapa Catatan Dan Instrumen Mengenai Atau Yang Berkaitan dengan Remedi (Remedy) Bagi Korban Pelanggaran Hak Asasi Manusia (HAM)*, 2015.

5. *United Nation Declaration on the Rights of Indigenous Peoples* (UNDRIP) 2007;
6. *Rome Statute of the International Criminal Court* (ICC) 1998.

International human rights instruments that are closely related to fulfilling the rights of victims of human rights violations which are the reference for the Standard Operating Procedure (SOP) for Application and Implementation of Compensation conducted by LPSK[39] are: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power dan Basic Principles and Guidelines on the Right to A Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and International Criminal Court (hereinafter written as ICC) which is the main reference of Law No. 26/2000.

In Declaration of Basic Principle of Justice for Victim and Abuse of Power, adopted by General Assembly Resolution 40/ 34 of 29 November 1985, listed several main points regarding the rights of victims that must be guaranteed by the State: *First*, the rights of victims to the availability of a justice mechanism and to receive immediate compensation (either in the form of compensation or restitution); *Second*, the right to information regarding their rights in seeking compensation and to obtain information on the progress of the ongoing legal process, including compensation; *Third*, the right to express views and give opinions; *Fourth*; the right to provide assistance during the sentence process; *Fifth*, the right to protection from harassment/intimidation /retaliation from the perpetrator, protection of personal freedom and safety, both personal and family; and *Sixth*, the right to a fast and simple justice mechanism/process/no delay.

Meanwhile in the Rome Statute and the rules regarding law and evidence, as the main international human rights instrument closely related to gross human rights violations, it pays special attention to the position of the victim in the running of the judiciary. This is regulated in several articles that regulate the rights of victims during the judicial process, namely: First, the right to protection for victims during the trial process (article 57 which regulates protection at the pre-trial stage and Article 68 which contains rights victims during the trial process, such as victim participation, protection mechanisms in the evidentiary stage to provide information in camera or submission of evidence by electronic means). Second, the right to guarantee protection, both in the context of financial and other facilities for crime victims and their families (Article 79 regulates the establishment of a Trust Fund to guarantee the rights of crime victims and their families). [40]

Apart from the two documents above, in the realm of international human rights law, van Boven's principles and Joinet's principles are known as two main references

[39] *Lampiran I Peraturan Lembaga Perlindungan Saksi Dan Korban Nomor 2 Tahun 2010 tentang Standar Operasional Prosedur (SOP) Permohonan dan Pelaksanaan Kompensasi*, n.d., sec. Bab I Pendahuluan, Umum angka Nomor 3.
[40] ELSAM, *Laporan Pemantauan Pengadilan Hak Asasi Manusia Kasus Abepura*, n.d., 256.

formulated through in-depth studies by the Special Rapporteur of the UN Human Rights Sub Commission and independent experts. Based on several international legal principles, every violation of human rights will give rise to the right to remedy. Referred to as recovery according to Van Boven is all types of redress that are material or non-material for victims of human rights violations. Therefore, the rights to compensation, restitution and rehabilitation cover certain aspects of recovery. Boven proposed six basic principles that must be fulfilled by the state that will formulate policies to fulfill the rights of victims as follows: *First*, recovery can be demanded individually or collectively. *Second*, the state is obliged to establish specific steps that enable the implementation of remedial measures that are fully effective. Recovery must be balanced with the severity of the violation and the damage caused by it, which includes restitution, compensation, rehabilitation, satisfaction, and guarantees that a similar incident does not happen again. *Third*, every country must announce through public mechanisms and private institutions, both at home and abroad, about the availability of recovery procedures. *Fourth*, the restrictive provisions may not be applied during periods when there is no effective resolution of human rights violations and humanitarian law violations. *Fifth*, each country must enable the availability of all information related to the requirements for recovery quickly. *Sixth*, decisions regarding the recovery of victims of human rights violations and humanitarian law violations must be implemented in carefully and quickly.[41]

In the Joinet principle, in general, it is an effort to protect and promote human rights through steps to eliminate impunity by adopting universal basic human rights principles to be applied to efforts in the operation of domestic legal mechanisms. In this study, four important points were presented, namely: the right to know, the right to justice, the right to reparation, and the guarantee of non-repetition. One of the principles of the right to justice which is quite important to raise is the provision regarding the principle of limitation justified by the desire to fight impunity, regarding the provision of amnesty for gross human rights violations. It is clear in this principle that amnesty cannot be granted to perpetrators of violations before the victim has received justice through an effective trial. Amnesty may not have any legal effect on judicial proceedings brought by victims regarding reparations.[42] The criminal justice system can develop recovery efforts for victims of human rights through several methods which can be broadly divided into two: monetary remedies and non-monetary remedies.[43] Monetary remedies are remedies that utilize material value in the form of money or physical to repair damage/loss resulting from human rights

[41] Theo Van Boven, "Mereka Yang Menjadi Korban, Hak Korban Atas Restitusi, Kompensasi, dan Rehabilitasi. Pengantar Buku" (ELSAM, 2002), xxi–xxii.
[42] KontraS, *Menolak Impunitas, Serangkaian Prinsip Perlindungan dan Pemajuan Hak Asasi Manusia, Prinsip-Prinsip Hak Korban* (Jakarta: KontraS, 2005), 128.
[43] Dinah Shelton, *Remedies in International Human Rights Law* (Oxford: Oxford University, 1999).

violations. Meanwhile, Non-Monetary Remedies are recovery efforts for victims that are more based on repairing damage/loss caused by certain steps that cannot be matched with certain material values (such as: apology from the perpetrator/state, guarantees of non-repetition, rehabilitation, truth telling, punishment for the perpetrator, or a statement through a judge's decision (declaratory judgments).

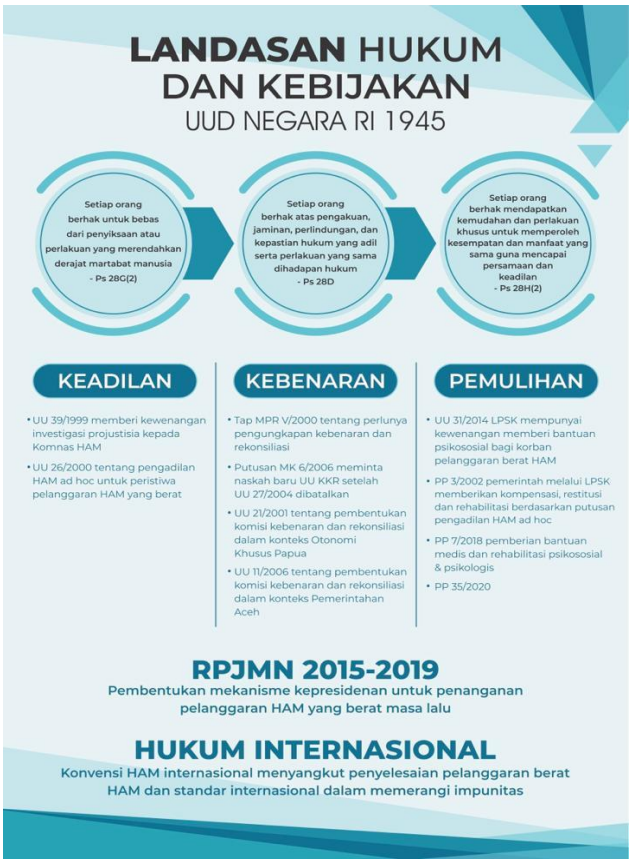
National Instruments related to the Rights of Victims of Gross Human Rights Violations

Although national human rights instruments are not as good as international human rights instruments, in fact the legal basis and legal policies in Indonesia are actually quite good and should be able to fulfill the rights of victims of gross human rights violations. This is shown in Figure 1.[44]

Protection for Victims of Gross Human Rights Violations in Indonesia is regulated through several National Legal Instruments, starting from Article 34 of Law Number 26 of 2000 concerning Human Rights Courts, which are entitled to protection in the form of physical and mental protection from threats, harassment, terror and violence from any party and carried out by law enforcement and security apparatus free of charge. Apart from that, this Law also stipulates that the Victims of Gross Human Rights Violations receive compensation, restitution and rehabilitation which are further regulated through a Government Regulation regarding its implementation.

Figure 1. Legal Basis, Truth-seeking and Reconciliation Policy

[44] Koalisi untuk Keadilan dan Pengungkapan Kebenaran (KKPK), *Jalan Indonesia Menuju Penyelesaian atas Pelanggaran HAM Masa Lalu Demi Masa Depan Bangsa: Kerangka Dasar untuk Kerja Bersama Berlandaskan Kontitusi*, 2015, 3, https://perpustakaan.elsam.or.id/index.php?p=show_detail&id=14580&keywords=.



Source: Coalition for Justice and Truth-Telling (KKPK), *Indonesia's Way to Resolve Past Human Rights Violations for the Nation's Future: Basic Framework for Collaborative Work based on the Constitution*, 2015, 3. https://perpustakaan.elsam.or.id/index.php?p=show_detail&id=14580&keywords=, compiled by the author with updated of information.

In the course of implementing the Protection for Victims of Serious Human Rights Violations, there are several regulations, starting with the level of the Law, namely Law Number 27 of 2005 concerning the Truth and Reconciliation Commission (KKR), but because in its application it is considered to be more beneficial to the perpetrator and contrary to UUD 1945, then this rule is no longer in effect since it was canceled by Constitutional Court Decision Number 006/PUU-IV/2006. To fill the void in the KKR Law, Law Number 13 of 2006 concerning Protection of Witnesses and Victims was formed, which was amended by Law Number 31 of 2014, which regulates the rights of victims of gross human rights violations.

Article 5 paragraph (1) of the law states the rights of witnesses and victims, as follows:

a. obtain protection for the safety of his personal, family, and property, and free from threats regarding the testimony he will, is being, or has given;
b. participate in the process of selecting and determining forms of security protection and support;

c. provide information without stress;
d. got a translator;
e. free from entangling questions;
f. get information about case progress;
g. get information about court decisions;
h. get information in case the convict is released;
i. anonymity;
j. got a new identity;
k. find a temporary residence;
l. got a new residence;
m. obtain reimbursement of transportation costs as needed;
n. get legal advice;
o. get temporary living expenses assistance until the end of the protection period; and/or
p. get assistance.

Furthermore, Article 6 of the Law states that victims of gross human rights violations, victims of criminal acts of terrorism, victims of trafficking in persons, victims of criminal acts of torture, victims of criminal acts of sexual violence, and victims of serious abuse, are also entitled to medical assistance and psychosocial and psychological rehabilitation assistance.

Article 7 also states that every victim of gross human rights violations and victims of criminal acts of terrorism has the right to compensation. Article 7A adds that Victims of criminal acts have the right to receive Restitution in the form of:

a. compensation for loss of wealth or income;
b. compensation resulting from suffering directly related to a criminal act; and/or
c. reimbursement of medical and/or psychological treatment costs.

At the level of the Implementing Regulation, it is further regulated through Government Regulation Number 2 of 2002 concerning Procedures for the Protection of Victims and Witnesses in Gross Human Rights Violations (hereinafter written as PP 2/2002), then through Government Regulation Number 44 of 2008 and most recently the Government Regulation Number 7 of 2018 concerning Compensation, Restitution and Assistance to Witnesses and Victims as amended by Government Regulation Number 35 of 2020.

There are several terms that appear in several national laws and regulations which constitute the rights of victims to receive the restoration of the rights of victims of gross human rights violations, including:

a. Compensation;
b. Restitution;
c. Rehabilitation;
d. Medical assistance;

e. Psychosocial rehabilitation assistance; and
f. Psychological.

Article 35 paragraph (1) of Law 26/2000 states that "Every victim of serious human rights violations and/or their heirs can receive compensation, restitution and rehabilitation". The mechanism for granting these three rights must be included in the ruling of the Human Rights court (Article 35 paragraph (2)) and Article 35 paragraph (3) states "Provisions regarding compensation, restitution and rehabilitation shall be further regulated by Government Regulation".

In relation to Article 35 paragraph (3) of Law 26/2000, the government has issued Government Regulation 3 of 2002 concerning Compensation, Restitution and Rehabilitation of Victims of Serious Human Rights Violations (hereinafter written PP 3/2002). The mechanisms for providing compensation, restitution and rehabilitation are regulated in Article 2, Article 3, Article 4, and Article 5.

A more complete mechanism for providing compensation, restitution, and assistance to victims is regulated in the written PP 7/2018 as amended by PP 35/2020. In Article 2 paragraph (2) PP 7/2018, it is stated that "Application for compensation as referred to in paragraph (1) shall be submitted by the victim, family, or his proxy". Furthermore, in the next paragraph, it is stated that "Application for compensation as referred to in paragraph (2) shall be submitted in writing in Indonesian on sufficiently stamped paper to the court through the LPSK".

Fulfilling the rights of victims of gross human rights violations in the form of medical assistance and psychosocial and psychological assistance is regulated in Article 6 of Law 31/2014 and Government Regulation 7/2018. In Article 37 paragraph (2) the PP states "Assistance as referred to in paragraph (1) is in the form of: (i) medical assistance and (ii) psychosocial and psychological rehabilitation assistance". The mechanism for requesting assistance is described in the following two paragraphs: "Applications for assistance as referred to in paragraph (2) shall be submitted by Witnesses and / or Victims, their families or their proxies", and "Applications for assistance as referred to in paragraph (3) shall be submitted in writing in Indonesian. on paper with sufficient duty stamp to LPSK".

LPSK as an institution that has a primary function in victim protection has a mechanism for victim recovery which is described in the following LPSK regulations.

In Article 5 to Article 7 of LPSK Regulation Number 3 of 2016 concerning Services for Application for Protection of Witnesses and/or Victims of Criminal Acts, the formal and material requirements submitted by the applicant are regulated. Formal requirements consist of complete identity, power of attorney if represented and evidence of information from the relevant agencies regarding the applicant's status as a witness or victim of serious human rights violations. Apart from that, there are also material requirements which in essence are completeness that support events related

to witnesses/victims, for example chronology/description of events and other supporting documents. Meanwhile, applicants who apply for compensation/ restitution must attach details of the losses suffered.

Applications submitted to the LPSK are subject to a review process first. The review is carried out within a maximum period of 30 (thirty working days) and can be extended for a maximum of 30 (thirty working days). The review is carried out for the preparation of the Plenary Meeting Minutes. The review aims to determine the nature, form, level of threat, medical and psychological condition of the applicant and to record the applicant's track record of criminal acts.

LPSK in providing assistance to victims of gross human rights violations also refers to Government Regulation Number 44 of 2008 as amended by Government Regulation Number 7 of 2018 and Government Regulation Number 35 of 2020, where victims of gross human rights violations are also entitled to receive assistance in the form of medical assistance and psychosocial rehabilitation .

In the attachment of LPSK Regulation Number 4 of 2009 concerning SOPs for Providing Medical and Psychosocial Assistance, it is stated that medical-psychosocial assistance is anything related to health care and the like. This includes all actions aimed at healing the victim with the aim of accelerating the victim's recovery, including psychological physical therapy and victim rehabilitation (mental health counseling) which includes:

a. medical treatment is paid directly (direct medical costs) which are intended to meet the overall cost of health care (medical action);
b. medicine needs needed by the victim, during the treatment process (prescription claim);
c. restoring the victim's mental health, through psychological therapy or psychological therapy with the aim of accelerating the victim's recovery;
d. Physical therapy (physio therapy) to return the victim to her original work environment and daily life;
e. Transportation needed by the victim and / or their family during the treatment process at the hospital.

Obstacles to Restoring the Rights of Victims

Restitution and compensation are based on human rights court processes. In other words, there is a need for a legal process and stipulated by a decision of a human rights court as regulated in Article 35 paragraph (2) of Law 26/2000. This is not easy, considering that the process for court decisions is a long process and makes it difficult for victims who are both formally and materially difficult to meet the requirements.

In providing medical assistance and psychosocial and psychological rehabilitation, synergy between related institutions is needed to carry it out. For example, cooperation

between the LPSK, the Ministry of Social Affairs, the Ministry of National Education, the Ministry of Public Works and Public Housing, the Ministry of Health, the Ministry of Manpower, and other government ministries / agencies that can potentially provide assistance and recovery to victims and / or victims' families. This process is not easy, because each institution has its own policies. For this reason, the government needs to give authority and appoint LPSK as the coordinator.

In carrying out the mandate of the law to provide the restoration of the rights of victims of gross human rights violations there are several budget constraints. The availability of an inadequate budget greatly affects the implementation of providing medical and psychological assistance to victims, especially victims of gross human rights violations. This has implications for policies in providing assistance. This policy is undergoing changes, because it is adjusted to the availability of budget owned by LPSK and the number of victims receiving assistance.

The victims live far enough away to make it difficult for the victims to submit applications and/or apply for extensions.

In several newly formed areas, there was no cooperation with the relevant areas, so the victim was referred to a hospital which was considered closer to the area where the victim lived.

Another obstacle comes from the negative stigma of society. There is still a lack of understanding by some parties regarding the victims of gross human rights violations of the 1965/1966 incident and the authority of the LPSK which results in the assumption that the activities of providing assistance carried out by the LPSK are suspected of being an attempt to revive communism or are considered negative.

The average age of victims of serious human rights violations who are not young (over 60 years) requires special assistance from LPSK Facilitators and Staff in accessing the assistance provided by LPSK and utilizing medical, psychological and psychosocial assistance facilities.

Related to victims, there are also obstacles, namely the mechanism to determine the victim and who is authorized to grant the status of the victim. Law in Indonesia applies the principle of individual crime responsibility, while human rights violations are crimes committed by state policies.

Many victims have died and are old. At the same time, the TRC had been canceled by the Constitutional Court, so the only effort that could be made was judicial.

CLOSING

Conclusion

The mechanism for restoring the rights of victims of past gross human rights violations can be carried out through judicial and non-judicial processes. The judicial process is pursued through a human rights court as regulated in Law 26/2000. Because

the judicial process takes a long time and the seriousness of the government, the rights of the victims are difficult to fulfill, so a non-judicial mechanism is needed, as regulated in PP No. 7/2018 jo. PP No.35 / 2000. This provision is meant by the alternative fulfillment of the rights of victims of past gross human rights violations that can technically be accommodated through the RPJMN.

The obstacles faced are as follows:

a. Juridical Constraints: The state, in this cases the Government and the DPR, has not followed up on the Constitutional Court Decree No. 006 / PUU-IV / 2006 to issue Law No. 27/2004 concerning KKR.
b. Sociological Constraints: there has not been optimal synergy yet between State Institutions.
c. Political constraints: the government is not serious about resolving human rights in the past.
d. Philosophical constraints: the prevailing laws and regulations are not fully based on justice.

Suggestion

From the research conducted by the author, there are several things that should be the quality improvement in protection for victims of serious human rights violations, including the following:

1. The government should re-evaluate all laws and regulations relating to the protection of victims of serious human rights violations, both in terms of the protection that will be provided and the procedures for the protection provided;
2. As stipulated in Law 26/2000 on Human Rights Courts, the government should make protection for victims of serious human rights violations a top priority, especially with the long-standing incidents that have caused victims of serious human rights violations to suffer suffering for years until now .
3. The state in this case the government should also ratify the International Regulation regarding the Protection of Victims of Serious Human Rights Violations, namely the Rome Statute so that protection of victims of gross human rights violations can be implemented in accordance with the nature of humanity that applies internationally. In addition, it also minimizes a number of actions by the authorities and government that have not been maximal in providing protection for victims of gross human rights violations.
4. The government should conduct a mapping of victims who are deemed not yet receiving protection in their rights as victims of gross human rights violations. This can be done through surveys or in collaboration with human rights institutions in Indonesia.

5. The government needs to revive the spirit of establishing a Truth and Reconciliation Commission which assists in the implementation of objective and real protection for victims of gross human rights violations.
6. LPSK should maximize the provision of medical, psychosocial, and psychological assistance in an effort to provide alternatives to fulfill the rights of victims of past gross human rights violations.
7. LPSK needs to be given the authority to coordinate the provision of assistance to victims of gross human rights violations from a number of ministries/agencies.

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VIOLATIONS OF DIPLOMATIC PRIVILEGES AND IMMUNITIES REVIEWED UNDER THE 1961 VIENNA CONVENTION
(TAPPING CASE OF THE INDONESIAN EMBASSY IN YANGON, MYANMAR)

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Abstract

Diplomatic members will receive special treatment from the government in the country where they are stationed. However, this privilege is often misused by diplomatic members, one of which is the wiretapping of eight embassies of the Republic of Indonesia (KBRI), including Myanmar (Yangon), Japan (Tokyo), Canada (Ottawan), China (Beijing), South Korea (Seoul), Finland, Norway and Denmark. This research will examine what immunities and diplomatic privileges stipulated in the 1961 Vienna Convention were violated in the case of wiretapping the Indonesian embassy in Myanmar, as well as the provisions regarding sanctions for violations of the wiretapping case of the Indonesian embassy in Myanmar regulated in the 1960 Vienna Convention. This can be done using the diplomatic route or the negotiation route. If the agreement fails to be drawn, then methods of legal dispute resolution can be taken and brought it to the International Court of Justice. The type of research used is normative juridical research, secondary data of this research is data obtained from library observations, and various references or library materials related to the research title.
Keywords : *privileges, immunities, embassies, tapping*

I. INTRODUCTION

One of the things that is highlighted in international relations is the recognition of diplomatic status, the meaning of diplomatic status is a privilege that is absolutely inherent in the person of a diplomat. To establish a relationship between countries, these countries place representatives from each other, namely the embassy or consular, these diplomatic members will receive special treatment from the government in the country where they are stationed. However, this privilege is often misused by diplomatic members, one of which is the wiretapping of eight embassies of the Republic of Indonesia (KBRI), including Myanmar (Yangon), Japan (Tokyo), Canada (Ottawan), China (Beijing), South Korea (Seoul), Finland, Norway and Denmark. This is a form of violation of power and violates things that have been stated in the 1961 WINA Convention. This study focuses on what immunities and diplomatic

privileges stipulated in the 1961 Vienna Convention were violated in the case of wiretapping the Indonesian embassy in Myanmar, the provisions regarding sanctions for violations in the wiretapping case of the Indonesian embassy in Myanmar as stipulated in the 1961 Vienna Convention and how to solve the wiretapping case of the Indonesian embassy in Myanmar according to the 1961 Vienna Convention.

II. LEGAL MATERIALS AND METHOD

The type of research used is normative juridical research, secondary data of this research is data obtained from library observations, and various references or library materials related to the research title.

III. RESULT AND DISCUSSION

Immunities and Diplomatic Privileges Regulated in the 1961 Vienna Convention Violated in the Wiretapping Case of the Indonesian Embassy in Myanmar

The granting of immunity rights and diplomatic privileges comes from customary international law that has developed over centuries and has undergone a long evaluation, which was later regulated in the 1961 Vienna Convention. This is in line with the statement of the 1961 Vienna Convention, which states "Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents". Indonesia is one of the countries that ratified the 1961 Vienna Convention on Diplomatic Relations through the Law of the Republic of Indonesia Number 1 of 1982, bound by the provisions of granting immunity rights and privileges to diplomatic officials.[45]

After the establishment of the 1961 Vienna Convention with all the provisions contained therein, especially regarding the guarantee of immunity rights and privileges for diplomatic representatives, there were still many violations committed by countries that even participated in ratifying the Convention. One of the violations that occurred was the wiretapping case in Yangoon, Myanmar, the joint security team of the Republic of Indonesia consisting of elements from the National Encryption Agency (Lemsaneg), the State Intelligence Agency (BIN) and the Ministry of Foreign Affairs conducted an examination at the Indonesian Embassy in Yangon, Myanmar. [46] The investigation was carried out on June 24,

[45] Lex Crimen Vol. V/No. 4/Apr-Jun/2016
[46] PERSPEKTIF Volume XV No. 3 Tahun 2010 Edisi Juli

2004, and gave the result that the Myanmar military junta had illegally intercepted all activities and talks of diplomats of the Republic of Indonesia who served in Yangoon, Myanmar, namely by installing bugging devices on the walls of the office of the Ambassador of the Republic of Indonesia, resulting in a decrease in frequency call from 50 Mhz to 30.1 Mhz. Of course this raises unrest and shows that the situation and conditions that exist in the Indonesian diplomatic representative building in Myanmar are not safe and do not provide protection to diplomatic representatives, this also violates the things stated in the 1961 Vienna Convention.

1. Diplomatic Representative Building Cannot be Contested This has been included in article 22 of the 1961 Vienna Convention, which is stated as follows:

   1) The representative building cannot be contested (inviolable) State instruments from the receiving country are not allowed to enter the representative building, except with the permission of the head of representative;

   2) The receiving country has a special obligation to take the necessary steps to protect the representative building from any disturbance or damage and to prevent any disturbance of the peace of the diplomatic representative or which degrades its dignity.

   3) Representative buildings, their furniture and other property inside the building as well as vehicles of the representative will be exempted from inspection, prosecution, bondage, or confiscation..[47]

Diplomatic law recognizes the existence of exterritoriality theory, this theory assumes that the diplomatic representative building is an area that is considered outside the territory of the receiving country so that what applies is the law of the sending country, thus the representative building is inviolable or inviolable because it is part of the region. Territorial of the sending state. Not only the building but all its furniture and property inside the diplomatic representative building is immune to inspection or search, confiscation, and execution is immune to inspection or search, confiscation and execution.

2. Protection outside the Foreign Representative Building Environment

This is also included in article 22 of the 1961 Vienna Convention, which explains that the receiving country is not only obliged to protect foreign representative

[47] Effendi, A. Masyhur, (1994). Hukum Konsuler-Hukum Diplomatik Serta Hak dan Kewajiban Wakil- wakil Organisasi Internasional/Negara,IKIP Malang, Malang

buildings but also conditions in the environment outside the building. Therefore, in relation to the situation in the environment around the foreign representative building, the government of the receiving country must take the necessary steps to prevent threats and things that disturb the peace of the representative or that can reduce the dignity and worth of the foreign representative in a country. However, the foreign representative cannot expect permanent security protection from the receiving country, if interference, threat is suspected or if the head of the foreign country's representative informs about the occurrence of disturbance or other disorder, the receiving country can provide security guards (police) proportionally taking into account- right the level of the disturbance.

3. Limits for Application and Interpretation of Article 22 Paragraph (1) of the 1961 Vienna Convention

The foreign diplomatic representative building cannot be contested, even officials and officials from the receiving country cannot enter without the permission of the head of representative. However, if the receiving country has strong evidence or allegations that the function of the foreign representative is contrary to the provisions of the 1961 Vienna Convention, the government of the receiving country can enter the representative building. However, it does not preclude the receiving country from taking action against foreign representatives in that country in the context of self-defense or avoiding criminal acts, this is the opinion in the opinion of the International Law Commission.

Provisions for the Wiretapping Case of the Indonesian Embassy in Myanmar according to the 1961 Vienna Convention

The right to provide deepness and privileges to diplomatic representatives so that each diplomatic representative can carry out its functions properly has been regulated and recognized in the 1961 Vienna Convention on Diplomatic Relations, namely in article 27. In article 27 paragraph (2), official correspondence of diplomatic missions is explained. Namely invulnerable, which means it is in line with the theory of functional necessity.[48]

In the opening paragraph of the 1961 Vienna Convention, the fourth paragraph states that the purpose of granting immunity and privileges is not intended for individual benefit, but to ensure the efficient implementation of diplomatic functions in the framework of representing the sending country.

Apart from article 27, article 22 and article 33 of the 1961 Vienna Convention also state that the residence and diplomatic representative building have the right of

[48] Suryokusumo, 1995, Hukum Diplomatik Teori dan Praktek, Alumni, Bandung, hlm. 42.

immunity, this is in accordance with the theory of exterritoriality, even if only literally. Article 22 of the 1961 Vienna Convention, states :

> *(1) The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.*
> *(2) The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity*
> *(3) The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.*[49]

Therefore, it is considered that the diplomatic representative building is an area that is considered to be outside the territory of the receiving country, so that what should apply is the law of the sending country and cannot be contested because it is part of the territorial area of the sending country. So it can be concluded that what Myanmar has done violates the provisions of article 22, article 27 and article 33 of the 1961 Vienna Convention.

Settlement of Tapping Case of the Indonesian Embassy in Myanmar according to the 1961 Vienna Convention

There are many ways that can be taken to resolve cases of tapping the diplomatic building, one of which is through settlement procedures politically, juridically and within the framework of ASEAN cooperation. Settlement of cases of breaches of immunity and diplomatic privileges can be resolved using diplomatic channels or through negotiation channels, based on the good faith of the two countries involved. If the agreement fails to be taken in the diplomatic way, then methods of legal dispute resolution can be taken and bring it to the International Court of Justice. [50]

However, to resolve disputes at the International Court of Justice, we need to first calculate the advantages and disadvantages, Indonesia is indeed a country that is disadvantaged by the wiretapping incident but the good relations between Indonesia and Myanmar can be destroyed, especially since the two countries are part of ASEAN which should be able to understand each other. And maintain relationships.

This is also conveyed in the United Nations Charter article 2 paragraph (3) which states that all members of the United Nations must resolve international disputes in a peaceful manner so that international peace and security. Dispute resolution must prioritize peaceful ways aimed at creating peace on earth that every nation has aspired to aspire to. There must be good faith from the two countries in

[49] Effendi, A. Masyhur, (1994). Hukum Konsuler-Hukum Diplomatik Serta Hak dan Kewajiban Wakil- wakil Organisasi Inter- nasional/Negara,IKIP Malang, Malang
[50] *Ibid*.

resolving disputes politically and not too materially because what is prioritized is efforts to restore diplomatic relations between the two countries. Dispute resolution can be carried out through negotiations, Indonesia as the loser and Myanmar as the wrong party must admit their actions and not repeat and will continue to comply with the provisions contained in the 1961 Vienna Convention concerning diplomatic relations.[51]

In these negotiations, the two countries must carry out an open dialogue, exchange information transparently in order to reach an agreement that meets the interests of both parties. If after the negotiation is complete the two parties do not find a bright spot to resolve the dispute, then the dispute settlement can be resolved legally and can be brought to the International Court of Justice.

Article 22 paragraph (1) of the 1961 Vienna Convention concerning diplomatic relations regulates the right of immunity and privileges to diplomatic representative buildings where foreign representative buildings are not allowed to be inviolated, besides that state instruments from the receiving country are not allowed to enter the building diplomatic representation except with the permission of the head of representative. Article 22 paragraph (2) states that the receiving country has the obligation to protect the diplomatic representative building from any disturbance or damage that can reduce dignity and status, so article 22 paragraph (2) can be interpreted as relating to immunity in the diplomatic representative building environment. Itself. Therefore, the protection provided by the receiving country is not only done inside the representative building (interna rationae) but also outside or the surrounding environment (externa rationae). [52]

If it is related to the wiretapping case of the Indonesian Embassy in Yangoon, Myanmar, it can be said that the Myanmar government has violated the provisions of article 22 of the 1961 Vienna Convention because obtaining information from the Indonesian Embassy by means of tapping is an illegal act and is not allowed in diplomatic relations, and is a violation of the obligation of the receiving country to protect the diplomatic representative building from any disturbances and threats that can hinder the performance of diplomatic representatives. [53]

Referring to the cases at the United States Embassy in Tehran and the United States Consulate in Tabriz and Shiraz, Iran where the International Court of Justice ruled that Iran, which was referred to as a recipient country, had violated the provisions of article 25 of the 1961 Vienna convention on diplomatic relations, the

[51] Sigit Fahrudin, dalam Artikel, *"Hubungan Diplomatik Menurut Hukum Internasional"* Law Online Library.
[52] Merrills, J. G. (1986). Penyelesaian Sengketa Internasional, Penyadur : Achmad Fauzan, S. H., Transito, Bandung
[53] Wasito, (1984). Konvensi Konvensi Wina Tentang Hubungan Diplomatik, Hubungan Konsuler dan Hukum perjanjian/traktat, Andi Offset, Yogyakarta

recipient country must provide facilities fully for the performance of the functions and missions of the diplomatic representative. From the above decision it can be used to find a legal basis for the case of tapping the diplomatic representative building of the Republic of Indonesia, because the Myanmar government as a recipient country is unable to provide facilities to diplomatic representatives from the sending country in carrying out their duties and the Myanmar government has disturbed their performance. From diplomatic representatives working in the diplomatic representative building.

Thus, it can be concluded that the tapping carried out by the Myanmar government has violated the custom of international law, namely the obligation for countries to provide protection to diplomatic representatives within certain limits so that the diplomatic representatives can carry out their functions properly, how is the Functional Necessity theory formulated and? the provisions in articles 22 and 25 of the 1961 Vienna Convention on diplomatic relations. What the Myanmar government has done as a recipient country is an omission and a mistake that can lead to state responsibility.

IV. CONCLUSION AND SUGGESTION

Conclusion

The disruption of ambassadors that occurred since the past was the forerunner to the birth of a grant of immunity rights which at the same time served as protection for ambassadors. SIn fact, this has been regulated in the second protocol of the Diplomatic Order Guidelines of the Republic of Indonesia, that immunity contains two definitions, namely immunity and inviolability. Diplomats will be protected and inviolable, including their residence and property as stated in articles 29, 30 and 41 of the 1961 Vienna Convention, as well as their immunity from administrative, civil and criminal jurisdictions (article 31 Vienna Convention 1961). Diplomats also have privileges, this includes immunity and social security dating privileges and even diplomatic agent tax exemptions, exemptions from personal services and military obligations, and finally exemptions from customs for diplomatic missions. And there are sanctions that apply to violations of the right of immunity and diplomatic privileges committed by diplomatic officials, one of which states that when a diplomatic official or a person who enjoys immunity from court prosecution under Article 37 takes the first action in a court claim, he loses immunity in connection with the prosecution. replies that are directly related to the main demands.

The case presented in this paper illustrates that the tapping of embassies of other countries as carried out by the Myanmar government has violated customary international law, namely the obligation for countries to provide protection to diplomatic representatives within certain limits so that these diplomatic

representatives can carry out their functions with both how the theory of Functional Necessity is formulated and the provisions in articles 22 and 25 of the 1961 Vienna Convention on diplomatic relations. What the Myanmar government has done as a recipient country is an omission and a mistake that can lead to state responsibility.

Suggestion

Diplomatic officials must understand and respect the laws of the recipient country so that there are no violations and arbitrariness of their privileges. Apart from that, the receiving country is also an important part of obeying and becoming the background of the candidates for foreign representatives or diplomatic officials so that they can be more selective in accepting foreign representatives in their countries so that violations do not occur. For cases that have been described, the receiving country must correct and at the same time be responsible for the rights violations that have been committed and maintain the honor of the sending country of diplomatic representatives as a sovereign state. The settlement of international disputes between Indonesia and Myanmar in the case of tapping the diplomatic building does not have to be resolved at the International Court of Justice or the route of violence but can go through the path of negotiation, the two countries must hold each other and convey their wishes so that good relations continue, especially Indonesia and Myanmar are part of ASEAN.

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DESIGNING PROTECTION OF PERSONAL DATA AS A RIGHTS TO PRIVACY IN AN EMERGENCY IN INDONESIA

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Abstract: *Article 28 G Paragraph (1) 1945 Constitution provides a guarantee that everyone has the right to personal protection, including protection of personal data. In an emergency, the State needs access to people's personal data to control the spread of the Covid-19. However, the legal basis for personal data protection in Indonesia is still well known in different regulations, this has caused legal uncertainty regarding the concept and mechanism of personal data protection even brings the phenomenon of leakage to the sale of Covid-19 patient data. This study aims to examine the extent of personal data protection regulations in the context of emergencies in Indonesia and to discover the ideal concepts and practices applied. This study uses a normative juridical method with a statutory, conceptual, and comparative legal approach. The results of state intervention investigations on personal data in an emergency are valid as long as it is in accordance with the limits set out in the regulations in the related fields. This research encourages the adoption of the European Union's GDPR (General Data Protection Regulation) concept through the passing of the Personal Data Protection Bill.*

Keywords: *protection of personal data, emergency, Indonesia.*

I. INTRODUCTION

Article 28 G paragraph (1) of the 1945 Constitution of the Republic of Indonesia provides a constitutional guarantee that "*every person has the right to protection of himself, family, honor, dignity and property under his control, as well as the right to a sense of security and protection from the threat of fear to act or not doing something that is a human rights*". Discuss about personal protection, Danrivanto Budhijanto emphasized that protection of personal rights or private rights will increase human values, improve relations between individuals and their communities, increase independence or autonomy to exercise control and get deserved as human being, and increase tolerance and keep away from discriminatory measures and limit the power of the government.[54] Personal protection is an inseparable part of human rights which must be respected, fulfilled and protected by the State.

One of the objects protected in personal protection is personal data. The concept of personal data protection has the similar concept as the right to privacy as proposed by Allan Westin, who for the first time defined privacy is the claim of individuals, group or institution to determine for themselves when, how, and to what extent information about them is communicated to others.[55]

Personal data is an aspect that deserves to be protected because Personal data is an asset or commodity with high economic value.[56] Personal data consists of general and specific types of data. General personal data consists of name, gender, nationality, religion, and so on. Meanwhile, special personal data consists of personal financial data, genetic data, health information, children's data, criminal records, and so on.

Because of wide scope of data classified as personal data, the collection and dissemination of personal data is a violation of privacy[57] someone has the right to privacy includes the right to determine whether or not to provide personal data.[58] However, in the current Covid-19 pandemic situation, people's personal data is quite important for the government to control the spread of the virus. Not only does it need data on Covid-19 patients, the government also needs public data that has not been indicated by Covid-19 through many tracking applications, such as the PeduliLindungi application.

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[54] Budhijanto, Danrivanto. *Hukum Telekomunikasi, Penyiaran & Teknologi Informasi: Regulasi & Konvergensi.* Bandung: PT. Refika Aditama, 2010.
[55] Westin, Allan., and Westin Alan F. Privacy and Freedom. London, 1967.
[56] Makarim, Edmon. *Kompilasi Hukum Telematika.* Jakarta: PT. Raja Grafindo Perkasa. 2003. See Sanusi, M. Arsyad. Teknologi Informasi & Hukum E-commerce. Jakarta: PT. Dian Ariesta. 2004.
[57] Kamus Besar Bahasa Indonesia provides definition of privacy is a freedom of self. Kamus Besar Bahasa Indonesia Edisi 3. Jakarta: Departemen Pendidikan Nasional dan PT. Balai Pustaka. 2001
[58] Human Rights Committee General Comment No. 16 (1988) on the right to respect of privacy, family, home and correspondence, and protection of honor and reputation (art. 17) within Privacy International Report. 2013.

The problem that occurs is that Indonesia does not have specific rules regarding personal data protection to classify types of personal data, provide legal certainty regarding the use of personal data in an emergency context, and provide a legal basis for the use of tracking applications. The regulation is also important to explain how the government applies the mechanism when using patient personal data, particularly when the data is transferred to other interested parties.

Due to the absence of specific rules regarding the protection of personal data, the phenomenon of leakage to the sale of Covid-19 patient data has emerged in the community. In fact, this data can be linked to finances, residence, medical history, which is sensitive data and has the potential to be misused. This study aims to examine the extent of personal data protection regulations in the context of emergencies in Indonesia and to discover the ideal concepts and practices applied with comparative legal approach with other countries. These various problems will be overcome by the adoption of the European Union's GDPR (General Data Protection Regulation) concept through the passing of the Personal Data Protection Bill.

II. LEGAL MATERIALS AND METHODS

This study uses normative juridical methods with statutory, conceptual, and comparative legal approaches that refer to juridical rules or norms relating to the right to privacy. The type of data used is secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials. In presenting the review and elaborating the issue, this paper uses qualitative analysis by revealing legal arguments relating to the protection of personal data as a right to privacy in Indonesia.

III. RESULT AND DISCUSSION

3.1 The Extent of Personal Data Protection Regulations in the Context of Emergencies in Indonesia

3.1.1 The Rights to Personal Data Protection

Placing the law in the highest position of the State is a logical consequence of the concept of a rule of law which is set on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This law is manifested in the form of a constitution as the supreme law of a State which describes the various principles as a basis for the regulations under it. According to J.G. Steenbeek, the constitution as the highest basic rule in a country contains at least three main things, consist are: (1) guarantee and respect for human rights and their citizens; (2) created the fundamental constitution of a state; and (3) the division and limitation of administrative duties which are also fundamental.[59]

The most basic spirit for citizens of the law enforcement in their country is the

[59] Soemantri, Sri. *Prosedur dan Sistem Perubahan Konstitusi*. Alumni 2006.

protection of their rights as human beings. Therefore, human rights are the most important term in modern constitution. Human Rights, is a set of rights which inherent in the nature and existence of every human being as a creature of God Almighty and is a gift that must be respected, upheld, and protected by the State, Law, Government, and everyone, for the sake of honor and protection of human dignity. This means that human rights are rights which inherent in every human being.

The various protections for human rights are normalized and guaranteed by the 1945 Constitution of the Republic of Indonesia which are referred to as constitutional rights. Constitutional rights created from the conception of individual rights which are derived from thoughts of natural rights, that they are translated into the constitution, they will bind all branches of state power. Therefore, obedience to these rights must be enforceable.

Article 28 G paragraph (1) of the 1945 Constitution of the Republic of Indonesia provides a constitutional guarantee that "*every person has the right to protection of himself, family, honor, dignity and property under his control, as well as the right to a sense of security and protection from the threat of fear to act or not doing something that is a human rights*". One form of personal protection that means by Article 28 G paragraph (1) of the Constitution is protection of personal data. Discuss about the basic human rights contained in the constitution, this means that it signifies a limit that cannot be violated by State Administrators in running the State power.

Personal Data according to The EU General Data Protection Regulation (GDPR) is; Personal Data means any information relating to an identified or identifiable natural person („data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person".[60]

Referring to the Ministerial Regulation of Communication and Information Technology Number 20 Year 2016, personal data is certain individual data that is stored, maintained, and maintained for the authenticity and its confidentiality. Another definition of "personal data" is data in the form of identity, code, symbols, letters or numbers to identify a person which is private and confidential. Based on some terms above, personal data can be interpreted as identity relating to the life of each individual which is closely related to the principle of confidentiality so that it must be protected by statutory regulations.

Related to personal data, in developed countries, another term that is often used is privacy as a right that must be protected, meaning that the rights of a person which related to his personal life that not allowed to be disturbed. This right to privacy is also contained in the Universal Declaration of Human Rights (UDHR) Article 12, which states: "*No one shall be subjected to arbitrary interference with his privacy,*

[60] Art. 4 Paragraph 1 GDPR (General Data Protection Regulation

family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."

The regulation of Article 28 G paragraph (1) is translated through various laws and regulations concerning the protection of personal data. However, the regulations regarding personal data protection in Indonesia are still well known in different regulations so they have weak capabilities because they are scattered in various different laws and regulations and only discuss personal data protection in general term. These various regulations include Law on Information and Electronic Transactions (ITE) Number 11 Year 2008, Law Number 8 Year 1997 concerning Company Documents, Law Number 36 Year 2009 concerning Health, Law Number 36 Year 1999 concerning Telecommunications, and Law Number 24 Year 2013 concerning Amendments to Law Number 23 Year 2006 concerning Population Administration, Law Number 43 Year 2009 concerning Archives, Law Number 10 Year 1998 concerning Amendments to Law Number 7 Year 1992 concerning Banking, Law Number 14 Year 2008 concerning Openness of Public Information. More than that, the concept of personal data protection in general is only set out in the Ministerial Regulation of Communication and Information Technology of the Republic of Indonesia. Whereas, protection of personal data has also been given a special legal corridor in countries such as the United States and European Union countries.[61]

In the Law on Information and Electronic Transactions, Article 26 states that the use of any information through electronic media relating to a person's personal data must be carried out with the consent of the person concerned, even someone who is injured can file a lawsuit for losses incurred under this Law. Norms in this Law are further elaborated through Government Regulation Number 71 Year 2019 concerning Implementation of Electronic Systems and Transactions.

3.1.2 Personal Data and COVID-19 Problems

Covid-19 has become a phenomenon that changed many forms of human life, including the order of life as a state. Since news began to emerge in late December 2019 about a worrying new virus spreading through the Chinese province of Wuhan, health experts have begun stepping up their caution, and on January 30, 2020 the World Health Organization (WHO) officially declared the stage of a *'global health emergency'* after 213 cases died and 9,692 cases from all 31 Chinese provinces were reported.[62]

[61] Rosadi, Sinta Dewi. *Cyber Law: Aspek Data Privasi Menurut Hukum Internasional, Regional, dan Nasional.* Bandung: Refika Aditama. 2015.
[62] AlJazeera , *WHO declares coronavirus global emergency as death tolrises'*. GDPR art 83(5) and 83(6).

Since that phenomenon, all orders of life have begun to change, from the economic, social, cultural, educational, to employment sectors. Conflicts has emerged, such as the problem of workers that being forced to lay off, the tourism sector that not developing as usual, full hospitals, and restricted social activities. Not only that, another issue to concern is protecting personal data during the Covid-19 pandemic.

One of the important discourses in the Covid-19 pandemic is the controversy between patient privacy and the public's interest in preventing the spread of the virus. Efforts to prevent the spread of the Covid-19 virus require disclosure of information, particularly regarding patients who have tested positive for Covid-19. But on the other hand, it is against patient privacy. The pandemic has made the government need personal data on Covid-19 patients, this is because the government needs to be able to control the spread of the virus and facilitate virus detection. If the data is not known, it will be difficult for the government and medical personnel to detect where the patient is infected, the history of the places the patient has visited, and who might be infected. This data includes name, address, age, place of work, and medical history, which includes sensitive data qualifications.

Not only that, we are also faced with various tracking application technologies to control the spread of viruses. This aims to make it easy for the government to identify who needs further treatment. Technological developments are considered to have a positive impact in inhibiting the spread of the Covid-19 virus. Information technology plays a role in the dissemination of positive information or messages so that it is able to reduce the number of victims of the Covid-19 Pandemic.[63]

[63] H Hasyim., Suroso Rizki Pratama., S. Profesional Makassar. "*Peranan Teknologi Informasi Dalam Upaya Pencegahan Virus COVID-19 di Lingkungan Universitas*". Jurnal Ilmiah Pendidikan Teknik Elektro, 4(2) (2020): 124-129 (accessed April 20, 2021)

Applications	Description
PeduliLindungi	pplication relies on public participation to share location data with each other while traveling so that tracing the history of contact with people with Covid-19 can be carried out. This is particularly helpful when the person cannot remember travel history and who they are in contact with. Users of this application will also get notifications if they are in a crowd or in a red zone, which is an area or sub district where there are people who are infected with positive Covid- r there are patients under surveillance. Furthermore, if you remain in the red zone for 30 es, PeduliLindungi will also provide a
	der.
Fight COVID-19	pplication is used to keep travel history of arrivals upon arrival in Bangka Belitung by retrieving location data or GPS on everyone's smartphone. If someone does not comply with self-quarantine for 14 days after arrival, the government can still track their travel history using location data stored in the Fight Covid-19 application.
Corona 100m	South Korean application allows users to view patients infected with the virus, starting from the date, nationality, gender, age, and the place where the patient visited. Users can also see how close they are to Covid-19 patients.

Cocoa Covid-19 (Contact Confirming Application)	Japan application allows smartphone devices that have been downloaded to detect each other via Bluetooth short-range wireless technology and record users who have been in close contact with other users. The app recognizes close contacts (within 1 meter, 15 minutes or more) between smartphones running this app. If you test positive for Covid-19, you can register anonymously in this app. If you have been in close contact with a user who tested positive, the app notifies you of potential infection and provides guidance to protect your health.
COVIDSafe	Australian application has regulations in the form of laws to accommodate and provide legal protection for the existence of the COVIDSafe application that is used by the public. In particular, the provisions regarding the COVIDSafe are contained in the Privacy Amendment (Public Health Contact Information) Act No. 44, 2020.

Table 1.1 COVID-19 Virus Tracking Applications in Various Countries

All efforts to track and obtain data on Covid-19 patients, of course, that must be accompanied by a strong legal protection base to prevent things that can harm those who have this personal data. One of the consequences that have arisen due to the absence of a legal basis for protecting personal data is leakage to the sale of patient data. The form of data leakage on Covid-19 patients was revealed through the dark web site RaidForums. It is said that the owner of the Database Shopping account on the site stated that he owned 230 thousand Covid-19 patient data which contained a number of personal information from Covid-19 patients in Indonesia.[64] Cyber security observers from CISSRec described that the data stolen and sold on the RaidForums hacker forum consisted of many things, such as id history, id data collection, id user, report date, status, respondent name, nationality, gender, age, telephone, address, risk, type of contact, case relationships, risk start date, and risk end date.

Leaking patient data has a very big risk, because the data is built from population data, which are connected to a person's ID number and number of family registers.

[64] Kebocoran Data Pasien Covid-19. https://forensics.uii.ac.id/kebocoran-data-pasien-covid-19/ (accessed April 20, 2021)

Meanwhile ID number and number of family registers are the main instruments in verification and access to various services, both public and private, such as BPJS, banking services, and so on. In more severe cases, the loss of personal data can have an impact on fraud until it is connected to theft of balances in digital wallets.

3.1.3 State of Emergency

We can investigate the Covid-19 pandemic first through Law Number 24 Year 2007 concerning Disaster Management. The law lay out that a disaster is a phenomenon or series of phenomenon that threatens and disrupts people's lives and livelihoods which are caused both by natural factors and / or non-natural factors as well as human factors, resulting in human casualties, environmental damage, property loss, and psychological impacts. Related to the spread of the corona virus itself, it can be classified as a non-natural disaster. Article 1 point 3 of the Disaster Management Law states:

Non-natural disasters are disasters caused by non-natural phenomenon or series of phenomenon, including technological failure, modernization failure, epidemics, and outbreaks disease.

If it is related to the stages of disaster management implementation, which includes pre- disaster, state emergency, and post-disaster,[65] the emergency status of the corona virus disease has been declared through the Decree of the Head of the National Disaster Management Number 13A Year 2020 concerning Extension of Certain Emergency Disaster Status of Corona Virus in Indonesia. This decision replace the Decree of the Head of the National Disaster Management Number 9.A Year 2020 concerning Determination of the Status of Certain Emergency Disaster Conditions for Corona Virus in Indonesia which has expired.[66] That decree initially set the status of a certain emergency situation for disease outbreaks due to the corona virus to be valid for 32 days, starting from January 28, 2020 to February 28, 2020.[67]

In the practice of state or government administration, things that are not normal often occur in state managing, where the legal system that is usually used is unable anymore to accommodate the interests of the state or society so that it requires separate arrangements to mobilize state functions so that it can run effectively to guarantee respect for the state and fulfill the basic rights of citizens. This situation forces the government to act quickly and precisely. This situation is known as the state of

[65] Article 33 The Law of Disaster Management
[66] Part Considering letter a and b Decree of the Head of the National Disaster Management Number 13A Year 2020 concerning Extension of Certain Emergency Disaster Status of Corona Virus in Indonesia
[67] Second Part of Decree of the Head of the National Disaster Management Number 9.A Year 2020 concerning Determination of the Status of Certain Emergency Disaster Conditions for Corona Virus in Indonesia

emergency.

If we see at the provisions of the 1945 Constitution, there are 3 (three) important elements cumulatively that form the definition of a state of emergency which creates a compelling emergency, consist are: first, the element of a dangerous threat; second, the element of a reasonable necessity; and third, the element of the limited time.[68] To accommodate those circumstances, the president is given the authority by the constitution to create a Government Regulation in Lieu of Law to regulate matters needed in the context of protecting the nation.

As is Government Regulation in Lieu of Law Number 1 Year 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (COVID-19) Pandemic and / or in the Context of Facing Threats that Endanger the National Economy and / or Financial System Stability, This means that the government has declared an urgent issue that forces it even though the Government Regulation in Lieu of Law which has now become a law does not include Article 12 of the 1945 Constitution in its preamble. Some of the considerations for the application of the Government Regulation in Lieu of Law is the spread of Corona Virus Disease 2019 (COVID-19) which is declared by the World Health Organization as a pandemic in most countries around the world, including in Indonesia, shows an increase over time and has resulted in greater casualties and material losses, so that it has implications for the social, economic and welfare aspects of the community.

Discuss about the protection of personal data in the context of an emergency, based on Article 57 paragraph (1) of Law Number 36 Year 2009 concerning Health, every person has the right to the secret of his personal health condition that has been disclosed to health service providers. However, in paragraph (2) it is emphasized that these rights do not apply in the case of: statutory orders, court orders, permits concerned, public interest, or the interest of that person. On the other hand, based on Article 26 paragraph (1) of Law Number 11 Year 2008 concerning Electronic Transaction Information (ITE), any information concerning a person's personal data must be made with the consent of the person concerned. This indicates that access to data on Covid-19 patients obtained by the government and medical personnel is constitutional because it relates to the interests of the community. However, this rule has not been said to be ideal because there is no specific mechanism that guarantees how the data is not transferred or misused.

3.2 Ideal Concept and mechanism for data protection based on European GDPR for Indonesia Guidelines toward Future Data Protection Act

3.2.1 General Data Protection regulation (GDPR) in General

GDPR or General Data Protection Regulation is a regulation concerning to the

[68] Asshiddiqie, Jimly. Hukum Tata Negara Darurat. Jakarta: PT. Rajawali Grafindo Persada, 2007.

privacy or protection of personal data of the European Union. This rule obliging companies to request permission from their consumers, and tell them how their data is stored, including to whom their data will be sent. This regulation is quite strict and firm, particularly for platforms like Google and Facebook.[69] The purpose of the GDPR is to impose a uniform data security law on all EU members, so that each member state no longer needs to write its own data protection laws and laws are consistent across the entire EU. In addition to EU members, it is important to note that any company that markets goods or services to EU residents, regardless of its location, is subject to the regulation. As a result, GDPR will have an impact on data protection requirements globally.[70] Personal data that is controlled under the GDPR include:

a. Basic information such as name, identification number and address;
b. Web data such as location, IP address, cookies, and RFID (radio frequency identification);
c. Health and genetic data;
d. Biometric data;
e. Ethnic and racial data;
f. Political opinion; and
g. Sexual orientation[71]

The GDPR is considered by experts to be one of the world‟s strictest privacy regulations. The consensus among European regulators and the European data protection supervisor is that the current crisis does not nullify the GDPR, but that its rules are flexible enough to accommodate the emergency measures while keeping in place adequate safeguards. According to the GDPR, for example, national governments are permitted to act in the public interest, but must limit the data they use.

A few principles advanced in the GDPR are important in this respect. The regulation requires "data minimization" and "purpose limitation." These two guidelines specify that as little personal data as necessary should be used and for a specific, narrow purpose only in this case, to limit the spread of the virus and protect employees‟ health. Transparency is also required, meaning that affected individuals must be informed about the usage of their data in simple, clear language. A further principle is protection data must be sufficiently protected both technically against

[69] Susmoro, Harjo. *The Spearhead Of Sea Power*. Yogyakarta: Pandiva Buku. 2019
[70] "What is the General Data Protection Regulation? Understanding & Complying with GDPR Requirements in 2019 | Digital Guardian," diakses 21 April 2021, https://digitalguardian.com/blog/what-gdpr- general-data-protection-regulation-understanding-and-complying-gdpr-data-protection.
[71] Regulation (EU) 2016/679 Of The European Parliament And Of The Council – General Data Protection Regulation

cyber risk and organizationally against unauthorized sharing.

The four most important actors in the GDPR are „data subjects", „controllers", „processors", and „Data Protection Authorities". Data subjects are people whose personal data are processed.[72] Controllers are those who determine the purposes and the means of processing of personal data, companies for example.[73] Processors are entities that do something with personal data on behalf of controllers;[74] in such case, there is a clear hierarchy. For example, if company Y gathers and analyzes survey data on the customers of company X, as instructed by company X, company X is the controller and company Y the data processor. If two organizations work together in determining why and how personal data will be processed, they will be seen as joint controllers and will share the regulatory burden and liability for errors and mistakes.

In the U.S. system, much is left to data subjects. They are supposed to read and critically evaluate privacy notices, and make choices in the marketplace based on this carefulstudy.[75] Europeans reject that approach and place the clear burden of responsibility on controllers. Data processors, such as a data center or cloud provider, have to comply with a considerable proportion of the GDPR. If data processors violate the GDPR, in principle, the data controller will be considered responsible and liable. The GDPR attempts to head off predictable principal-agent problems with processors. It requires that controllers ensure that processors are competent and responsible. To establish a chain of accountability, processors cannot subcontract without consent of the controller. The GDPR also specifies that if the subcontracted processor fails to fulfill its data protection obligations, the initial processor shall remain fully liable to the controller for the performance of that other processor"s obligations.[76]

3.2.2 Regulation of GDPR in the State of Emergency

Many countries in the EEA (European Economic Area) provide for the possibility that in emergency situations, the government can enact laws to cope with a crisis such as a pandemic.[77] Under certain circumstances, Article 23 GDPR allows for national derogations to data subject rights where necessary and proportionate in a democratic society to safeguard important objectives of general public interest of the EU or Member States, including public health[78] In the time of pandemic, the need for process personal data during a pandemic is one of the tools to overcome the pandemic.

The European Data Protection Board (EDPB) has been informed of the adoption

[72] GDPR art 4(1).
[73] GDPR art 4(7).
[74] GDPR art 4(8).
[75] D Solove, „Privacy Self-Management and the Consent Dilemma" (2013) 126 Harvard Law Review1979
[76] See also GDPR art 29
[77] "senato.it - La Costituzione," diakses 20 April 2021, http://www.senato.it/1024.
[78] GDPR art 23

by the Hungarian government of the Decree 179/2020 of 4 May 2020 on the derogations from certain data protection and access to information provisions during the state of danger. Under Article 1, this Decree provides that, with respect to personal data processing for the purpose of preventing, understanding, detecting the coronavirus disease and impeding its further spread, including the organization of the coordinated operation of State organs in relation to it, all measures following data subject"s request exercising the rights based on Articles 15 to 22 of the GDPR are suspended until the end of the state of danger promulgated by Decree 40/2020[79] , and the starting date of such measures shall be the day following the day after the termination of the state of danger. Article 5 of the Decree 179/2020 provides that such suspension is also applicable to all requests to exercise the referred data subject rights, which were already pending at the date of entry into force of the Decree. The data subject has to be notified about this restriction without delay after the end of the state of danger and at the latest within ninety days after the request is received.

As previously stated by the EDPB, data protection does not impede the fight against the COVID-19 pandemic. The GDPR remains applicable and allows for an efficient response to the pandemic, while at the same time protecting fundamental rights and freedoms. Data protection law, including relevant applicable national law, already enables data processing operations necessary to contribute to the fight against the spread of a pandemic, such as the COVID-19 pandemic. As we can see that, even in the times of emergency, the protection personal data must be upheld in all emergency measures, including restrictions adopted at national level, as per Article 23 of the GDPR thus contributing to the respect of the overarching values of democracy, rule of law and fundamental rights on which the Union is founded: on the one hand, any measure taken by Member States must respect the general principles of law, the essence of the fundamental rights and freedoms, and must not be irreversible and, on the other hand, data controllers and processors must continue to comply with data protection rules.

3.2.3 The GDPR'S Extraterritoriality

Personal data present several regulatory puzzles. For example, if companies can simply move information out of Europe to „data havens" where no rules apply, the European privacy enterprise will fail. Thus, like the Directive did, the GDPR imposes controls on personal data outside the EU. Another problem is that a small company with little revenue and few employees can still possess sensitive data on almost everyone in the world. Thus, the GDPR eschews traditional employee and revenue size thresholds for limiting coverage of the law.

[79] his information is based on the information received from the Hungarian Supervisory Authority, from NGOs and from publicly available sources. The Decree 40/2020 does not provide for any time limit to the state of danger.

Obviously, a company that has offices or personnel in Europe will be subject to the GDPR.[80] For instance, the CJEU held that Google Spain is an establishment of Google Inc., and that some of the advertising activities aimed at the Spanish public were „carried out in the context of the activities" of the Spanish establishment, so Google Inc. had to comply with EU law.[81]

But even if a company has no physical presence in Europe, the GDPR can apply.[82] For instance, offering goods or services, even free ones,[83] to Europeans can trigger the GDPR if it is „apparent that the controller or processor envisages offering services to data subjects in one or more Member States in the Union."[84] Simply making a website available is not enough, but using local language or currency may make it apparent that one is offering services to Europeans.[85] The basic philosophy of the GDPR is that when non-EU based organizations consciously process personal data of people in the EU, the GDPR will apply. (The nationality of the data subject is not relevant for the scope of the GDPR; the relevant criterion is whether people are in the EU.)

These kinds of well-construct regulation can be guidelines for Indonesia in the future data protection act. For example, if an Indonesian company or any other national company places tracking cookie on the computers of people in the EU, the GDPR will apply. As we will see, the GDPR also burdens such tracking by classifying it as „high risk." The cumulative burdens placed on third parties could be a blessing for first parties, particularly news organizations and publishers that have grown dependent on third party tracking. The GDPR treats first-party data uses more leniently, even recognizing many of such uses as „legitimate," whereas if these same functions are performed by third parties, many substantive and procedural requirements are imposed.[86]

3.2.4 The GDPR'S Enforcement for Violation of Non-Compliance

The GDPR invests heavily in compliance and enforcement. We discuss three key enforcement issues here: first, who can sue, and the amount of sanction imposed, is dramatically expanded under the GDPR. The GDPR enables class-action-like activities in Europe, and fines that approach those established in competition law. Second, the tasks and powers of Data Protection Authorities have expanded considerably. For businesses, this is a silver lining – the tasks burden authorities with functions and necessarily will reduce enforcement efforts. Third, the European

[80] GDPR art 3(1).
[81] Case C-131/12 Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD), Mario Costeja González [2014] ECLI:EU:C:2014:317.];
[82] GDPR rec 2
[83] GDPR art 3(2)(a); See also GDPR recs 22–24.
[84] GDPR rec 23.
[85] *ibid*.
[86] GDPR art 6(1)(f).

Commission and an advisory board have been granted powers for standard setting. We discuss each point below.

The Directive was plagued by ineffective sanctions. The Directive left fines and other remedies to individual member states. Some countries implemented the Directive with maximum fines of a couple of thousand euros – so low to be completely inconsequential to many businesses. For instance, the CNIL levied its maximum fine against Facebook in 2017 for tracking users for advertising purposes. The fine was 150,000 euro[87].

The GDPR brings about a change on three points: sanctions, remedies and liability. The changes with respect to sanctions are the most spectacular. With regard to the right to compensation and liability, the GDPR has little new. As for sanctions, there are two levels of fines, based on seriousness of the violation. Less serious violations can trigger administrative fines up to ten million euro or, in the case of an undertaking, up to 2% of the total worldwide annual „turnover" (net – not profit) of the preceding financial year, whichever is higher. The 2% sanction is triggered when the data controller violates the rules on, inter alia, consent given by children, data protection by design and by default, the keeping of documents and records on the data processing activities, notifying a data breach, and data protection impact assessments.[88]

More serious violations can trigger administrative fines of up to 20 million euro or, in the case of an undertaking, up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher. The 4% sanction is triggered, inter alia, in case of a violation of the data minimization principle, the purpose limitation principle, the accuracy principle, the integrity and confidentiality principle, the rights of data subjects (such as the right to be informed and the right to correct or erase data), the transparency obligations, and the rules on trans-border data flows.[89]

To place this in perspective, Facebook"s 2017 fine of €150,000 could rise to between €800 million to €1,6 billion under the GDPR. At least in theory. As for Indonesian regulation, electronic transaction and information act (UU ITE) did provide sanction to those who violated it. But this is only can be applied for third parties who misconduct the private data information. The sanction can be given to maximum to 12 years in prison or maximum fines for 12 billion rupiah (€690.0000). As for the private data stealer only give administrative sanction which obviously didn"t bring any sense of remorse. And to be recall also that the fines is not absolutely high comparing the violation that have already been made.

[87] 8CNIL, „Facebook sanctioned for several breaches of the French Data Protection Act," May 16, 2017 <https://www.cnil.fr/en/facebook-sanctioned-several-breaches-french-data-protection-act>
[88] GDPR art 83(4).
[89] GDPR art 83(5) and 83(6).

IV. CONCLUSION AND SUGGESTION

4.1 CONCLUSION

From explanation above, we know that the regulation of Article 28 G paragraph (1) is translated through various laws and regulations concerning the protection of personal data. However, the regulations regarding personal data protection in Indonesia are still well known in different regulations so they have weak capabilities because they are scattered in various different laws and regulations and only discuss personal data protection in general term. These various regulations include Law on Information and Electronic Transactions (ITE) Number 11 Year 2008, Law Number 8 Year 1997 concerning Company Documents, Law Number 36 Year 2009 concerning Health, Law Number 36 Year 1999 concerning Telecommunications, and Law Number 24 Year 2013 concerning Amendments to Law Number 23 Year 2006 concerning Population Administration, Law Number 43 Year 2009 concerning Archives, Law Number 10 Year 1998 concerning Amendments to Law Number 7 Year 1992 concerning Banking, Law Number 14 Year 2008 concerning Openness of Public Information. More than that, the concept of personal data protection in general is only set out in the Ministerial Regulation of Communication and Information Technology of the Republic of Indonesia. Whereas, protection of personal data has also been given a special legal corridor in countries such as the United States and European Union countries.

GDPR also provides some potential concept to adopt such as The GDPR"S Extraterritoriality Concept. The GDPR imposes controls on personal data outside the EU. A company that has offices or personnel in Europe will be subject to the GDPR. But even if a company has no physical presence in Europe, the GDPR can apply. These kinds of well- construct regulation can be guidelines for Indonesia in the future data protection act. For example, if an Indonesian company or any other national company places tracking cookie on the computers of people in the EU, the GDPR will apply. The other potential concept is the GDPR"S Enforcement for Violation of Non-Compliance. The GDPR brings about a change on three points: sanctions, remedies and liability. As for sanctions, there are two levels of fines, based on seriousness of the violation.

4.2 SUGGESTION

This research encourages the adoption of the European Union"s GDPR (General Data Protection Regulation) concept through passing of the Personal Data Protection Bill in to the Indonesian codification of law. Considering that GDPR is considered by experts to be one of the world"s strictest privacy regulations. We hope that by adapting some regulation in GDPR. Indonesia can have some well-construct regulation in the aspect of data protection into their way of life and give certainty of law regarding protection for private data.

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THE PROTECTION OF MIGRANT DOMESTIC WORKERS DURING CORONA VIRUS: ASEAN FRAMEWORK

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Abstract: The impact of the development of the coronavirus with the COVID-19 disease as a global pandemic has expanded, not only covering health issues but also having several implications for labour issues, especially for migrant workers in the domestic sector. In the COVID-19 pandemic situation, the working conditions of migrant workers in the domestic sector are increasingly vulnerable to job loss, violation of human rights, exposure to COVID-19 and lack of access to health care. ASEAN member countries are countries of destination and countries that are sending workers in the domestic sector from and to all over the world. The sending workers countries in the domestic sector are the Philippines and Indonesia. ASEAN as an international organization of Southeast Asian countries must endeavour protection for migrant workers in the domestic sector during the COVID-19 pandemic situation. This paper aims to analyze the protection of migrant workers in the domestic sector in the COVID-19 pandemic situation in terms of ASEAN regulations. This research applies a juridical-normative approach focusing on the legal materials related to the protection of domestic workers especially in covid 19 era, besides this research applies the statute approach. The results are ASEAN has made the agreements in protecting migrant workers in the domestic sector and ASEAN member countries must apply the agreements on Labor and Employment in national regulation especially for sending and receiving countries of migrant dometic workers.
Keyword : Protection; Migrant; Domestic Workers.

I. INTRODUCTION

Domestic work is an essential source of livelihood for women and men in Southeast Asia, especially for women who come from villages with low levels of education and marketable skills.[90] Migration is considered as a way out of poverty, because working abroad for a certain period is expected to generate a certain amount of money to buy a house, starting a business, sending children to school or fulfilling their daily needs. Besides, the lack of employment opportunities in villages and the difficulty of finding work in big cities in the country of origin is driving factors why employment as a migrant worker is so attractive and promising.

[90]"Tinjauan Permasalahan terkait PRT di Asia Tenggara", 2006 <http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilojakarta/documents/publication/wcms_122271.pdf> [08/02/2014].

The International Labor Organization (ILO) Article 1 Domestic Worker Convention (No. 189) 2011 defined Domestic workers as everyone who is engaged in domestic work in an employment relationship. In general, workers in the domestic sector are considered as a continuation of the nature of women and work without wages, so that they are not considered an economic activity.[91] Therefore, workers in the domestic sector become jobs that have considerable risk, including low wages, long working hours, heavy workloads, not given rest days per week and are very vulnerable to psychological, physical, or sexual abuse. [92] Work in the domestic sector becomes more at risk when the world faces the Covid 19 pandemic situation, especially since the World Health Organization (WHO) declared the Corona Covid-19 virus outbreak a Pandemic. The impact of the development of the coronavirus with the COVID-19 disease as a global pandemic has expanded, not only covering health issues but also having severe implications for labour issues, especially for migrant workers in the domestic sector.

In the COVID-19 pandemic situation, the working conditions of migrant workers in the domestic sector are increasingly vulnerable to job loss, violation of human rights, exposure to COVID-19 and lack of access to health care.[93]

ASEAN member countries are countries of destination and countries that are sending workers in the domestic sector from and to all over the world. The sending workers countries in the domestic sector are the Philippines and Indonesia.

According to data from the Philippine government, in 2019, as many as 2.2 million Filipinos went abroad to become migrant workers.[94] The COVID 19 pandemic has a very significant impact on the lives of migrant workers from the Philippines.[95] On 3 June 2020, more than 50,000 migrant workers have been repatriated, after losing their jobs due to the COVID 19 pandemic. By the end of 2020, the Philippine government estimates that more than 500,000 migrant workers will return to the Philippines. [96]

Apart from the Philippines, Indonesia is also a sending country for migrant workers, according to data from the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI), in 2019, the placement of

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[91] *Ibid*.
[92]Glenda Labadie Jackson, "Reflections on Domestic Work and The Feminization of Migration", *Campbell Law Review* (2008).
[93] UN Women, Guidance Note: Addressing the Impacts of the Covid-19 Pandemic on Women Migrant Workers, diakses pada 15 Mei 2020, https://www.unwomen.org//media/headquarters/attachments/sections/library/publications/2020/guidance-noteimpacts-of-the-covid-19-pandemic-on-women-migrant-workers-en.pdf?la=en&vs=227.
[94] Pekerja migran Filipina berjuang di tengah pembatasan COVID-19, https://www.aseantoday.com/2020/06/filipino-migrant-workers-struggle-amid-covid-19-restrictions/?lang=id diakses 11 November 2020.
[95] Ibid
[96] Ibid

migrant workers totalled 276,553 people.[97] The ASEAN countries that are the destination of most migrant workers in the domestic sector from Indonesia are Malaysia, totalling 79,663 people, Singapore 19,354 people, and Brunei Darussalam 5,639 people.[98] In general, during the Covid-19 pandemic or from January to August 2020, 176 thousand Indonesian Migrant Workers (PMI) have returned to their homeland.[99] Many migrant workers from Indonesia claim to have experienced work rights violations during the COVID-19 pandemic, ranging from layoffs, unpaid salaries, fear of reporting their health conditions for fear of being arrested by security forces for working illegally, extra work without being given incentives, to starvation.[100]

Regarding this condition, ASEAN as an international organization of Southeast Asian countries must endeavour protection for migrant workers in the domestic sector during the COVID-19 pandemic situation. On May 2020, ASEAN issued a regulation which was the result of an agreement by ASEAN countries regarding legal protection for workers during the Covid 19 period, entitled Joint Statement of ASEAN Labor Ministers on Response to the impact of Corona Virus Diseases 2019 (Covid-10) on labour and employment. This paper aims to analyze the protection of migrant workers in the domestic sector in the COVID-19 pandemic situation in terms of ASEAN regulations.

II. LEGAL MATERIALS AND METHODS

The method used in this research is the normative juridical method, which is to study the legal principles and international conventions related to legal protection for domestic workers. This research focuses on a statute approach, which is an approach that uses international legal rules to determine regulations on the protection of workers in the domestic sector. This research is a descriptive-analytical study that describes and analyzes problems related to the legal protection of workers in the domestic sector in a situation of the COVID-19 pandemic.

Data collection techniques used in this study is a literature study. Primary legal data in this study consists of international conventions, international legal practices, principles of international law, particularly those governing the protection of migrant workers and domestic workers. Secondary legal materials are in the form of all legal

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[97] Data Penempatan dan Perlindungan Pekerja Migran Indonesia tahun 2019, https://bp2mi.go.id/uploads/statistik/images/data_19-02-2020_Laporan_Pengolahan_Data_BNP2TKI____2019(2).pdf, diakses 11 November 2020.
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[99] 176 Ribu Pekerja Migran Indonesia dipulangkan selama pandemic Covid-19, https://www.liputan6.com/bisnis/read/4348439/176-ribu-pekerja-migran-indonesia-dipulangkan-selama-pandemi-covid-19. Diakses tanggal 11 November 2020.
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publications that are not official documents. Secondary legal materials used in this study include textbooks, legal dictionaries and legal journals, especially those related to the problems examined in this study, namely the protection of workers in the domestic sector. Tertiary legal materials are materials that provide information about primary legal materials and secondary legal materials, including dictionaries, interviews, articles from magazines or newspapers and the internet. All collected data were analyzed normatively qualitative. Qualitative normative means that research is based on legal principles and legal norms. The research was carried out by studying documents, kinds of literature, scientific writings as well as related laws and international conventions, then analyzed, in order to get a clear picture related to the identification of the problem under study.

III. RESULTS AND DISCUSSION

There are several principles to provide legal protection to workers. Iman Soepomo categorized these protection principles into three groups, financial protection, in the form of efforts to provide sufficient income for workers to meet the daily needs of workers and their families.[101] The second protection is social protection, which is community-based efforts for workers to enjoy and develop their lives as human beings in general and as members of the family and society.[102] The third protection is technical protection which ensures that workers avoid the danger of accidents that can be caused by tools, tools, machines or other work tools, or materials that are processed and worked on by workers in the workplace.[103]

The three categories of worker protection principles mentioned above are in line with workers' rights included in the Covenant on Economic, Social and Cultural Rights (The International Covenant on Economics, Social and Cultural Rights; 1966 / ICESCR). Article 7 of the ICESCR defines the right to fair and good working conditions, as stated below:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

a) *Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
b) *Safe and healthy working conditions;*

[101] Iman Soepomo, *Hukum Perburuhan Bidang Kesehatan Kerja (Perlindungan Buruh)*, Jakarta : Pradnya Paramita, 1974, hlm. 8.
[102] *Ibid.*
[103] *Ibid.*

c) *Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
d) *Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

Article 7 of the ICESCR stipulates the right to a respectful working environment in the form of a fair wage and can provide for workers and their families properly under the provisions of the covenant, safe and healthy working conditions, equal opportunities for promotion, rest, rational working hours and paid periodic holidays, as well as salaries for public holidays. The rights of workers, as outlined in Article 7 of the ICESCR, fall into the categories of financial protection and technical protection.

Article 8 (1) of the ICESCR establishes the right to form and become a member of a trade union, as stated below:

The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests.

Article 8 (1) of the ICESCR affirms that states parties to this covenant must promise to guarantee the right of everyone to form trade unions and join trade unions of their own choice, based on the rules of the organization concerned, in order to promote and protect their economic and social interests. Meanwhile, Article 9 of the ICESCR explains that states parties to this covenant must recognize the right of everyone to social security, including social insurance. The workers' rights outlined in Articles 8 (1) and 9 of the ICESCR fall under the category of social protection.

In creating regulations and policies that are acceptable to the international community, it is necessary to have a standard of protection for workers in the domestic sector. On June 16, 2011, the General Conference of the International Labor Organization (ILO) in Geneva, Switzerland successfully approved an international convention, namely the Domestic Worker Convention (No. 189) 2011 which regulates legal protection and world recognition of the existence of workers in the domestic sector as workers. This Convention applies to all workers in the domestic sector. This Convention requires States which ratify it to respect and adequately realize the basic principles and rights at work, including : (a) freedom of association and the significant recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) effective elimination of child labour, and (d) eliminating discrimination in terms of employment and occupation and ensuring every

domestic worker and employer enjoys the freedom of association and the significant recognition of the right to collective bargaining. [104]

One of the efforts that can perform to protect workers in the domestic sector is by ratifying and applying the Domestic Sector Workers Convention by ASEAN countries. From the several ASEAN member countries, only the Philippines has ratified the Domestic Sector Workers Convention. Thus, in the context of ASEAN, it is not sufficient for the workers' domestic convention to be ratified by each ASEAN country, but there must also be other protection frameworks made by ASEAN.

In general, efforts to regulate the promotion and protection of workers in the domestic sector offered by ASEAN in the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. Even so, this arrangement was deemed insufficient, until on November 14, 2017, in Manila Philippines, ASEAN countries agreed on an agreement related to the protection and promotion of migrant workers' rights, entitled Asean Consensus on the Protection and Promotion of the Rights of Migrant Workers, in this discussion, will be referred to as the 2017 Asean Consensus on migrant workers.

In part three of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers which regulates the fundamental rights of migrant workers and the members of their families, explain that their family members can visit migrant Workers, the purpose and length of time of the visit, as determined by the laws, regulations and national policies of the Host State. Migrant workers have the right to hold their passports and original documents issued by the government regarding employment documents under the laws, regulations and policies of the Host Country. Migrant workers are subject to the national laws, regulations and policies of the Receiving State. Migrant workers have rights no less favourable than those imposed on nationals of the Receiving State when they are imprisoned or placed in detention pending trial or while detained for any reason. Migrant workers have the right to lodge their complaints with the relevant authorities of the receiving country and/or seek assistance from their respective embassies, consulates or missions located in the receiving country. Migrant workers have the right to freedom of movement in the Host Country, subject to the laws, regulations and policies of the Host Country.

In the fourth part of ASEAN Consensus 2017, the specific rights of migrant workers are:

1. Migrant workers have the right to access information about matters relating to employment and employment conditions from the authorities, relevant bodies including recruitment agencies, in sending and receiving countries;
2. Migrant workers have the right to share/receive employment contracts or appropriate documentation from relevant authorities/agencies and/or

[104] Pasal 3 (2) Konvensi Pekerja di Sektor Domestik no 89 tahun 2011

employers with clear terms of employment and subject to national laws, regulations and policies;

3. Migrant workers are required to comply with national laws, regulations and policies of the host country, and migrant workers are entitled to fair treatment in the workplace;
4. Migrant workers have the right to adequate or adequate accommodation which is subject to the national laws and regulations of the host country
5. Migrant workers, regardless of gender, are entitled to fair and appropriate and beneficial remuneration under the laws, regulations and policies of the host country;
6. If migrant workers leave the Host Country, they may not lose their right to benefits arising from their employment under national laws, regulations and policies of the Host Country;
7. Migrant workers have the right to transfer their income and savings in any form under the laws and regulations on currency transmission in sending and receiving countries;
8. Migrant workers have the right to file complaints or make a representation under the laws relating to labour disputes in the Receiving Country against termination of employment and/or breaches of employment contracts in the Receiving Country and, subject to national laws, regulations and policies relating to immigration is allowed to continue to live in the recipient country until the completion of legal proceedings against the case. In this regard, if the decision on appeal is favourable for the migrant worker, the migrant worker has the right to receive assistance for not fulfilling their rights as described in the work contract. Ninth, Migrant workers have the right to join trade unions and associations that are subject to national laws, regulations and policies of the host country.

Based on a description of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, it further strengthens that migrant workers, especially in the domestic sector, really need superior protection. In regular times and the absence of disease outbreaks, types of work in the domestic sector already require exceptional and extra protection, because migrant workers in the domestic sector, who are mostly women, are at risk of experiencing multiple intersections of discrimination and violence based on race, ethnicity, nationality, age, migration status or other sex or gender-related characteristics.[105] Especially when the world faces COVID-19 pandemic, the emergency creates an increased risk of violence

[105] Risalah Kebijakan ILO, perlindungan Pekerja Migrant selama pandemic covid 19, *https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_745598.pd*f, diakses pada tanggal 10 November 2020.

and harassment against female migrant workers by employers, partners, law enforcement officers or frontline service providers. [106]

Coronavirus (COVID-19) itself is an infectious disease caused by a new version of the coronavirus that found at the end of 2019.[107] Most of the disorders experienced by individuals infected with the COVID-19 virus will experience mild to moderate respiratory disease and recover without requiring special treatment.[108] The transmission percentage is more likely in elderly individuals and those with a history of medical problems such as cardiovascular disease, diabetes, chronic respiratory disease, and cancer;[109] more likely to develop COVID-19 virus infection into more severe disease. Currently, respiratory droplet transmission and contact are the main routes.

To prevent the transmission of Covid 19 by controlling the source of infection, including by improving hygiene, increasing personal immunity and social restrictions. Social distancing measures, primarily when implemented through movement restrictions and quarantine procedures, can increase the risk of violence against female migrant workers. Women migrant workers may find themselves trapped with the people who abuse them.[110] In the COVID-19 pandemic situation, movement restrictions and quarantine procedures restrict female migrant workers from seeking assistance and accessing social networks and support services. An increase in violence and harassment, the changing nature of human rights violations, occurs at a time when services for responding to violence, migrant support and legal aid are hard to access. [111]

The COVID-19 pandemic situation has at least three essential impacts on migrant workers in the domestic sector, first, safety from violence and impacts on welfare.[112] This first impact is closely related to gender-based violence, which is a global human rights issue that endangers lives.[113] During COVID-19, stress,

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[106] ibid
[107] World Health Organization, "Coronavirus," last modified 2020, accessed April 3, 2020, https://www.who.int/health-topics/coronavirus#tab=tab_1.
[108] "Covid-19 Coronaviruses Pandemic," accessed April 3, 2020, https://www.worldometers.info/coronavirus/; Wang Zhou, ed., Coronavirus Prevention Handbook (Wuhan: Hubei Science and Technology Press, 2020).
[109] 6 Kemkes, "Tentang Novel Coronavirus (NCOV)," last modified 2020, accessed April 3, 2020, https://www.kemkes.go.id/resources/download/info-terkini/COVID-19/TENTANG NOVEL CORONAVIRUS.pdf; "Covid-19 Coronaviruses Pandemic"; Zhou, Coronavirus Prevention Handbook; Scripps Research Institute, "COVID-19 Coronavirus Epidemic Has a Natural Origin," Science Daily, last modified 2020, accessed April 3, 2020, https://www.sciencedaily.com/releases/2020/03/200317175442.htm.
[110] Opcit, Risalah ILO
[111] ibid
[112]Covid-19 dan Pekerja Migran Perempuan di ASEAN, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_748173.pdf, diakses pada tanggal 11 november 2020.
[113] ibid

disruption of social networks and protection and reduced access to services can further exacerbate the risk of violence for women, including female migrant workers.[114] ASEAN female migrant workers may experience an increased risk of violence, harassment and exploitation in the workplace.[115] Quarantine increases isolation and makes it increasingly difficult for migrant domestic workers to leave situations of violence. Some employers do not allow domestic workers to access their cell phones during working hours, making it difficult to access trade unions, CSOs and other service providers if they need help. Besides, female former migrant workers are vulnerable to violence and harassment on their way home and while in compulsory COVID-19 quarantine facilities.[116]

The second impact that occurred in the Covid 19 pandemic on migrant workers in the domestic sector was the impact on employment and social protection. It can explain that the COVID-19 pandemic has caused massive economic disruption, with a particular impact on women, migrants, informal workers, young workers and elderly workers. Workers throughout the ASEAN region experience a reduction or complete loss of income, as well as loss of benefits and social protection related to work, and this risk is often higher for female migrant workers. Domestic workers reported being overloaded, given extra work, not getting paid overtime, and not getting several days of paid leave during the quarantine. Besides, nursing the sick at home carries its health risks.[117]

The third impact that occurred in the Covid 19 pandemic on migrant workers in the domestic sector was the impact on health and provision of care. Female migrant workers in low-wage employment in ASEAN are at increased health risk during the pandemic as they often live and work in conditions without the means, space, information or personal protective equipment to follow public health measures and maintain social distancing. Female migrant workers can have difficulty accessing accurate information about COVID-19 in their language.[118]

In order to respond to the situation that occurred as a result of the COVID-19 pandemic and a concrete step for the commitment of the heads of ASEAN countries, ASEAN held a video conference meeting of labour ministers throughout ASEAN led by the Malaysian Minister of Human Resources, Datuk Seri M. Saravanan, as Chair of the 2018- period ALMM. 2020. The meeting was also attended by the Secretary-General of ASEAN, Dato Lim Jock Hoi; ILO Director-General, Guy Ryder; and Menaker from Malaysia, Brunei Darussalam, Cambodia, Laos, Myanmar, the Philippines, Singapore, Thailand and Vietnam. The meeting resulted in a Joint

[114]ibid
[115] ibid
[116] ibid
[117] ibid
[118] Ibid

Statement of ASEAN Labor Ministers on response to the impact of coronavirus dieases 2019 (COVID-19) on Labor and Employment.

This joint statement of ASEAN labour ministers consists of 9 points of agreement that govern the following:

1. Provide support for the work and health of all workers, especially those working in high-risk fields, as well as protect labour rights amid the impact of Covid 19 on the economies and industries of ASEAN member countries;
2. Strive to provide appropriate compensation for workers, when they are laid off or furloughed the employer due to the Covid 19 pandemic. These workers are entitled to receive social assistance or unemployment benefits from the government, under applicable laws and policies in their respective countries. ASEAN member countries;
3. Facilitate access of all workers infected with Covid 19 to health care services and other health support services and prevent discrimination against infected workers;
4. Provide appropriate assistance and support for migrant workers in ASEAN who are affected by the pandemic in their respective countries or third countries, including making the effective implementation of the ASEAN Consensus on the protection and promotion of the rights of migrant workers;
5. Further strengthen the effectiveness of active labour market policies at the national and regional levels, occupational safety and health standards, productive social protection systems and harmonious social dialogue to maintain employment, reduce the vulnerability of workers at risk and increase their resilience;
6. Utilizing digital technology as a medium of communication and consultation amidst temporary movement restrictions in many countries to better reach regional and national cooperation on the impact of the pandemic;
7. Increase the effectiveness and transparency of communication through official media in order to fight misinformation circulating regarding the pandemic;
8. Increasing cooperation with tripartite partners, namely between civil society, international organizations, ASEAN dialogue partners and other stakeholders;
9. Continue to share best practices among ASEAN Member States on measures to address risks to workers and employers, and promote their resilience.

The points of the agreement contained in the Joint Statement of ASEAN labour ministers are very relevant and if implemented in ASEAN countries, especially in sending and receiving countries of migrant workers in the domestic sector, are considered to be able to minimize the widespread impact caused by the Covid-19 pandemic. In addition to responding to the conditions that occurred in the labour sector during the COVID-19 pandemic, the Joint Statement of ASEAN labour ministers also mandated strengthening the implementation of the Asean Consensus on the Protection and Promotion of the Rights of Migrant Workers 2017 by ASEAN countries.

To implement the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers 2017 and the Joint Statement of ASEAN labour ministers 2020, Indonesia as a sending country for migrant workers to ASEAN countries in particular and other countries, in general, has issued a Minister of Manpower Decree. The Republic of Indonesia Number 294 of 2020 concerning the implementation of the placement of Indonesian migrant workers during the adaptation period of the new normal. The presence of Kepmenaker No 294 of 2000 also led to the Decree of the Minister of Manpower Number 151 of 2020 concerning Temporary Termination of Placement of Workers Indonesian migrants, no longer implemented.

In general, the guidelines for implementing the placement of Indonesian migrant workers during the adaptation period for new normal which are an integral part of the Minister of Manpower Decree No. 294 of 2000 have the following objectives; (1) ensuring that the implementation of placement and protection of Indonesian migrant workers can run effectively under health protocols; (2) preventing and controlling the spread and protecting Indonesian migrant workers from the risk factors of COVID 19 in the service process for the placement and protection of migrant workers; (3) provide the broadest possible information to Indonesian migrant workers, ministries/institutions, and stakeholders regarding the implementation, mechanisms and administrative procedures for the placement of Indonesian migrant workers during the new transparent, measurable and accountable period; (4) strengthening coordination between ministries/institutions and service providers, both government and private, in the implementation and monitoring of the placement of Indonesian migrant workers according to these guidelines.

The guidelines in the Minister of Manpower Decree No. 294 of 2000 regulate the placement and protection of migrant workers, which are applied to migrant workers from Indonesia who are just leaving, this guideline can also be applied to protect migrant workers from Indonesia who are already and working in Country of placement. Although the existence of the Minister of Manpower Decree No. 294 of 2000 has drawn criticism from many parties who think that sending migrant workers

abroad is not the right choice, when the sending of migrant workers is officially stopped, illegal sending will be unstoppable.

More technically, Kepmenaker No. 294 of 2000 regulates every placement process starting from the stage before work, during work and after work. In every step of the placement process for migrant workers striving migrant workers to comply with applicable health protocols, both in the sending and receiving countries. Kepmenaker No. 294 of 2000 also attempting to strengthen the presence of coordination between various ministries/institutions and service providers, both government and private, in the implementing and monitoring of the placement of Indonesian migrant workers. Kepmenaker No. 294 of 2000 support the use of information technology. For example, online registration services for prospective Indonesian migrant workers who have just arrived in the receiving country must report their arrival to representatives of the Republic of Indonesia through the SafeTravel application and/or the portal caring for Indonesian citizens, the hotline for complaints and filling out a Health Alert Card (e-HAC) which can be accessed through *https://sinkarkes.kemkes.go.id/ehac*.

In order to facilitate the access of all migrant workers infected with Covid 19 to health care services and other health support services during their working period, the Minister of Manpower Decree No. 294 of 2000 strives for a complaint hotline and intensive monitoring of the health conditions of Indonesian migrant workers infected with COVID-19.

The provisions in the Minister of Manpower Decree No. 294 of 2000 are primarily in sync with what has been regulated in the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers 2017 and the Joint Statement of ASEAN labour ministers 2020. The provisions that have not been found are related to efforts to provide appropriate compensation for workers when laid off or temporarily suspended by the employer due to the Covid 19 pandemic. Joint statement of ASEAN labour ministers 2020 mandates the provision of social assistance or unemployment benefits from the government, be it the sending country or the receiving country of migrant workers. The implementation of the Minister of Manpower Decree No. 294 of 2000 is highly expected in the protection of migrant workers in the domestic sector, especially in the presence of close coordination between ministries/institutions and service providers, both government and private, in the implementation and monitoring of the placement of Indonesian migrant workers.

From the description above, it found that in protecting migrant workers in the domestic sector during the Covid 19 pandemic, ASEAN has attempted to present a Joint statement of ASEAN labour ministers 2020 which puts forward nine essential points that must be implemented by ASEAN countries, including therein strengthening the provisions of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers 2017.

IV. CONCLUSION AND SUGEESTION

To protect migrant workers in the domestic sector during the Covid-19 pandemic situation, ASEAN through the minister of manpower of its member countries agreed on the Joint statement of ASEAN labour ministers 2020 which put forward nine essential points that must be implemented by ASEAN countries, including strengthening of the provisions of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers 2017. ASEAN countries, especially countries sending migrant workers in the domestic sector, are very concerned about the existence of ASEAN rules regarding the protection of migrant workers in the domestic sector, including Indonesia. Therefore, in order to protect migrant workers in the domestic sector during the Covid pandemic, the implementation of detailed and technical rules in each ASEAN country must refer to Joint statement of ASEAN labour ministers 2020 and ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Worker

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PEOPLE'S PERSPECTIVE ON TERMINATION OF EMPLOYMENT BY COMPANIES DURING THE COVID-19 PANDEMIC

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Abstract

The Covid-19 pandemic has had a significant impact to Indonesians live, in terms of economi and social factor and other factor. In particular, this pandemic has caused Indonesia's economic situation to decline. Many of companies have stopped or decrease their productivity after being effected by the Covid-19. As the result, many companies have to terminate the relation with their employees. This study aims to determine the problems that occur, wheter it is appropriate for company to cut off work relations with the community on the grounds that the company's productivity has decreased due to the impact of Covid-19 and companies tend not to be able to meet their obligations to pay employee wages or salaries. This study used a qualitative research method, which wanted to show that the community views this incident in two ways, the first is that the community feels aggrieved by the layoffs made by the company because it can eliminate the income earned and the second is that the community also understands the difficulty of moving the company during the pandemic.

Keywords*:* *Covid-19, Company, Employee, Economic*

I. INTRODUCTION

The Covid-19 pandemic that hit the world is very influential in all aspects of human life, ranging from politics, economy, health, and security. This pandemic causes crises and anxieties around the world. Covid-19 infected its first individual in Wuhan, one of the cities in the People's Republic of China and then spread throughout the world, including Indonesia. The Government of Indonesia confirmed the first case of COVID-19 in Indonesia on March 2, 2020 despite some speculation that COVID-19 had entered Indonesia some time before (detikcom Team, 2020).

Indonesia is one of the countries genuinely affected by the Covid-19 pandemic, with the number 5 most confirmed patients in Asia. The Government of Indonesia implemented several measures such as encouraging its citizens to stay at home until the enactment of Large-Scale Social Restrictions (PSBB), although the policy shows the limitation of civil liberties of people to gather (Liputan6, 2020) as well as a setback in the performance of the community in the economic sector that ultimately leads to

the collapse of the economy on a national scale (Hadiwardoyo, 2020; Ansori, 2020; Ahmad, 2020).

Employment Law Practitioner. Juanda Pangaribuan said there are at least 4 employment problems arising from Covid-19. First, at the time of implementation of Large-Scale Social Restrictions (PSBB) some companies should not operate. As a result, there are companies that decide to house workers or order workers to Work From Home (WFH). For companies that carry out WFH, it means that workers continue to do their work, but do not attend work whether it is an office or factory as usual. Wages and benefits must still be paid by employers. In this condition, it is possible that employers do not pay allowances that are not fixed because this pandemic period makes the company's productivity can decrease. But for companies that do not operate must house their workers, Juanda sees the practice there are companies that provide basic salary or benefits only. There is also an agreement the parties made a cut in wages. This practice in each company is different because it depends on financial capabilities.

Second, under these conditions, the principle of no work no pay can apply as stipulated in Article 93 paragraph (1) of Law No.13 of 2003 on Employment.This provision states that wages are not paid if the worker does not do the job, except for the sick worker, either because of Covid-19 or not.

Third, the payment of wages. Juanda argues that after the Covid-19 pandemic ends, there are potentially many employment disputes that will arise. One of them is a dispute over rights related to the fulfillment of statutory provisions, employment agreements, company regulations, or collective labor agreements related to wage fulfillment. There are various community responses related to the Covid-19 outbreak that make things irregular, ranging from indifferent, and some are confused because of job losses due to Covid-19. Thus, of course, the thing that must be done by the community is to remain calm and find a solution how to make Covid-19 end and try to start a new life again with their respective efforts to get back to life. The public must also respect and follow all efforts of the Government of Indonesia to fight Covid-19.

II. LEGAL MATERIALS AND METHODS

The Covid-19 pandemic is affecting all countries, especially Indonesia, which is also one of the countries affected by the Covid-19 pandemic. There are many aspects in people's lives affected by Covid-19. Starts with health, social life, and also economics. It is clear that due to a pandemic is a decrease in revenue and the closure of the company due to a lack of income resulting in bankruptcy. Many of the companies avoided bankruptcy and company closures, so they chose to reduce the workers they had. By reducing workers, companies can save on expenses, namely the

salaries of employees. However, it is undeniable that the actions taken by these companies also adversely affect the workers who are cut off. At the beginning after termination, most employees will definitely be given severance. But it just the beginning of the retirement, not for the pension fund in the long run. To overcome this during the Covid-19 pandemic, the government has a regulation, namely Presidential Regulation Number 36/2020 on Work Competency Development through The Pre-Employment Card Program, which was later revised to Presidential Regulation Number 76/2020. This Prakerja Card Program itself aims to reduce the number of miscarriages, one of which is the victims of layoffs by companies affected by the pandemic. In April to November 2020, the government has provided Rp 20 trillion for approximately 5.6 million people, which each person gets Rp 3,550,000, consisting of training costs and intensive cash. The training was conducted online the official platform of kartu Prakerja program and the participants can choose their type of training with the marketplace as requested by them.

The research method used in the paper People's Perspective On Termination Of Employement By Companies During The Covid-19 Pandemic is qualitative research. In this study the authors conducted a survey conducted online, considering this is a pandemic period and avoid direct contact with correspondents in order to avoid the chain of spread of Covid-19.

III. RESULT AND DISCUSSION

During a pandemic like this, many companies make various policies to maintain their business due to cash flow difficulties. Each company has its own strategy in dealing with this problem, however, sometimes policies that are carried out can also end in Termination of Employment (PHK). Many companies are not able to continue their business productivity, so they have to terminate their employment relationships. Data from the Ministry of Manpower of the Republic of Indonesia recorded up to 2.8 million victims of termination of employment in the Covid-19 pandemic era. Even the Minister of Finance Sri Mulyani stated that more than 5 million workers had been laid off. Kadin is even bigger, namely 15 million people who have been laid off in Indonesia.

From this reality, we took research samples from several circles of society, both those who work as students and also those who work as workers. And here are the results of our research.

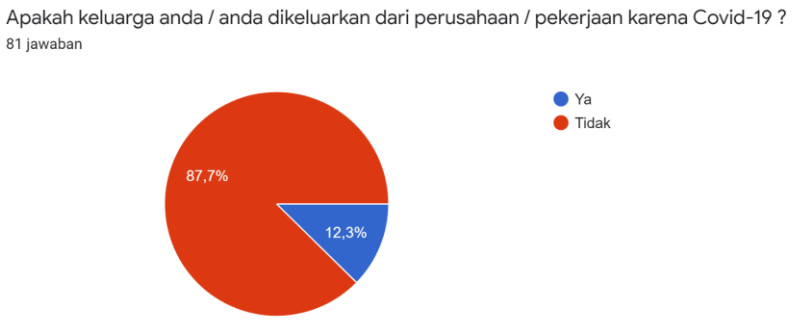

Diagram 1.1 Percentage of respondents about themselves or their families who were expelled from the company because of Covid-19

There were 12.3% of the answers stating that they or their families had been dismissed due to Covid-19, while 87.7% others answered that they or their families were not affected by layoffs by their companies even in conditions of the Covid-19 pandemic such as this. So, here it can be seen that in fact not many people have been excluded by the company because of the Covid-19 pandemic. But this also doesn't mean they agree with company policy to expel someone due to the pandemic.

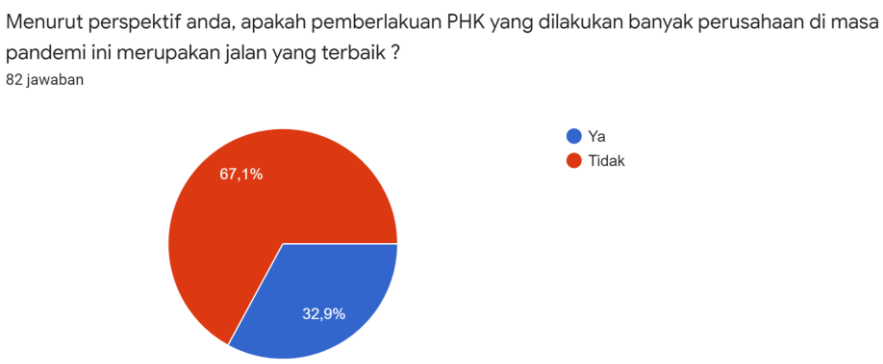

Diagram 1.2 People Perspectives on the enforcement of termination of employment during a pandemic

In diagram 1.2 it can be seen that 67.1% of respondents answered that they disagreed and thought that the implementation of Termination of Employment during this pandemic was not the best way, while 32.9% agreed that termination of employment was the best way. The reasons for the respondents who chose the answer to disagree were various, but here are some of the reasons that were answered most often :

1. They think that this is actually not a wise move because, in order to be more efficient, the company can apply a half-salary system with its employees instead of just laying off employees, in this case an understanding must be built

between the company and its employees so that this half-salary system can take place.

2. They also think that the many layoffs will also increase the crime rate because more and more people become unemployed, while the daily needs for themselves and their families must be fulfilled, also this is increasingly difficult to solve because people find it difficult to find new jobs during the pandemic.

Meanwhile, for respondents who chose the answer to agree, the average answer was almost the same, namely because the company would suffer losses if it continued to employ a normal number of employees as before the pandemic because the company's income was also reduced and this was a step to avoid bankruptcy.

The government has also provided various social assistance for people affected by the Covid-19 pandemic, however, people also feel that this assistance is not helpful enough.

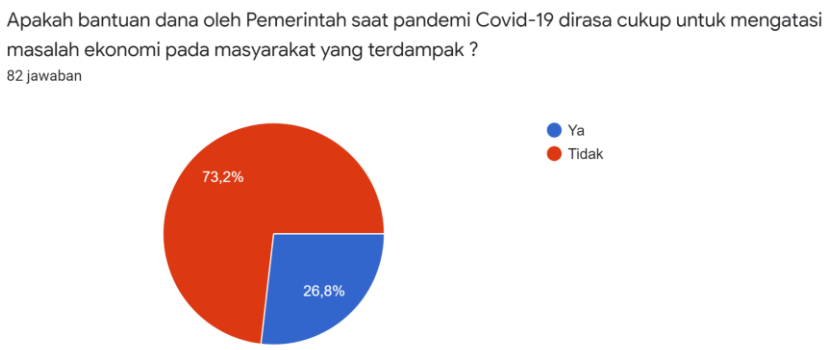

Diagram 1.3 Community perspectives on social assistance funds

From the data obtained from respondents, it can be seen that 73.2% answered that they felt that financial assistance by the Government during the Covid-19 pandemic was not sufficiently helpful in overcoming their economic problems and the remaining 26.8% answered that this assistance helped the economic problems they faced because of the Covid-19 pandemic.

From the results obtained, it can be seen that people does not agree with the company's policy of cutting off work relations with employees and according to them the social assistance provided by the government is not sufficient to help the situation of those affected by the current pandemic.

So, what is the legal perspective in this matter? In Undang-Undang Number 13 Year 2003 concerning Manpower (Labor Law) it has actually been explained that termination of employment is the last resort that can be taken by a company to its employees because termination of employment will have a very serious impact on the economy of the worker's family. On the other hand, business owners are also in a difficult position because they have to fulfill obligations for employees who

experience termination of employment. The company's obligations are to provide severance pay, wages for service awards, and compensation for rights.

The reasons for companies to terminate their employees during a pandemic also vary, for example:

1. The availability of industrial raw materials is decreasing
2. The weakening of the Rupiah against the Dollar
3. Decrease in visitors to Indonesian tourism
4. Drop in the composite stock index

And because of the condition of this company, it results in company owners not willing or maybe it is difficult to provide severance pay and various other costs to employees who are affected by termination of employment even though these costs are fees that must be paid, and this needs to be followed up with various regulations that must be enforced by the government and specific clear regulatory arrangements regarding employment during Covid-19 so that workers have their own legal "umbrella" in this matter.

IV. CONCLUSION AND SUGGESTION

The result of the research is that the community still does not feel safe with the regulations set by the government regarding termination of employment and also according to them that the social assistance provided by the government is also insufficient in ensuring their welfare during this pandemic. So we offer several alternative solutions, namely:

1. There needs to be a transparent two-way communication between company owners and employees to find the best solution.
2. It is necessary to make a special regulatory policy regarding labor conditions during the Covid-19 pandemic so that the public can understand how to act in this pandemic situation.
3. The government has prepared a plan to provide a stimulus fund to MSMEs as well as cooperatives and also provide a social incentive. These funds must be realized and also properly monitored so that they can be right on target and the people who get assistance will feel helped.
4. The government also needs to build a communication with companies, especially companies that are really affected, such as for example tourism bureaus and others, so that the regulations that are built can suit the situation.
5. The government can also establish a task force for handling termination of employment in order to respond to complaints about termination of employment in society during a pandemic and presumably can mediate between business owners and employees if a problem occurs that has the risk

The task of the government and us in solving the COVID-19 pandemic is still long. Rescuing residents and suppressing the spread of the virus are the main focus at this time. We hope that the COVID-19 pandemic can be resolved completely so that the government, with the support of all parties, can immediately restore the economy.of ending up with termination of employment.

V. ACKNOWLEDGEMENT

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Quantitative restriction regulation under world trade organization on indonesian import export policies During covid-19 pandemic period

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Abstract: The spread of the coronavirus disease-19 (covid-19) pandemic made every country take all actions necessary to prevent the spread and transmission of covid-19 in its country. As in the present case, indonesia issued the minister of trade regulation (mot regulation/permendag) number 10/2020 concerning the temporary prohibition of importing live animals from china, as well as mot regulation 23/2020 concerning the temporary prohibition of exports of antiseptics, raw materials for masks, personal protective equipment, and masks, which considered as quantitative restrictions (qr). However, these actions under article xi: 1 general agreement on tariffs and trade (gatt) were prohibited. The research in this paper uses qualitative research methods through document and case studies to seek an interpretation of the legal provisions of quantitative restrictions, which is then analyzed how such regulation implemented towards indonesian actions above. The outcome of this study is a clear interpretation of quantitative restrictions internationally, and how indonesia applies this provision in both actions. In the end, indonesia cannot be blamed to violate the provisions of qrs because it has complied with international law and public order.

Keywords: Covid-19, indonesia, permendag/mot regulation, quantitative restrictions, world trade organization.

I. Introduction

In the later period of 2019, coronavirus disease-19 (covid-19) spread out globally. More than 32,844,146 people have been confirmed as the victims of this pandemic, recorded since 1st march 2020 until 27th september 2020.[119] every state has the same focus to prevent the transmission of the virus with all necessary measures possible. One of the measures possible to do is by conducting quantitative restrictions (qr) in foreign trade activities: export and import. Qr can be defined as trade restrictions carried out by stopping or limiting the number of goods entering or exiting a country.[120] of course, such action gives a certain effect toward the spread of the

[119] Pusat Statistik Kementerian Kesehatan Republik Indonesia, "Data Terbaru Perkembangan Infeksi Covid-19." Accessed on 27 September, 2020, https://www.kemkes.go.id/article/view/20012900002/Kesiapsiagaan-menghadapi-Infeksi-Novel-Coronavirus.html; Satuan Tugas Penagangan Covid-19 Republik Indonesia, Accessed on 27 September, 2020, https://covid19.go.id/peta-sebaran; World Health Organization Official Website. "*updated data on Covid-19.*" Accessed on 27 September, 2020, https://covid19.who.int/table.

[120] Laird, S., & Yeats, A, *Quantitative methods for trade-barrier analysis (*Springer: 1990); Hanson, D, *Limits to free trade: Non-tariff barriers in the European Union, Japan and United States* (Edward

virus, but the world trade organization (wto) prohibits such practice under article xi:1 of general agreement on tariffs and trade (gatt) which states:

Article XI

General elimination of quantitative restrictions"

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party."[121]

This provision gives us a clear statement of prohibition that there should be no restrictions made in a quantitative manner, *inter alia* quotas, import or export licenses or other measures, specified in the provision. The basis of the prohibition is that qr distort the trade *equilibrium* between state parties, causing the instability toward the income of the directed states, and of course inconsistent with the object and purpose of wto itself; while wto try to build the free and equitable trade for every state, qr destroy such purpose.[122] this purpose can be seen in the main principle of wto: most-favored nations (mfn principle), non-discrimination, national treatment, etc., where these principles made to ensure that there will be a fair trade globally, regardless of a state's status, namely, developed and developing state. By implementing qr, once again, there will be no fair and free trade practice, since each state cannot sell or buy the same commodity restricted by qr.[123]

In the past *status quo*, indonesia, as a response to the spread of covid-19, enacted 2 minister of trade regulation (permendag): mot regulation no. 10/2020 concerning temporary prohibition of importing live animals from china, enacted since 7th february 2020,[124] and no. 23/2020 concerning temporary prohibition of export of antiseptics, mask raw materials, personal protective equipment and masks.[125] these regulations

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Elgar Publishing: 2010); Martin, L. L. (Ed.), *The Oxford handbook of the political economy of international trade* (Oxford University Press: 2015).

[121] Article XI:1 General Agreement on Tariffs and Trade (GATT).

[122] Charnovitz, S. "The moral exception in trade policy." *Va. J. Int'l L.* 38 (1997): 689; General Agreement on Tariffs and Trade (Organization), Porges, A., Weiss, F., & Mavroidis, P. C. *Analytical Index of the GATT: Guide to GATT Law and Practice*. General Agreement on Tariffs and Trade (1993)

[123] Ibid.

[124] Sapto Andika Candra, Dessy Suciati Saputri, Deddy Darmawan Nasution, Kamran Dikarma, "Larangan Impor Setengah-setengah' Komoditas China." Accessed on 13 September, 2020, https://nasional.republika.co.id/berita/q583a3409/larangan-impor-setengahsetengah-komoditas-china; Billy Adytya, "Deretan Barang Impor dari China yang Dilarang Masuk Indonesia Karena Virus Corona." Accessed on 13 September, 2020, https://www.merdeka.com/trending/deretan-barang-impor-dari-china-yang-dilarang-masuk-indonesia-karena-virus-corona.html; Dani Prabowo, "Dubes China Anggap Rencana Penghentian Impor Berpotensi Ganggu Hubungan dengan Indonesia." Accessed on 27 September, 2020, https://nasional.kompas.com/read/2020/02/04/20361351/dubes-china-anggap-rencana-penghentian-impor-berpotensi-ganggu-hubungan.

[125] CNN Indonesia, "Mendag Larang Ekspor Masker dan APD di Masa Darurat Corona." Accessed on 17 June, 2020, https://www.cnnindonesia.com/ekonomi/20200406115339-92-490698/mendag-larang-

ruled the export import activities on indonesia by restrict the entry of live animals from china in the earlier regulation, and restrict the exit of medical equipment from indonesia in the later regulation. However, it is clear that these measures constitute qrs as regulated under article xi gatt. But why indonesia considered not violated such provisions? The answer lies in the present paper.

This paper will explain how the gatt regulates the qr internationally, and then implement such regulation toward 2 mot regulations enacted by indonesia. In the end of this paper, there will be answer regarding whether or not indonesia violates the provision. Regardless of the absence of the objection filed toward indonesia due to the present situation, this paper serve as a legal study material in order to help further related research and as a guideline of interpretation for practitioners before enacting article xi-related policy.

II. Legal materials and methods

The legal material used in this study comes from the primary legal material, which comprises of international law source, such as general agreement on tariffs and trade (gatt), and national law source, such as mot regulation no. 10/2020 concerning temporary prohibition of importing live animals from china, and mot regulation no. 23/2020 concerning temporary prohibition of export of antiseptics, mask raw materials, personal protective equipment and masks. The method used in this study comes from normative juridical method with statutory and jurisprudence approach using secondary data, both consisting of secondary data of primary legal material, secondary data of secondary legal material, as well as secondary data of tertiary legal material.

III. Result and discussion

A. General

The result specified on this paper will be focused on the regulation under article xi:1 gatt about general prohibition of qr. As already mentioned in the introduction, qr can be defined as restriction toward commodities to limit it from entering or exiting a country quantitatively. In practice, there are 2 general forms that often taken by countries in implementing this restriction: through the imposition of quotas or the imposition of an embargo. Quota is a provision that regulates the maximum amount of goods that are allowed to enter a country, either based on the sale value or based

ekspor-masker-dan-apd-di-masa-darurat-corona; Kontan.co.id, "Kemendag larang ekspor antiseptic dan masker hingga Juni 2020." Accessed on 17 June, 2020, https://www.msn.com/id-id/berita/nasional/kemendag-larang-ekspor-antiseptik-dan-masker-hingga-juni-2020/ar-BB11lVmj; Setiawan Adiwijaya, "WTO: 80 Negara Larang Ekspor Masker dan APD." Accessed on 17 June 2020, https://www.tagar.id/wto-80-negara-larang-ekspor-masker-dan-apd/?c=.

on the number of goods.[126] the imposition of quotas is carried out by a country to protect its domestic industry from foreign competition that is considered uncompetitive, and as part of the application of a country's national economic policy, as well as to reduce dependence on imported goods. Quotas are the policy most often taken by a country, because they provide a quick effect to protect domestic industries that are affected by excess imports.[127]

In addition to quotas, quantitative restrictions can also be carried out through the application of embargoes: prohibits the entry of all commodities from one country to another, or by stopping certain commodities from entering a country specifically. Embargoes can be carried out in both import and export practices, in which an embargo is usually carried out by a country because of its political interests, such as to impose strict sanctions against a country that has taken action to destabilize international relations.[128] for example, an embargo was carried out by the united states against north korea in 2017 due to north korea's actions which disrupted world security and order by conducting intercontinental nuclear missile tests in july 2017.[129] this embargo action was approved through the issuance of the united nations security council resolution (unsc) number 2371 dated august 5th, 2017. Commodities prohibited from entering north korea include coal, raw iron ore, fishery products, as well as lead and raw lead materials.[130]

To be clear, here is the provision regulating the prohibition of qr under gatt, which stated that:

Aarticle XI

General elimination of quantitative restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party."[131]

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[126] Hidalgo, J. T. "The Regulatory Framework of Export Restrictions in WTO Law and Regional Free Trade Agreements." *IES WORKING PAPER* 8 (2013).
[127] Richard Schaffer, Beverley Earle, and Filiberto Agusti, *International Business Law and Its Environment*, 4th ed, (Ohio: Thomson, 1999) at 322.
[128] Ibid.
[129] Danu Damarjati, "Disanksi PBB, Ini yang Tak Boleh Dilakukan Korea Utara." Accessed on 18 November, 2020, https://news.detik.com/internasional/d-3588090/disanksi-pbb-ini-yang-tak-boleh-dilakukan-korea-utara; Suci Sekarwati, "Diembargo Dunia, Ini Nasib Ekonomi Korea Utara." Accessed on 18 November, 2020, https://dunia.tempo.co/read/1108895/diembargo-dunia-ini-nasib-ekonomi-korea-utara.
[130] Rathbone, M., & Jeydel, P. "United Nations Security Council Resolutions 2321, 2371, & 2375." *International Legal Materials* 56, No. 6 (2017); UN Security Council Resolution No. 2371 (2017), 8019th meeting.
[131] Article XI:1 General Agreement on Tariffs and Trade (GATT).

From this provision, it can be asserted that there are several aspects of requirements that should be fulfilled in order to categorize a measure fall within the scope of the present provision. It is: (1) there is an imposition of non-tariff restriction; (2) conducted on export and import activities; and (3) there is a national legislation which serve as a basis for the measure. To be clear, abovementioned requirements will be explained briefly in the next part of this paper.

1. Imposition of non-tariff restriction

The first key element of the provision is the prohibition of imposing trade barriers other than those required by article xi gatt, namely the imposition of duties, taxes and other measures. In short, this provision prohibits a country from imposing quantitative trade barriers through the imposition of quotas, complicating export and import licenses, and other measures that impede the entry and exit of a commodity. The scope of this action includes restrictions and prohibitions by a country. The wto panel in the case of *china - raw materials* provides a definition stating that "prohibitions" are prohibited from entering a particular commodity in export and import, while "restrictions" are defined as anything that limits a person or thing, restrictions on a thing, conditions or regulations that restrict, which refers to the measures that has a "limiting" effect.[132]

The contents of the provisions of article xi:1 gatt wordings covers all forms of restrictions or restrictions imposed by a country on commodities exported or imported. The prohibitions and restrictions prohibited under this provision are of a quantitative nature. Below are actions that are prohibited under the provisions of article xi:1 gatt.

First is quota imposition. Quotas are quantitative restrictions imposed on export and import commodities by limiting the number of commodities that can be exported to or imported from a country.[133] limitation through the imposition of quotas is often carried out by many countries to protect the national agricultural products of a country, maintain the balance of the balance of payments of the country concerned, and to protect the interests of the national economy.[134] there are several forms of quotas: (a) unilateral quota or absolute quota, where the quantity and commodities that are restricted or prohibited from entering are determined unilaterally by the country which imposes restrictions or bans on export and import; (b) bilateral or negotiated quota, where the quantity and commodities that are restricted or prohibited from entering are carried out through a concession or agreement between two or more countries accompanied by the formation of a trade agreement between the parties; and (c) tariffs quota, a combination of tariff imposition and quota imposition. Basically, this type of quota is not an actual quota, because the way the imposition of this quota

[132] Panel Report, *China – Raw Materials*, Dispute No. DS394, Paras 319-320.
[133] Nopirin, "Akuntan Publik dalam Era Perdagangan Bebas." *Jurnal Ekonomi dan Bisnis Indonesia* 12, No. 2 (1997); Hidalgo, J.T., *Supra* note.
[134] Richard Schaffer, *Supra* note.

works is based on the tariff. The more goods a country wants to import, the higher the amount of tariffs that must be paid by the importing country.[135]

Then the *second* measure is the export and import license. Both of these actions are carried out indirectly or directly, by imposing a number of laws, regulations, administration and other measures that have limiting effect or affecting the selling price of foreign commodities in the local market.[136] export-import licenses are every requirement that must be met by exporters or importers to carry out export-import activities.[137] the export-import license which prohibited from its use in article xi gatt is a license which in its application is discriminatory, no transparency, takes a very long time, and makes it difficult for importers to enter the purposed country.

This is exemplified in a case where us filed a lawsuit against thailand in 1990 regarding thailand's import license of tobacco and cigarettes from the united states. In this case, it is known that thailand has stipulated regulations regarding the prohibition of tobacco imports since 1966. Thailand's import license rules state that every tobacco product that is to be imported must first pass through the director general of customs and excise, to be first inspected by domestic tobacco companies in indonesia. Thailand. The united states in its lawsuit said that the action was not in accordance with the provisions in article xi of the gatt and could not be justified under the provisions of article xx (b) of gatt regarding the protection of the health of the population. In the end this case was won by the united states on the basis that the actions taken by thailand were not in accordance with articles xi and xx (b) of the gatt, because thailand could not prove that tobacco originating from the united states was more dangerous than tobacco that was abroad, and us tobacco bans are not the last measures thailand can take to limit tobacco consumption in the country.[138]

Then what is the form of export-import license that is allowed? The licenses allowed by this provision are regulated in the wto agreement on import licensing procedures, which states that the imposition of import licenses must comply with all the provisions stipulated in gatt 1994 including the annexes and protocols.[139] this agreement requires that each country does not complicate the requirements for arranging the required import licenses, provides clear rules and procedures for processing import licenses, simplifies the required documents, and is subject to applicable law and public order rules.[140] there are two forms of import licensing regulated in this agreement, namely automatic import licensing and non-automatic

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[135] Ibid.
[136] Ibid; Article 1 Paras 1 of WTO Agreement on Import Licensing Procedures.
[137] *World Trade Organization.* Accessed on 21 Juni, 2020, https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm; Desy Churul Aini & Rehulina, *Hukum Ekonomi Internasional* (Bandar Lampung: Zam-Zam Tower, 2017), Hal. 27-28.
[138] Panel Report, *Thailand – Cigarettes*, Dispute No. DS371.
[139] Article 1 Paras 1 of GATT Agreement on Import Licensing Procedures.
[140] Ibid.

import licensing. Automatic import licensing is an import license which is valid for all export import conditions automatically.[141] meanwhile, non-automatic import licensing is all forms of import license that are not automatic or manual in nature, such as policies that regulate the quantitative restriction of a commodity.[142]

2. On export and import activities

The second element of this provision is that measures of prohibition and restriction are carried out in either export or import activities. The contents of the provisions of article xi:1 gatt does not provide a narrow editorial regarding whether this provision applies to export or import activities. This provision only states that:

"1. No prohibitions or restrictions …, shall be instituted or maintained by any contracting party ***on the importation*** *… or* ***on the exportation*** *…."*[143]

This means that all restrictive or prohibiting measures carried out include all state activities related to foreign trade, namely exports and imports as a whole. Export defined as the exit or sale of a commodity from one country to another,[144] while import defined as the entry or purchase of a commodity into a country.[145] because exports and imports are the main facilities for a country to conduct foreign trade, it is necessary to ensure that these facilities are carried out fairly and are prevented from any actions that can damage these facilities.[146] thus, it is true to say that the prohibition on implementing quantitative trade barriers covers all export and import commodities by a country.

This was stated by the wto panel in the case of *turkey - textiles*, which stated that the purpose of the establishment of article xi annex i: a wto is to ensure that all trade barriers imposed by wto member countries constitute non-tariff trade barriers, both in export and import activities.[147] the question arises then, how to prove that these restrictions and prohibitions on exports and imports are quantitative trade barriers? In this situation, a country that wants to sue must first prove that there is evidence that there has been a quantitative restriction or ban on a commodity in export and import activities in a country.[148]

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[141] Article 2 of GATT Agreement on Import Licensing Procedures.
[142] Article 3 of GATT Agreement on Import Licensing Procedures.
[143] Article XI:I GATT.
[144] Seyoum, B, *Export-import theory, practices, and procedures* (Routledge: 2013); Çetintaş, H., & Barişik, S. "Export, import and economic growth: The case of transition economies." *Transition Studies Review* 15, No. 4 (2009): 636-649.
[145] Johnson, T. E., & Bade, D, *Export/import procedures and documentation*. (Amacom: 2010); Achchuthan, S. "Export, Import and Economic Growth: Evidence from Sri Lanka." *Journal of Economics and Sustainable Development* 4, No. 9 (2013): 147-155.
[146] Ibid.
[147]Panel Report, Turkey – Textiles and Clothing Dispute No. DS34, paras. 9.63-9.65.
[148] Grando, M. T. "Allocating the burden of proof in wto disputes: a critical analysis." *Journal of International Economic Law* 9, No. 3 (2006): 615-656; Unterhalter, D. "Allocating the Burden of Proof in WTO Dispute Settlement Proceedings." *Cornell Int'l LJ* 42 (2009): 209.

In the case of *indonesia - import licensing regime*, indonesia took 18 separate actions against the import of animal products, live animals and horticultural products exported by new zealand. In response to this, new zealand as the plaintiff, in the trial, showed complete statistical data with analytical charts that showed the negative impact of restrictive measures taken by indonesia. This was accepted by the panel and it was proven that the restrictive measures taken by indonesia were restrictive measures that were not in accordance with article xi annex i: a wto, and asked indonesia to stop these actions.[149]

Overall, to say that a country is implementing quantitative restrictions or prohibitions, it must be proven by a reduction in the number of exports or imports experienced by a country.

3. The existence of national legislation

Then it comes to the last aspect of requirement under article xi:1 gatt, the existence of national legislation. To categorize an act of prohibition or restriction is the scope of the provisions of article xi:1 gatt, it must be proven that the government of a country has taken part in the restrictive measure: there is a regulation or policy and other national laws, either directly or indirectly, which has the effect of limiting or prohibiting the entry and exit of a commodity in export and import. In the case of the *dominican republic - import and sale of cigarettes*, the wto panel states that to declare an action taken by a country a quantitative trade barrier, it must first be seen whether this action involves the government in its application through applicable policies or regulations.[150]

This requirement is an absolute condition or must be met, because the provisions of article xi:1 gatt only covers all actions taken by the state, as confirmed by the wto panel in the case of argentina - hides and leather. This case states that the scope of article xi:1 gatt comprise all state actions which have the effect of limiting and prohibiting commodities from entering or leaving a country.[151] this requirement includes regulations that govern either directly or indirectly. Direct regulations are regulations in which the regulations have a clear language and purpose to limit or prohibit the entry and exit of a commodity from a country.[152] whereas in indirect regulations, the objectives and functions are not directly limiting or prohibiting the entry and exit of a product, but by providing regulations in other matters, which

[149] Panel Report, Indonesia – Import Licensing Regimes, Dispute No. DS477, para. 7.50.
[150] Panel Report, *Dominican Republic - Import and Sale of Cigarettes*, Dispute No. DS302, para. 7.261 – 7.265.
[151] Panel Report, *Argentina – Hides and Leather*, Dispute No. DS 155, para. 11.18.
[152] Hansen, B., & Nashashibi, K, "Introduction to Foreign Trade Regimes and Economic Development: Egypt", In *Foreign Trade Regimes and Economic Development: Egypt* (pp. 5-1) (NBER: 1975); Hirschman, A. O, *National power and the structure of foreign trade* (Vol. 105). (University of California Press: 1980).

indirectly restrict commodities from entering and leaving, even though these regulations do not aim for that.[153]

The indirect regulation is exemplified in the japanese national regulation, the large-scale retail stores law which has been in effect since the 1990s. This regulation regulates the operation of large retailers in japan such as supermarkets. The formation of this regulation aims to protect small retailers such as kiosks, small stalls, and other small retailers, so that they have the same opportunity to compete with imported goods from abroad, and to secure japan's national economy so that its citizens keep buying domestic products. This regulation regulates the operating hours of large retailers there, and determines the places that are allowed for large retailers to operate, so as not to shift the position of small retailers. This regulation indirectly inhibits the entry of imported commodities, due to the limited number of large retailers in japan, which causes a small number of imported goods to be sold and affects the large number of imported goods in japan. This is coupled with the high price of land in japan, making it difficult to build large retailers that require large areas of land. This caused japan to reduce the goods imported into the country and indirectly impose restrictions on imported goods entering japan.[154]

Based on the description above, to state that an action is the scope of article xi: 1 annex i: a wto, it must also be proven that the action involves the government of a country in it legally through the issuance of national regulations and policies.

B. How indonesia did not violate such provision?

From the later part of this paper, we have already knows the regulation of qr in brief. Now turn to the question regarding indonesia's obedience to such provision. Is indonesia violate the provision or not then? To knowing the answer, we should know that violation exist if there is an absence of duty toward specific provision which compulsory in manner,[155] and moreover, there is no exception can be made or based when conducting such violation.[156] if the wording above contrarily read, a violation will not exist if there is no absence of duty and there is an exception can be made or

[153] Leontief, W. "Domestic production and foreign trade; the American capital position re-examined." *Proceedings of the American philosophical Society* 97, No. 4 (1953): 332-349.
[154] Flath, D. "Why are there so many retail stores in Japan?" *Japan and the World Economy* 2, No. 4 (1990): 365-386; Upham, F, "Privatizing Regulation: The Implementation of the Large-Scale Retail Stores Law." In *Political dynamics in contemporary Japan* (pp. 264-294) (Cornell University Press: 2019); Grier, J. H. "Japan's regulation of large retail stores: Political demands versus economic interests." *U. Pa. J. Int'l Econ. L.* 22 (2001): 1.
[155] Gazzini, T. "The legal nature of wto obligations and the consequences of their violation." *European Journal of International Law* 17, No. 4 (2006): 723-742; Pauwelyn, J. "A typology of multilateral treaty obligations: are WTO obligations bilateral or collective in nature?" *European Journal of International Law* 14, No. 5 (2003): 907-951.
[156] Simmons, B. "Treaty compliance and violation." *Annual Review of Political Science* 13 (2010): 273-296.

based. In the *status quo*, it is true that article xi of gatt have the exception clauses on it that exclude the implementation of qr in several circumstances. In assessing the question above, there should be an explanation about the content of 2 mot regulations enacted by indonesia, and explain the exception clauses under gatt, then analyze whether the enactment has fulfill the exception clauses.

To begin with, there are three exception clause existed under gatt, it is article xi:2 gatt, article xx gatt about general exceptions, and article xxi about security exceptions. These exceptions serve as the basis of exception that can be done when necessary to conduct qr in a consistent manner. To know the exact regulation, we will continue to the main question of this part.

Let's start with the mot regulation no. 10/2020 concerning temporary prohibition of importing live animals from china. Hereby is the content of the regulation which stated that:

"menimbang":

A. Bahwa organisasi kesehatan dunia (world health organization) telah menyatakan wabah virus corona yang berasal dari wuhan, republik rakyat tiongkok sebagai public health emergency of international concern (pheic) atau darurat kesehatan publik yang menjadi perhatian internasional, sehingga pemerintah perlu mengambil langkah perlindungan bagi kesehatan masyarakat dan pencegahan penyebaran virus corona ke dalam wilayah negara kesatuan republik indonesia;

B. Bahwa untuk mengambil langkah perlindungan dan pencegahan sebagaimana dimaksud dalam huruf a khususnya dalam bidang perdagangan internasional, pada tanggal 3 februari 2020 di jakarta, pemerintah menyelenggarakan rapat koordinasi tingkat menteri bidang perekonomian;

C. Bahwa berdasarkan hasil rapat koordinasi tingkat menteri bidang perekonomian sebagaimana dimaksud dalam huruf b dan sebagai bentuk perlindungan kesehatan manusia dan hewan sesuai dengan article xx general agreement on tariffs and trade 1994 world trade organization, perlu mengatur larangan sementara impor binatang hidup dari republik rakyat tiongkok;

D. Bahwa berdasarkan pertimbangan sebagaimana dimaksud dalam huruf a, huruf b, dan huruf c, perlu menetapkan peraturan menteri perdagangan tentang larangan sementara impor binatang hidup dari republik rakyat tiongkok;

Mengingat:…

…

Pasal 2

(1) dengan diberlakukannya peraturan menteri ini, importir dilarang mengimpor binatang hidup yang:

A. Berasal dari republik rakyat tiongkok; atau

B. Transit di republik rakyat tiongkok,

Ke dalam wilayah negara kesatuan republik indonesia.
(2) binatang hidup yang dilarang untuk diimpor sebagaimana dimaksud pada ayat (1) terdiri atas jenis sebagaimana tercantum dalam lampiran yang merupakan bagian tidak terpisahkan dari peraturan menteri ini."[157]

From this provision, in brief, the point of this regulation is that the enactment of this regulation is necessary to protect the health of indonesia's citizens from the spread of covid-19. Under gatt, such exception is regulated under article xx gatt about general exceptions, especially under point (b) of the provision which in part stated that:

Article XX

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, ***nothing in this agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures****:*

...

(b) ***necessary to protect human, animal or plant life or health****;*

…"[158]

From the provision above, it can be asserted that as long as the measures directed to protect the life of human, animal, or the plant, the qr can be implemented by a state. But, there are several requirements that should be fulfilled. *First*, the purpose of the measure shall be consistent with the provision above. Under mot regulation no. 10/2020, the purpose has been delivered in the consideration part "menimbang" point "a" which stated that:

"a. Bahwa organisasi kesehatan dunia (world health organization) telah menyatakan wabah virus corona yang berasal dari wuhan, republik rakyat tiongkok sebagai public health emergency of international concern (pheic) atau darurat kesehatan publik yang menjadi perhatian internasional, ***sehingga pemerintah perlu mengambil langkah perlindungan bagi kesehatan masyarakat dan pencegahan penyebaran virus corona ke dalam wilayah negara kesatuan republik indonesia****;"*[159]

with such clear wording stated in the consideration, it is proven that the only purpose of indonesia enact the regulation is to secure the lifeline of indonesia from covid-19, and therefore, fulfill the first requirement under article xx gatt.

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[157] Consideration part of "menimbang" and Article 2 of MOT Regulation No 10/2020 concerning Temporary Prohibition of Importing Live Animals from China.
[158] Article XX(b) GATT
[159] Consideration "menimbang" point "a" MOT Regulation No 10/2020 concerning Temporary Prohibition of Importing Live Animals from China.

In the *second* requirement, there should be direct act to fulfill the purpose above. This requirement also seen in the consideration part "menimbang" point "b" and "c" of mot regulation no. 10/2020 which stated that:

"b. ***Bahwa*** *untuk mengambil langkah perlindungan dan pencegahan sebagaimana dimaksud dalam huruf a khususnya dalam bidang perdagangan internasional,* ***pada tanggal 3 februari 2020 di jakarta, pemerintah menyelenggarakan rapat koordinasi tingkat menteri bidang perekonomian****;*

C. ***Bahwa berdasarkan hasil rapat koordinasi tingkat menteri bidang perekonomian*** *sebagaimana dimaksud dalam huruf b dan sebagai bentuk perlindungan kesehatan manusia dan hewan sesuai dengan article xx general agreement on tariffs and trade 1994 world trade organization,* ***perlu mengatur larangan sementara impor binatang hidup dari republik rakyat tiongkok****;"*[160]

Based on the content of this consideration, it is clear that it is deemed necessary to temporarily ban live animals originating from china. This action is taken to fulfill the objectives of this mot's policy, namely to protect the health of humans, animals and plants. Thus, the second requirement regarding the necessary actions has been fulfilled by indonesia in this policy.

Move to the *third* requirement that the enactment of regulation should be consistent with the provision under article xx gatt. It means that there will be no violation against the general principles lies under gatt itself. Mot regulation no. 10/2020 has already fulfill this requirement in its consideration "menimbang" point "c" which stated that:

"c. Bahwa berdasarkan hasil rapat koordinasi tingkat menteri bidang perekonomian sebagaimana dimaksud dalam huruf b dan ***sebagai bentuk perlindungan kesehatan manusia dan hewan sesuai dengan article xx general agreement on tariffs and trade 1994 world trade organization****, perlu mengatur larangan sementara impor binatang hidup dari republik rakyat tiongkok;"*[161]

Based on the consideration, it is clear that this policy is implemented based on the provisions of article xx of the gatt, which means that this policy still upholds the general principles under gatt. Accordingly, the third requirement in article xx (b) gatt is fulfilled by this policy. Therefore, mot regulation no. 10/2020 did not violate article xi:1 gatt, due to its compliance under article xx(b) gatt.

Moving to the last part of mot regulation enacted by indonesia, mot regulation no. 23/2020 concerning temporary prohibition of export of antiseptics, mask raw materials, personal protective equipment and masks. In general, this mot regulation prohibits the export of medical equipment and needs due to a shortage of medical

[160] Consideration "menimbang" point b and c MOT Regulation No 10/2020 concerning Temporary Prohibition of Importing Live Animals from China.
[161] Consideration "menimbang" point c MOT Regulation No 10/2020 concerning Temporary Prohibition of Importing Live Animals from China.

equipment and supplies in indonesia from march 2020 to june 2020. Indonesia considers that the availability of medical equipment and needs in indonesia is very important, because there are still many people in indonesia who need masks and other medical equipment to deal with the covid-19 pandemic. This is in accordance with the exceptions stated in article xi: 2(a) gatt which regulates critical shortages, where all elements in this provision have been fulfilled by existing facts. The contents of article xi:2(a) gatt stated:

> "*(a)* ***export prohibitions or restrictions temporarily applied to prevent*** *or relieve* ***critical shortages of*** *foodstuffs or other* ***products essential to the*** *exporting* ***contracting party****;"*[162]

In the current situation, mot 23/2020 has been implemented by indonesia on a temporary basis, since march 2020, in which its validity is revoked through mot 57/2020 concerning provisions for export of raw materials for masks, masks and personal protective equipment (ppe) in june 2020. The mot regulation also carried out to maintain the availability of medical equipment and needs in indonesia which were considered essential by indonesia at that time, and was carried out to maintain the availability of medical equipment and supplies in indonesia, as stated in the consideration "menimbang" point "b" of mot no. 23/2020 which states:

"b. ***Bahwa salah satu upaya untuk melindungi kesehatan masyarakat dan mencegah penyebaran virus corona di seluruh wilayah negara kesatuan republik indonesia*** *sebagaimana dimaksud dalam huruf a,* ***pemerintah perlu menjaga ketersediaan antiseptik, bahan baku masker, alat pelindung diri, dan masker yang penting untuk pelayanan kesehatan dan perlindungan diri bagi masyarakat****;"*[163]

Thus, mot no. 23/2020 has met the exemption provisions stipulated in article xi:2(a) gatt, and does not violate the provisions of article xi:1 gatt regarding general provisions regarding quantitative barriers. With the compliance of all policies in indonesia with the provisions of the exception of quantitative trade barriers in the wto, it can be asserted that the two policies implemented by indonesia do not violate the provisions of article xi:1 gatt.

IV. Conclusion and suggestion

Quantitative trade barriers are barriers that are applied to export and import activities by limiting or prohibiting the entry and exit of a commodity in quantity. The world trade organization (wto) prohibits the application of these trade barriers due to their destructive effects and obstructs the profits that a country gets from exported commodities. The wto has regulated the prohibition on imposing trade barriers in

[162] Article XI:2(a) GATT
[163] Consideration "menimbang" point b MOT Regulation No. 23/2020 concerning Temporary Prohibition of Export of Antiseptics, Mask Raw Materials, Personal Protective Equipment and Masks.

article xi:1 gatt, which states that every country is not allowed to impose quantitative barriers, such as through the application of quotas.

During the covid-19 pandemic, indonesia implemented two regulations in the form of the mot regulation no. 10/2020 concerning the temporary prohibition of importing live animals from china, and mot regulation no. 23/2020 concerning temporary prohibition of export of antiseptics, raw materials for masks, equipment personal protection, and masks, which categorized as qr. However, indonesia does not violate such provisions because the two minister of trade regulations were issued by indonesia to prevent the spread of covid-19 from becoming even more severe in the future, and to maintain the availability of supplies of medical equipment needed by indonesia to combat the covid-19 pandemic. Article xi: 2, article xx, as well as article xxi annex i: a wto states that quantitative trade barriers can be imposed by a country if such action is the most likely measure to prevent more dangerous situations from occurring, such as critical shortages, threat of disease, and threat to security and peace of a country.

Thus, it can be concluded that indonesia's actions by issuing the two ministry of trade regulation above do not violate the provisions of article xi:1 gatt concerning quantitative trade barriers. Suggestion that can be made in this paper that there should be a more advanced research regarding related matter, so that it will be easier for the future academic actors to study the qr and its interpretation in brief.

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FULFILLMENT OF INDONESIAN CITIZENS' CONSTITUTIONAL RIGHTS IN GENERAL ELECTIONS DURING THE COVID-19 PANDEMIC

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Abstract : The purpose of general elections is a safe and orderly leadership shift, General elections are the only channel to facilitate human rights to elect a leader, Today human rights in choosing leaders are faced with the Covid-19 pandemic situation which is contrary to the practice of the election process general public that often creates crowds or social interactions between individual communities, this article aims to see the extent to which the role of the government accommodates the fulfillment of the constitutional rights of its citizens in carrying out general elections by comparing the implementation of general elections in other countries, Indonesia is more responsive in issuing legal products than Poland which it was late in creating legal products during a pandemic, and this resulted in political instability and damaged the quality and administrative capacity of election officials to carry out election administration, but in practice Indonesia is no more ladder p in technical terms of the implementation of the legal policy itself. So that practices like this certainly reduce the fulfillment of citizens 'constitutional rights, on the other hand, this article allows the Indonesian government to apply the same thing as America and slightly modify technical policies during general elections in 2024 for the sake of health and fulfillment of citizens' constitutional rights.
Keywords : constituional rights, general elections, covid-19.

A. Introduction

The last two elections in indonesia are recorded as a new history, the first elections in 2019, to hold elections conducted simultaneously. This means that the first election is the legislative election of the regional people's representative council of the regency / city (dprd kabupaten / kota), the regional people's representative council at the provincial level (provincial dprd), and the house of representatives at the central level (dpr ri) conducted together with the election to find the leader of the country, namely the president and his vice president for the next 5 years 2019 - 2024.

Previously indonesia has never conducted simultaneous elections between legislative elections and presidential and vice presidential elections, thankfully this election agenda runs effectively for some regions because of careful preparation and sufficient potential while in some other areas it seems to need improvement from several aspects in order to be more effective and efficient.[164]

As forthe second new history is, indonesia for the first time conducted elections in 2020 in extraordinary condition, namely looking for the figure of regional heads (hereinafter called elections) in the period of corona virus *diseasse* 2019 (covid-19) that occurred around the world (pandemic). Not only in indonesia, the election is felt very heavy because the practice that runs simultaneously in some areas consumes a large budget and involves many parties, not to mention the efforts made in this election raises casualties. [165]but other countries feel the same way. So that the election in the pandemic covid does need special attention, if it is then left, then it does not close the possibility of increasing victims and the effects of the pandemic is increasingly protracted, until the virus is more proliferating and may even give rise to new viruses if social interaction of society continues to occur.[166]

Today, covid-19 is not the first pandemic and may also not be the last to be a barrier to the implementation of elections. For example, there are wider and frequent emergency situations, such as floods, earthquakes, etc., so basically what election organizers need is the readiness of the election organizers themselves. In practice both before and after the general election, election organizers and the government need some adjustments so that the fulfillment of the constituent rights of citizens remains accommodated in realizing democratic ideals.

For example, simply put, before this pandemic occurs, when citizens want to use their voting rights, the practice is that every citizen simply shows their identity card (KTP) and family card (KK) in the local neighborhood and then they can use their voting rights.[167] however, when the pandemic period is still going on of course such a thing can no longer be done as usual. On several occasions during the 2020 regional head elections, human rights in voting that is regulated in the constitution then did not go smoothly like previous elections, when the pandemic was very much a restriction that needed to be done even though every citizen had brought ktp and kk to vote at the polling place.

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[164] Nugroho, R. M., & Asmorojati, A. W. *Simultaneous Local Election in Indonesia: Is It Really More Effective and Efficient*?.(Yogyakarta, Jurnal Media Hukum, 2019). *Hlm.* 213-222.
[165] Various causes of victims then appear, if seen from various sources then obtained more because of fatigue and congenital diseases https://nasional.kompas.com/read/2019/05/13/15004911/6-fakta-ratusan-kpps-gugur-jumlah-korban-hingga-13-penyakit-penyebabnya?page=all
[166] Fukuyama, F. *The pandemic and political order*.(New York, Foreign Aff., 2020).hlm, 26.
[167]Simamora,J. *Protection of Voting Rights as Constitutional Rights of Citizens.* (Jakarta; Judicial Journal, 6(2) (2013).,pp. 123-142.

Therefore, one of the state's function in guaranteeing all human rights should be able to be fulfilled even in unusual circumstances, if there is human rights that are then not carried out, then the government can be allowed to be the defendant in court, on the constitutional grounds that the state is not present in the policy in action when the constitutional rights agenda in the general election is carried[168] out. On the basis of the current problems and the constituency agenda of the general election will continue to run in the coming year, then this research becomes important to be reviewed more deeply, so that we can know how then the fulfillment of the constituency rights of indonesian citizens in conducting elections in the pandemic covid-19.

B. Research methods

In depth this article examined qualitative research methods. Technically this research begins with the collection of data conducted with library study techniques (library resesarch). Continued by studying the selected literacy in detail and relevant, both from books, official documents to related laws and regulations, then analyzed and produced into one conclusion using descriptive-qualitative means. In addition, this study also looked at cases that occurred through the approach of legislation (statute approach) and comparison approach (compparative approach).

C. Results and discussion

1. Election of regional heads simultaneously during the covid-19 pandemic

Not only in the public spotlight in the country. The implementation of elections in 2020 is also a measure in several other countries to carry out the same state agenda thatis elections. Such as singapore, bolivia, south korea, new zealand, and hong kong. [169] the continuity of regional head elections in indonesia has a long and laborious process to be determined finally implemented almost at the end of the year. One of them is determining the issuance of a replacement government regulation law no. 2 of 2020 concerning the third amendment to law no. 1 of 2015 concerning the establishment of government regulation of replacement law no. 1 of 2014 concerning the election of governors, regents, and mayors into law, the government of indonesia decided to reschedule the election to december 9, 2020. This then became an affirmation that, with the continued running of the democratic party to elect leaders in the region directly, the electoral commission proved its quality as an election

[168]Laica Marzuki, *Constitutionalism and Human Rights.* (Jakarta; Journal of the Constitution, 2016). Pp. 479-488.

[169] Elections in a Pandemic: Lessons From Asia Mongolia, Malaysia, Japan, Singapore, and South Korea prove that COVID-19 elections are possible, but difficult.https://thediplomat.com/2020/08/elections-in-a-pandemic-lessons-from-asia/ di akses pada tanggal 10 maret 2021 pukul 13.30 WIB

organizer who has integrity, independent and independent. Because in general the implementation goes smoothly although there are still some shortcomings. That should be corrected. [170]

Regional head elections in 2020 at least refute some predictions and finally answered already, that of course one of the negative impacts that can have an effect on the use of larger budgets will occur if election activities are postponed. [171]in addition, the concerns seen during the covid-19 pandemic, for election participants and citizens who have the right to vote will be exposed to the coronavirus precisely answered with a curve that is aligned. That is proven, mitigation or crisis management of the implementation of local elections against the sustainability of the pandemic covid-19,[172] has not run to the maximum.

The issue of simultaneous local elections in 2020 is not just reading the evaluation of the high transmission of covid-19, which can be seen in the evidence of the findings of a new cluster of covid-19 occurring in banten province. At least three areas in banten province such as serang city, south tangerang city and tangerang city are inthered zone after the local elections areheld. But the issue of impermeability then elections became a stepping stone for the government to provide maximum facilities for the fulfillment of constitutional rights of the people in using their suffrage.

2. Covid-19 pandemicand the integrity of democracy

One of the domino effects of the covid-19 pandemic is its impact on democracy in the future, if it is not regulated and managed professionally not only health is threatened, but it could be factors in other fields lowering its achievements for the development of the country. In indonesia itself, since the rolling power of president suharto, the demands of reform that appeared in the leadership is the involvement of the people directly in choosing its leader (democracy). Although there has not been a significant change in direct elections since 2005, the democratic party that has run to this day provides evidence that all people enjoy and run it without any differences both among the elite and among the poor have the same rights.[173]

The election of the regional head as a form of democracy that is not postponed is a manifestation of the continuity of democracy in order to keep it running as it

[170]Aulia,D. Questioning Election Regulation: Efforts to Strengthen kpu as election organizers. The POLITICS: (Makassar: Master's Journal of Political Science, Hasanuddin University, 2016). 56-68.
[171]Ristyawati,A. *Effectiveness of The 2020 Regional Elections During the Covid-19 Emergency Pandemic in Indonesia.* (Semarang; CREPIDO Journal, 2, 2020). p. 100. 85-96.
[172] Ali, Jalaluddin. "CRISIS*MANAGEMENT REVIEW ON EFFORTS TO PREVENT THE SPREAD OF COVID-19 IN THE 2020 CONCURRENT*ELECTIONS". Electoral Governance Journal of Indonesian Election Governance 2, no. 1 (November 20, 2020). Accessed March 12, 2021. journal.kpu.go.id/index.php/TKP/article/view/196.
[173] Balinski, M. L., & Young, H. P. *Fair representation: meeting the ideal of one man, one vote*. (USA: Brookings Institution Press. 2010). Hlm 1-191

should, without then giving rise to a more complicated effect in the administrative aspects of the state when the election of the regional head is not held or postponed in the following year. For example, when the 2020 elections are postponed then the sustainability of democracy does not occur and authoritarian leadership by utilizing covid-19 can take place, this needs to be affirmed because power can take advantage of any situation for the sake of the continuity of power itself. [174]

The sustainability of democracy in times of pandemic through elections is a characteristic of democracy that can not be lost or impossible to postpone its implementation. In principle, there are several ways to give the government further action so that the democratic process is not significantly affected even though the covid-19 pandemic still exists, the first way is to mitigate the virus itself so that people are no longer reluctant to cast their votes in order to increase overall participation both at the regional level in particular, and at the national level in general. Learn from the declining 2020 elections.[175] and the trend of public participation in elections in various countries decreases of course must be addressed early in order for overall participation to increase in 2024.[176]

As for the second way, if voter fraud is seen by many as acrucial factor that underpins the legitimacy of elections, then by giving a mandate to make election regulations more stringent and comprehensive to the government and election organizers there are things that need to be prioritized. For example, using postcards or ballots sent through goods delivery services both private and state-owned in the state in order to increase registration and participation of the public during the implementation of elections. This has also been tested in the united states. From these two things can be analyzed benchmarks for the sustainability of the upcoming elections not only health can be protected but become a barometer of the integrity of democracy in the country to be more measurable. [177]

3. People's constitutional rights in elections

Election organizing institutions born of regulation both in the constitution and the laws and regulations under it, the principle becomes the basis of the mobilizer of society can accommodate its constituent rights. The legitimacy of the general election

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[174] Lazarski, C, *Power Tends to Corrupt: Lord Acton's Study of Liberty*. (US: Northern Illinois University Press. 2012*)* hlm. 14

[175] Decrease in Voter Participation in the 2020 Regional Elections Is Considered No Problem https://nasional.sindonews.com/read/262318/12/penurunan-partisipasi-pemilih-di-pilkada-2020-dinilai-tak-masalah-1607505162

[176] Landman, T., & Splendore, L. D. G. (2020). *Pandemic democracy: elections and COVID-19.* Journal of Risk Research, 23(7-8), 1060-1066.

[177] Mann, C. B., & Bryant, L. A.*If you ask, they will come (to register and vote): Field experiments with state election agencies on encouraging voter registration*. (California; Electoral Studies, 2020). hlm 63.

is very reasonable when viewed from the participation of the people to participate in the democratic party. The lower and farther away from the total number of voters who register and use their voting rights, the further away from the word "legitimate" leader that arises from the election results. Especially during the covid-19 pandemic is very likely to occur registered voters only half of the applicants who use their voting rights.[178]

In the constitution of the republic of indonesia expressly states in article 28 and article 28e paragraph (3). That the right of freedom of citizens to unionize, gather, and express opinions is a constitutional right. The reality is that the implementation of regional head elections in 2020 becomes an important learning when people on the one hand are worried about being exposed to coronavirus because they have to leave the house and keep their distance when using voting rights, on the other hand constituency rights must be used in order for the democratic party to run well. In this case, although the government has socialized the technicalities of the implementation of elections during the covid 19 pandemic, as well as issuing policies that impose sanctions when violating health protocol regulations, [179] basically the public still has not completely eliminated the fear of the exposure of coronavirus. On that basis, in anticipation of this repeating itself such as getting a big trap, or a big loss in the upcoming general election, [180] it is necessary to make technicalefforts.

Every stakeholder of the election organizers, it is appropriate to sit back together, to then start from reviewing some technical policies such as arranging registration in various ways not only directly to the polling place (tps) so that the voters can use their voting rights. The french government has issued voting process guidelines for all polling stations across the country. They asked the public to keep their distance, at least one meter from the person in front of them in each row. And as a result, the number of these voters is higher than in previous elections.[181]

In addition, in making new policies and programs for the implementation of elections 2024 is feasible to be designed early, because there is still approximately 3 years to read the map of the possibility of happening when the general election is carried out, and this can be learned from other countries such as germany that the number of people who submitted ballots more than five years earlier, and election

[178] Some areas that are still won by votes that do not vote include depok city area, South Tanggerang City, Kora Kediri, and Medan City, data is stable from various sources, one of which is https://www.merdeka.com/peristiwa/deretan-panggung-pilkada-dimenangkan-golput.htmlmedia.
[179] Nofi Sri Utami, K. *The Governmental Regulation No. 2 of 2020 and the Head of the Region General Election in the Pandemic ERA: Between the Health Protocol and Cluster Disaster of the Regional General Election*. (India; Medico Legal Update, 20(4) (2020), hlm. 1654-1658.
[180] James, T. S. *New development: Running elections during a pandemic.* (United Kingdom: Public Money & Management, 2021). hlm, 65-68.
[181] Guidelines for Reviewing a Legal Framework for Elections https://www.osce.org/files/f/documents/f/8/104573.pdf

officials use preventive measures such as protective gloves. Authorities say voters are allowed to bring their pets. Turnout increased by 3%.[182]

The implementation of honest, clean and fair elections will be fulfilled in line with the fulfillment of the constituent rights of citizens who are well facilitated by the government and this is the priority of the entire process that is part of the rights of election participants. During the pandemic and learning from various regional head election policies implemented in 270 2020, the principle greatly influenced the policy of simultaneous elections to be implemented in 2024. Although the pandemic cannot be predicted when it will be completed and the extent of efforts that have been made to reduce the impact and casualties of pandemics both at the global and national levels. The sovereignty of the people is the main key that must still be put forward by the government in order for the hard work of simultaneous elections in choosing heads of state, regional heads and all members of the legislature in 2024 both at the central and regional levels to run optimally and comprehensively.

B. Cover

The fulfillment of the constituent rights of indonesian citizens is the main thing to be accommodated by the government, in fact indonesia is not the only country that conducts elections during the pandemic. Policies in various countries such as poland's late shortage of effective policies will affect the quality of the elections themselves. Various other countries have also been implementing it effectively and efficiently, indeed the success will not be known before the policy is implemented to the maximum and mutual cooperation between stakeholders interests. By looking at existing policies, then revise and modify more technically in the upcoming elections in 2024, it is worth doing early, so that the shortcomings that occur in the 2020 elections become a meaningful experience to make new policies more maximal and comprehensive.

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Implementation of deep form and diplomatic function protection of Indonesian citizens abroad
Case study: Indonesian foreign nationals affected by covid-19

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Abstract: *As one of the foreign instruments, diplomatic relations are needs for every country. At the covid-19 pandemic, diplomatic relations are urgently needed in connection with protection of Indonesian citizens (wni) abroad is affected Covid-19. They are the form and function of diplomatic relations. Based on that obtained problem is how looked Diplomatic function under the protection of Indonesian citizens abroad as well how is implementation of diplomatic forms and functions in the protection of Indonesian state citizens abroad was affected by covid-19.*
Keywords*:* *diplomatic form and function, citizen protection, covid 19*

I. INTRODUCTION

There are many needs to be met by a country and inability to provide for one's own needs, Relationships need to exist in other countries in order to have a need the country can be fulfilled. This relationship is what you would call a relationship diplomatic ones that are understandable as interstate relations using state instrument equipment, also known as the rate of the state or more familiar being known as diplomatic representatives. In another sense, diplomatic relations is the partnership between nations and the friendship between nations of the world. In a sense diplomatic relations became a necessity for every country. During the corona virus virus 19 (covid-19) relationship diplomatic service is needed, given the presence of Indonesian citizens (wni) who live abroad to be protected. The thing is a function of diplomatic relations. Cause it has supposed Indonesian citizens (wni) abroad are getting That's protection in this case by diplomatic representatives in the state the receiver. Based on this description, studies are needed on "the implementation of deep form and diplomatic function protection of Indonesian citizens abroad (case study : Indonesian

citizen who are abroad affected by covid-19)". With the problem formulated that focuses the study among other things :

1. What is diplomatic shape and function in protection Indonesian nationals overseas?
2. How is the implementation of form and diplomatic function in Protection of Indonesian citizens overseas that affected covid-19?

II. LEGAL MATERIALS AND METHODS

The method used is the normative legal method. Research with normative law essentially examines the law that is conceptualized as a norm or rule that applies in society, and becomes a reference for everyone's behavior.

III. RESULT AND DISCUSSION

Diplomatic Form and Function Based on the International Law Commission, establishing a permanent diplomatic mission (Ambasade or Legation) is the most appropriate form of holding diplomacy between two countries. however, diplomatic missions are not the only form of diplomacy that can be pursued. according to article 14 of the 1961 Wina Convention, there are three levels of the Head of the Diplomatic Mission, namely:

1) Ambassadors, Nuncios
2) Envoys, Minister, and Internuncios
3) Charges d'Affaires

For a head of a diplomatic mission, before performing his functions, he must submit credentials called "credentials" or "letters de creance". The submission of these letters of trust is done in accordance with the level of the head of the mission above. for the levels of head of mission (1) and (2), he is accredited to his head of state meaning, his letters of trust are signed by the head of state of the receiving country. While the Charges d'Affaires are accredited to the foreign minister. This means that the credentials of the head of mission from level (3), the Charges d'Affaires are signed by the foreign minister of the sending country and then submitted to the receiving foreign minister.[183] In addition to the form of diplomatic relations in the form of sending diplomatic missions, there are also forms of diplomatic relations that are permanent or special or temporary, such as:[184]

1) Duplicate Accreditation

[183] I Gede Pasek Eka Wisanjaya, "Buku Ajar Hukum Diplomatik", (Bali: Universitas Udayana, 2013), Page 19
[184] Ibid. Page 20

Duplicate accreditation is when a sending country places or assigns a representative to more than one receiving country, the arrangements for which are set out in article 5 of the 1961 Vienna Convention

2) Joint Accreditation

Joint accreditation occurs when several countries place the same person as their representative in another country, so it can be said that joint accreditation is the opposite of joint accreditation. the arrangements are set out in article 5 paragraph 2 of the 1928 Havana Convention.

3) Ad Hoc Diplomacy

Ad hoc diplomacy is often referred to as "Special Mission" which is defined in article 1 letter (a) of the 1969 Special Missions Convention that a temporary mission of a state representative nature, sent by one country to another, with the consent of the latter, to talk about certain questions or to carry out these certain tasks, so that it can be concluded that the ad hoc diplomatic function ends when certain questions or special tasks have been carried out.

Then in article 3 of the 1961 Vienna Convention the diplomatic representative functions as:[185]

- Representing the sending country in the receiving country
- Protect (on the territory of the receiving country) the interests of the state and the citizens of the country it represents
- To study, by all lawful means, the conditions and developments of the existing conditions in the country in which they are assigned and report to the country they represent.
- Improve friendly relations and develop economic, cultural, scientific relations between sending and receiving countries.

While the end of these diplomatic functions can be caused by several things, namely: the diplomatic official concerned was summoned home by his country, either because his term of office had ended or because of deteriorating relations between the two countries. In this latter situation, the representative will be led by charge d'Affaires (business attorney) The diplomatic official concerned is declared "Persona non grata" freezing or ruling of diplomatic relations.

In the Indonesian national law the protection of citizens is specifically regulated in Article 21 of Law No.37 of 1999 which explains that in the case of Indonesian citizens being in real danger; Representatives of the Republic of Indonesia are obliged to provide protection, assist, and bring them together in safe areas, as well as endeavor to return them to Indonesia at the expense of the state. in that article the term "real danger" can constitute a natural disaster, invasion, civil war, terrorism or a major

[185] Ibid. Page 21

disaster so that it can be categorized as a threat to public safety.[186] From this it is known that representatives of the Indonesian state have an obligation to protect all citizens in the territories of other countries in accordance with the function of the Diplomatic Relations itself.

Implementation of Diplomatic Forms and Functions in the protection of Indonesian citizens abroad who are affected by COVID-19.

The form and function of diplomacy for Indonesian citizens in other countries is basically recorded in Law Number 37 of 1999 concerning Foreign Relations Protection for Indonesian Citizens, Article 18 paragraph:

The Government of the Republic of Indonesia protects the interests of Indonesian citizens or legal entities facing legal problems with representatives of foreign countries in Indonesia.

(2) The protection as referred to in paragraph (1) shall be carried out in accordance with the provisions of international law and practice.

Elucidation of Article 18 paragraph (1) What is meant by "representatives of foreign countries" are foreign diplomatic and consular representatives and their members. Protection of the interests of Indonesian citizens, such as those working for foreign representatives or Indonesian legal entities, such as private companies, is carried out in accordance with international legal principles and customs, among others by using diplomatic means. In general, the duty of an Ambassador as a diplomatic representative is to ensure the efficiency of the role of the diplomatic representative in the receiving country. Meanwhile, the function of a diplomatic mission is to carry out a series of tasks consisting of representation, negotiation, observation,protection and reporting, as well as enhancing friendly relations between sending and receiving countries. However, according to Oppenheim-Lauterpacht, in essence it only consists of three tasks that are obliged to be carried out by diplomatic representatives, namely negotiation, observation and protection.

COVID-19, which is an infectious disease and has become a global pandemic that has occurred since 2020, COVID-19 not only affects human health but also has an impact on many factors such as the economic sector, both national and international, so that it also affects diplomatic relations between country. This pandemic also supports the acceleration of changes in various activities to be online

[186] Ireine Tiara Karundeng, "Tugas dan Fungsi Perwakilan Diplomatik dalam Melindungi Kepentingan Warga Negara Indonesia di Negara Lain", Lex Et Societas, Volume 6, Nomor 9, November 2018, Hal.49

based through the use of social media and so on, such as diplomacy that adapts to digital diplomacy.[187]

Even though in 2020 Indonesia at the United Nations (UN) did not become a permanent member of the UN Security Council (DK) for the period January 1, 2019 to December 31, 2020. However, Indonesia still sent a Permanent Mission of the Republic of Indonesia (PTRI) to the United Nations (PBB) in New York where (PTRI) continues to discuss COVID-19 online but still focuses on the condition of Indonesian citizens (WNI) in New York City and its surroundings, even though COVID-19 has become an obstacle in all forms and diplomatic functions but diplomatic representatives continue to carry out their work in providing protection for Indonesian citizens who are in New York and their work continues in accordance with the main duties and mandates given to PTRI for the United Nations in New York. Work continues by sight the situation and condition of COVID-19 in New York City without reducing duties and responsibilities.[188]

PTRI's main priority for the United Nations in New York during the global COVID19 pandemic was the protection of Indonesian citizens in the United States. On March 18, 2020, all Indonesian representatives in the United States coordinated together to respond and minimize the impact of the spread of COVID-19 in the United States. Apart from PTRI for the United Nations in New York, there are six Indonesian representatives in the United States, namely the Embassy of the Republic of Indonesia (KBRI) in Washington DC, Consulate General of the Republic of Indonesia (KJRI) New York, KJRI Los Angeles, KJRI Chicago, KJRI San Francisco, and KJRI. Houston. Protection of Indonesian citizens abroad when COVID-19 is carried out using a hotline for Indonesian representatives and a digital application called safe-travel (Ministry of Foreign Affairs of the Republic.[189] This application provides various notifications and information needed by Indonesian citizens while abroad. So even though it is the form of diplomacy and implementation Diplomatic relations have turned into digital forms because they have to adjust to the circumstances affected by the COVID-19 pandemic, but this does not reduce the effectiveness of diplomacy and also diplomatic relations itself in protecting Indonesian citizens who are abroad and also affected by COVID-19.

[187] Muhammad Fikry Anshori, "Diplomasi Digital Sebagai Dampak Pandemi Global Covid-19: Studi Kasus Diplomasi Indonesia Di Perserikatan Bangsa-Bangsa (Pbb)", *Mandala : Jurnal Ilmu Hubungan Internasional*, Vol.3.No.2 Januari-Juni 2020, Page 103.

[188] Ibid. Page 103
[189] Ibid.Page 108

IV. CONCLUSION AND SUGGESTION

Conclusion

The International Law Commission establishing a permanent diplomatic mission (Ambasade or Legation) is the most appropriate form of holding diplomacy between two countries. however, diplomatic missions are not the only form of diplomacy that can be pursued. according to article 14 of the 1961 WIna Convention, there are three levels of the Head of Diplomatic Mission, namely: (1) Ambassadors, Nuncios; (2) Envoys, Ministers, and Internuncios, and (3) Charges d'Affaires. The form of diplomatic relations consists of Multiple Accreditation, Joint Accreditation, and Ad Hoc Diplomacy. In article 3 of the 1961 Vienna Convention, a diplomatic representative functions as: (1) Representative of the sending country in the receiving country; (2) Protect (in the territory of the receiving country) the interests of the state and the citizens of the country it represents; (3) Studying, by all lawful means, the conditions and developments of the existing conditions in the country where he is serving and reporting to the country he represents; and (4) Enhancing friendly relations and developing economic, cultural, scientific relations between sending and receiving countries. The form and function of diplomacy for Indonesian citizens in other countries is basically recorded in Law Number 37 of 1999 concerning Foreign Relations, Protection of Indonesian Citizens, namely in article 18.

In connection with the implementation of diplomatic forms and functions in protecting Indonesian citizens abroad affected by COVID-19, Indonesia sent a Permanent Mission of the Republic of Indonesia (PTRI) to the United Nations (PBB) in New York where (PTRI) continues to discuss COVID-19 regularly. online but still focuses on the condition of Indonesian citizens (WNI) in New York City and its surroundings. Even though the form of diplomacy and also the implementation of diplomatic relations has turned into a digital form because it has to adjust to the conditions affected by the COVID-19 pandemic, it still does not reduce the effectiveness of diplomacy and also diplomatic relations itself in protecting Indonesian citizens who are abroad and also affected by COVID-19.

Suggestion

The Government's efforts to establish diplomatic relations during the COVID-19 pandemic are a good step in helping Indonesian citizens who are abroad. Although the implementation of diplomatic relations is carried out in digital form because adjusting to the COVID-19 pandemic does not reduce the efforts and activities of diplomacy aimed at protecting Indonesian citizens who are facing the COVID-19 pandemic abroad.

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SUPREME COURT AUTHORITY IN THE CANCELLATION OF PROBLEMATIC LOCAL REGULATIONS BASED ON INDONESIAN LEGISLATION

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Abstract

Prior to the ruling of the Constitutional Court No. 137/PUU-XIII/2015, there was a material Case Decision No. 137/PU-XIII/2015 decided to grant the material test related to the governor's authority in cancelling the District regulation either Regency/city which was finally decided that the cancellation of local regulations can only be forged through judicial review mechanisms. The problem in this research is how the Supreme Court authority in the cancellation of local regulations is problematic based on the legislation of the Republic of Indonesia and how the effectiveness of the Supreme Court authority against the cancellation of local regulations The research method used in this research is the normative and empirical juridical approach method. The result of this research is the Supreme Court has authority in the cancellation of the regulations of the problematic areas based on the legislation of the Republic of Indonesia, this is evidenced by the decision of the Constitutional Court Decree No. 137/PUU-XIII/2015, which granted the mechanism of cancellation of district/city regulations by the Governor and the interior minister is unconstitutional This reinforces that the cancellation of a problematic regional regulation by law can only be done through judicial review submitted to the Supreme Court. The ruling on the Constitutional Court which authorizes the Supreme Court against the cancellation of local regulations is one of efforts in the improvement of government system in the creation of legislation, particularly local regulations. Supreme Court Authority is very effective in cancelling the regulations of the problematic area because it benefits in supporting better social and economic change than ever. The advice in this study is expected to change the judicial review of judicial events conducted by the Supreme Court as well as the addition of human resources, especially the supreme judge and also the State administrative room in addressing judicial review.

Keywords: Supreme Court, cancellation, local regulation, judicial review.

I. INTRODUCTION

The regulations of the problematic area can increase the acceleration facing the investment increased competition, so that the Government's concern of the Republic of Indonesia. In addition, the regulations of the affected areas are felt too less diversity and unity in accordance with Pancasila. The regulations of the cancelled areas on average contain things that can impede the growth of the regional economy, extension

of bureaucracy lines, difficult licensing processes, and also impede business, which is more major because many regional regulations are contrary to higher legislation on it.[190]

It should be that regional regulations should follow the higher rules on it, in accordance with the Lex Superior DerogatLegi Inferior principle. Because if it does not follow the higher regulations above, eating will occur disharmony. The cause of statutory disharmony is because there are several factors, including:[191]

a. The establishment of regulations is carried out by different institutions and in different times as well;
b. The change in the authority of the authorities in forming statutory regulations due to expiry of tenure or assignment;
c. The establishment of more sectoral statutory regulations against systematization;
d. Lack of coordination during the process of forming legislation that should be in the formation involving agencies and legal discipline;
e. Lack of community access in the process of forming legislation.
f. The procedures, methods, standards and standardization are not yet sure to bind the institution authorized in the manufacture of legislation

Legislation that is not mutually harmonious has its own consequences in its implementation, namely:[192]

a. There is a discrepancy in the implementation of regulations;
b. The occurrence of legal uncertainty;
c. Ineffective and efficient implementation of statutory regulations;
d. The occurrence of legal dysfunction, which means in the function of the lawcan not provide guidelines for public conduct, social control, dispute resolution, and also as a means of social change to the society orderly and orderly.

Regional regulations canceled by the government are many of which are related to the economic context of the rambling, too long and inhibiting the licensing investment including the retribution that is considered still problematic. Almost all regions in Indonesia take the initiative to bypass the regulations of the affected areas. In the area of Lampung, for example, there are provisions relating to regional retribution, in Maluku there are provisions relating to public service levy, there is another in North Maluku provisions related to the increase of capital investment in the region, and in Java Island, East Java province such as Malang City, Pasuruan City, Mojokerto, and Madiun there are local regulations on the management of local goods, the levy for reimbursement of the change of identity card (KTP) and the Civil Record

[190] http://www.kemendagri.go.id Accessed on Tuesday, February 11th, 2020 at 5pm
[191] http://ditjenpp.kemenkumham.go.id/htn-dan-puu/421-harmonisasi-peraturan-perundang-undangan.html Accessed on Tuesday, February 11th, 2020 at 3pm
[192] *Ibid*.

Act , whereas the ID CARD and deed in its execution should be dropped because it is a community service.

Implementation of ID CARD, birth certificate, death certificate and also funeral in principle is the service to the community for free, in accordance with the instruction of the Ministry of Internal Affairs of the Republic of Indonesia. If there is a payment, must be adjusted to the ability such as buying and selling issues and granting building permits (IMB). However, there are still other regional regulations relating to regional budget and expenditure budgets (APBD), Regional spatial Plan (RTRW), local tax, regional levy and long-term development plan (RPJPM) that has not been cancelled. Areas whose regional regulations have not been cancelled by the Ministry of Home Affairs, must seek permission to the Minister of Interior before implementing its regional regulations for evaluation[193]

Prior to the cancellation of local regulations, the President instructed the Minister of Home Affairs to supervise the head of the district and give sanctions if the head of the district does not support the provisions of legislation and evaluate local regulations that provide high costs on the implementation of the national Strategic Project.[194]

The presidential instruction was follow up by the Minister of Home Affairs by issuing the Minister of Interior instruction on 16 February 2016, No. 582/476/SJ on the revocation/change of local regulation, local head regulation and regional head decree of bureaucracy and investment licensing which contains that the Minister of the interior instruments local leaders throughout Indonesia to immediately take steps to revoke and/or amend local regulations, local head regulation and regional head decree containing the bureaucracy and perinzinan investment barriers.

The interior Minister re-issued the Minister of Interior instruction on 4 April 2016, Number: 582/1107/SJ about the affirmation instruction on Minister of Home Affairs No. 582/476/SJ on the revocation/change of local regulation, regional head regulation and decision of regional head that inhibits bureaucracy and investment licensing, instruction of interior Minister No. 582/1107/SJ based on provisions of article 148 Permedagri number: 80 year 2015 about regional legal products.

Second part instruction of Interior Minister number: 582/1107/SJ Instrufies to the Regents/mayor to be able to report the regional regulations of the Regency/city, regulation of the Regent/mayor and/or the decision of the Regent/mayor that has been completed or also still in the process of the change/revocation due to the classification letter of the Ministry of Home Affairs and the Republic of Indonesia.

[193] www.hukumonline.com Accessed on Tuesday, February 11th, 2020 at 7pm
[194] Instruksi Presiden Nomor 1 Tahun 2016 tentang Percepatan Pelaksanaan Proyek Strategis Nasional, Diktum Ke-8

On 5 April 2017, the Constitutional Court (MK) read the ruling on testing the law against some of the norms in Law No. 23 of 2014 on local government (PEMDA LAW). Case ruling Number: 137/PU-XIII/2015 decided to grant some applications submitted by the Association of Indonesian Regency of Indonesia (APKASI), some regional head and the chairman of the PARLIAMENT as an element of the local government and several regents and one individual.

One of the articles that was tested and granted related to the governor's authority to cancel local regulations (PERDA District/city), so that currently the Governor and the Minister of the Interior does not in any longer cancel the district/city regulations. This has an impact on the cancellation of district/city regulations which can only be pursued through the judicial review mechanism of the Supreme Court (MA).

II. LEGAL MATERIALS AND METHODS

The problems in this study are:

a. How does the Supreme Court's authority in the cancellation of local regulations problematic based on Republic of Indonesia legislation?

b. How is the effectiveness of the Supreme Court authority against the cancellation of local regulations?

RESEARCH METHODS

This research uses normative and empirical juridical approach methods, namely:

a. Normative juridical approaches
   Normative is a juridical approach that is taken based on the legal material by researching, concepts and principles of law and also the regulations relating to this research.
b. A juridical approach to empirical
   An empirical approach was that researchers dropped directly into the field to examine objects by collecting primary data through observations and interviews with related respondents in the study.

III. RESULT AND DISCUSSION

A. Supreme Court authority in cancellation of problematic local regulations based on Republic of Indonesia legislation

Law Number 12 Year 2011 concerning the establishment of legislation is a legal basis in the revocation/cancellation of local regulations. This law states that in the event of a statutory legislation under the law is allegedly contrary to law, the test is

conducted by the Supreme Court.[195] In this law also governs the type and hierarchy of statutory regulations, namely:[196]

1. State Constitution of the Republic of Indonesia year 1945;
2. The provisions of the People's Consultative Assembly;
3. Statute or Government regulation of the substitute law;
4. Government regulation;
5. Presidential regulation
6. Provincial regulations; Dan
7. District/City regulations

The structure of the hierarchy above makes the legal force of the legislation in accordance with hierarchical arrangement, which means the rules of legislation under it should not contradict those on it. Accordingly, the local regulations must not contradict the Presidential regulation, government regulation, law or regulation, MPR decree and also the Constitution of the Republic of Indonesia year 1945.

In addition to the above legal products, regional legal products also include regulations established by the provincial People's representative Council, the Governor, the People's representative Council of the Regency/city, Regent/mayor or the level.[197]

In addition to the law on the establishment of legislation regulating the mechanisms for revocation/cancellation of local regulations, local head regulation, and the decision of regional head of the problem is also governed by Law No. 23 of 2014 concerning local government as amended by Law No. 9 of 2015 on the Second amendment to Law No. 23 of 2014 concerning local government.

Pursuant to article 250 of Law No. 23 of 2014 concerning local government as amended by Law No. 9 of 2015 on the Second amendment to Law No. 23 of 2014 concerning local government, local regulations and regional head regulations shall not contradict the public interest, which includes:

1. The disruption of the harmony between citizens;
2. The disruption of access to public services;
3. The disruption of tranquility and public order;
4. Disruption of economic activities to improve community welfare; and/or
5. Discrimination against tribes, religions and beliefs, race, intergroup and gender.

The Joint Stock State (Eengeidsstaat) in its perspective is logical that in the government, the authority control over the government unit underneath. This means, the central government in the context of the unitary State of the Republic of Indonesia

[195] Pasal 9 Ayat (2) Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan
[196] Pasal 7 Ayat (1) Undang-UndangNomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan
[197] Pasal 8 Ayat (1) Undang-UndangNomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan

under the Constitution 1945 is certainly said to have the authority to control units of provincial government and/or district governments and/or city governments. Similarly, the provincial government is given authority in controlling the course of district governance/city.[198]

Local governments in the implementation must always be in the watch, it aims to ensure that the local government is running according to the plans and provisions of the prevailing laws and regulations. Government supervision on the implementation of the local government is as follows:[199]

1. Supervision over the implementation of government affairs in the region;
2. Oversight of local regulations and regional head regulations;
3. Cancellation of local regulations adopted in Law No. 23 of year 2014 is stipulated in Article 251 paragraph (1) and paragraph (2), namely:
   (1) Provincial regulation and Governor regulation in conflict with the provisions of higher legislation, public interest, and/or morality canceled by the minister
   (2) District/city regulations and Regent/mayor regulations contrary to the provisions of higher legislation, public interest, and/or morality canceled by the governor as the representative of the central government.

The Supreme Court conducts the material test Article 251 paragraph (1), paragraph (2), paragraph (7) and paragraph (8) of Law No. 23 of 2014 regarding the authority of the Governor and the Minister of Home Affairs (MENDAGRI) cancels the regional regulations along contrary to higher legislation, public interest, and/or morality. Because, at the time of implementation in the field of authority is widely abused by the central government that leads to re-centralization, although therein there is a process of objection cancellation of Provincial/district regulations to the President and the Minister of the Interior.

Test of Material Section 251 paragraph (1), paragraph (2), paragraph (7) and paragraph (8) of Law No. 23 of 2014 on local government, was granted by the Constitutional Court. The Supreme Court authorizes the Ministry of Interior authority to cancel provincial regulations and the cancellation of local regulations is the authority of the Supreme Court (MA). On the ruling No. 56/PUUXIV/2016 states the phrases ' provincial and ' in Article 251 paragraph (1) and paragraph (4) and the phrase ' PerdaPrvinsi and ' in Article 251 clause (5), and section 251 paragraph (7) of Law No. 23 of 2014 on local government is contrary to the Constitution of the Republic of Indonesia year 1945 and has no binding force of law.

The Supreme Court ruling No. 56/PUUXIV/2016 stated that the provincial regulations could not be cancelled by the Ministry of Home Affairs, but had to take judicial review to the Supreme Court. This means that any person who feels harmed by the enforcement of local regulations may apply for judicial review to the Supreme Court. This is because the Supreme Court aims to set the law in order, so that the cancellation of regional regulations both the province and/or Regency/city is bestowed into the Supreme Court.

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[198] Ni'matul Huda. 2008. *ProblematikaYuridis di SekitarPembatalanPerda.* Jurnal Konstitusi. Vol. 5.No. 1.Juni, pg. 58

[199] Ni'matul Huda. 2012. *Hukum Pemerintahan Daerah.* Nusa Media Bandung, hlm. 234

Some legal considerations that the Constitutional Court used to determine the authority of the cancellation of regional regulations by the Governor and the Minister of the Interior as stipulated in article 251 paragraph (2), paragraph (3) and paragraph (4) of the Local Government Act, namely:

1. The granting of authority to the minister and the governor cancels the District regulation/city is assessed contrary to article 1 paragraph (3) of the Constitution of the Republic of Indonesia year 1945 that Indonesia is the state of law.
2. Authorizes the cancellation of local regulations to the Supreme Court as a affirmation that the Supreme Court is the only institution that is authorised to carry out regulation material test under the legislation.
3. The valuation of the public interest and/or the literature that is the benchmark of assessing local regulations is the authority of judicial power.
4. Cancellation of district/city regulations with the decree of the Governor is assessed inappropriately because it is not in accordance with the regime of legislation in Indonesia that does not recognize the decision of the governor in the type and hierarchy of legislation. The decision of the governor is beschikking that can be sued through the State Administration judiciary in the State Administrative Court (PTUN). If the governor's decision on the cancellation of local regulations was sued through the PTUN and the judge granted the claim, then the regulations of the cancelled area can be reapplied.
5. The right to apply judicial review of regional regulations to the Supreme Court. On this side, the Constitutional Court will assess dualism of the court verdict.

The verdict of the Constitutional Court No. 137/PUU-XIII/2015 provides interpretation in Article 251 paragraph (2), paragraph (3), paragraph (4) and paragraph (8) of Law No. 23 of 2014 on local government, the Minister of the Interior is still permitted to perform the executive review. This is because the Constitutional Court only removes the authority of the interior Minister cancels regional regulations Regency/city. In the verdict of the Constitutional Court No. 137/PUU-XIII/2015 is granted a lawsuit concerning the testing of Article 251 paragraph (2), paragraph (3), paragraph (4) and paragraph (8) of Law No. 23 of 2014 on local government, stating the rules of the mechanism of cancellation of district/city regulations by the governor and interior Minister unconstitutional. This means that the cancellation of provincial regulations and district/city regulations can only be through judicial review submitted to the Supreme Court.

Material test conducted by the Supreme Court pursuant to article 24A clause (1) CONSTITUTION 1945 that the testing of legislation under law against law is done by the Supreme Court. In addition, in accordance with article 9, paragraph (2) states that in a legislation under the law is allegedly contrary to law, the test is conducted by the Supreme Court.

Law No. 48 year 2009 on judicial Power also in article 20 clause (2) Letter B states This provision governs the right of the Supreme Court's test against legislation lower than law. The right of test is done to the contents of the paragraph, article and/or part of the legislation that contradicts the higher laws and regulations on the establishment of legislation.

B. Effectiveness Of The Supreme Court Authority Against The Cancellation Of Regional Regulations

The Constitutional Court decides and determines the institution that is most entitled and has sole authority in cancelling local regulations. During this time, cancellation of the Perda has always been a debate between entering into law and/or legislation or entering into local government. Legislation sees local regulations as a product of legislative so that the test must be taken to be pursued a judicial review. Meanwhile, the local government sees local regulations as a legal product established by local government as part of government power. With the reason as mentioned above, then the local government such as having the right to be able to cancel the local regulation through Executibe review.

With the ruling of the Constitutional Court, finally a long debate on the cancellation of regional regulations ceased. The Constitutional Court's decision has a major influence on regulatory policy regulation, government regulatory oversight mechanisms and the arrangement of judicial review implementation in the Supreme Court. Despite the discharge of this ruling there are consequences that must be faced by the government. The consequence is that there are several governmental institutions that must be in the exercise of their functions. Because, however, the ruling of the Constitutional Court is Finas and binding, so the decision must be respected and executed.

Other consequences after the issuance of this Constitutional Court ruling is the abolition of authority by the Constitutional Court to the Ministry of Interior, may inhibit the deregulation program for investment because there are still many regional regulations contrary to higher regulations and extend the investment permit.[200] In addition, the emergences of concerns not control regional regulatory production that has the potential to cause controversy and inhibit development. In fact, the mechanism of cancellation of local regulations is not the only procedure that the government can run in supervising local regulations.

The government in supervising the course of local governance, which eventually led to the cancellation of local regulations, is a repressive form of supervision. In

[200] www.hukumonline.com Accessed on Sunday, 01 March 2020, at 1pm

addition, the local government also recognizes preventive supervision. As stated in article 242 and section 243 of the Local Government Act.

Section 242 and article 243 of the Local government law governs the obligation to register an agreed-upon regional regulation between the regional head and the regional People's Representative Council (DPRD). This process is used as a stage for the government to make corrections to a draft of local regulations. In addition, the draft of certain regional regulations such as regional budget income and expenditure (APBD), tax, levy and spatial, local government law also governs that the draft must be submitted to the Government for evaluation.

The process of register and evaluation for the four types of each type must be an opportunity for the government to supervise the quality of the. The government through the Ministry of Interior needs to rearrangement the implementation of this preventive supervision. Indeed his oversight power was like never before that came to the authority to undo. However, this preventive surveillance model is also required by the MK in its verdict. In consideration of the Tribunal the judges argued that "the local legislation as a legislative product in the region should only be" a preview "by the government of the superiors when the status is still as a draft of the local law."

In addition to the Ministry of Home Affairs, this Constitutional Court ruling also affected the Supreme Court. Because, in the decision stated that the cancellation of local regulations can only be pursued through a judicial review procedure in the Supreme Court. Indeed this is not new to the Supreme Court, but during this the number of judicial review in the Supreme Court averages only under 100 (a hundred) things.

Although the judicial review process is not the same as the executive review, but the potential litigation review rules of this area are enormous. Judicial Review can be conducted based on the application of the parties either in a community or individual group. This is where the Supreme Court has to do in regulating the implementation of the judicial review session, it is because, the Supreme Court as the only institution that has authority in cancelling the district/municipal regulations.

It is important to understand that judicial review conducted by the Supreme Court is not only applicable to local regulations, but also the entire legislation under the legislation. One of the things that must be addressed as soon as may is the legal change of the judicial review event that is governed by the regulation of the Supreme Court No. 1 year 2011. In addition, the Supreme Court needs to consider other policies in the handling of judicial review because it will potentially continue to grow.

After the verdict of the Constitutional Court in comparison with the number of judges, state administrative rooms that will deal with judicial review need to be added back. This is because local regulations as a product legislative the area guaranteed in the Constitution of the State of INDONESIA year 1945 will continue to increase. Thus

making the quality of local regulations is still potentially a problem in the system of legislation that can affect the development sector that is the regional regulation setting area.

Competent institutions, especially executives and judiciary, must improve the role and maintain the quality of local regulations, by taking corrective measures to perform the functions of each institution. There is no choice but to obey and enforce the Constitutional Court ruling on the elimination of the cancellation norms of the Regency/city owned by the Minister of the Interior and the governor.

The verdict of the Constitutional Court is the awaited momentum, because the regional regulatory surveillance system will be further improved, both in a preventive and also the oversight of the local regulation through judicial review that has not been effectively run. The Constitutional Court's decision is also one of the efforts in improving the system to support the creation of statutory regulations, which in this case is the local regulation. The existence of local regulations is expected to provide benefits in supporting the better changes in the community both from social and economic aspects.

IV. CONCLUSION AND SUGGESTION

The conclusion in this study was:

a. The Supreme Court has the authority in the cancellation of problematic local regulations based on the legislation of the Republic of Indonesia, this is evidenced by the decree of the Constitutional Court No. 137/PUU-XIII/2015 which grant mechanism rules of cancellation of district/city regulations by the Governor and the Minister of the country is inconstitutional. This reinforces that the cancellation of a problematic regional regulation by law can only be done through judicial review submitted to the Supreme Court.
b. The verdict of the Constitutional Court which authorizes the Supreme Court against the cancellation of local regulations is one of the efforts in the improvement of government system in the creation of legislation, especially local regulations. Supreme Court Authority is very effective in cancelling the regulations of the problematic area because it benefits in supporting better social and economic change than ever.

The suggestion in this study is expected to change the judicial review of judicial events conducted by the Supreme Court as well as the addition of human resources, especially the supreme judge and also the State administrative room in addressing judicial review.

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Intruksi Menteri Dalam Negeri Nomor 582/1107/SJ tentang Penegasan Intruksi Menteri Dalam Negeri Nomor 582/476/SJ Tentang Pencabutan/Perubahan Peraturan Daerah, Peraturan Kepala Daerah dan Keputusan Kepala Daerah yang Menghambat Birokrasi dan Perizinan Investasi.

Intruksi Menteri Dalam Negeri Nomor 582/476/SJ tentang Pencabutan/Perubahan Peraturan Daerah, Peraturan Kepala Daerah dan Keputusan Kepala Daerah yang Menghambat Birokrasi dan Perizinan Investasi;

Ni'matul Huda. 2012. *Hukum Pemerintahan Daerah.* Nusa Media, Bandung.

Ni'matul Huda. *ProblematikaYuridis di Sekitar Pembatalan Perda.* Jurnal Konstitusi. Vol. 5.No. 1.Juni 2008

Peraturan Menteri Dalam Negeri Nomor 80 Tahun 2015 tentang Pembentukan Produk Hukum Daerah;

Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan

Undang-undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah sebagaimana diubah terakhir dengan Undang-undang Nomor 9 Tahun 2015 tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah;

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THE LEGAL ASPECT of SHARING COVID-19 DATA

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Abstract: *The COVID-19 pandemic has been more than one year. Many data related to COVID-19 had been published locally and internationally. However, there are some recommendations and precautions to publish such data legally. Data are associated with privacy. Therefore, we must manage the data carefully. This paper aims to describe the legal aspect of sharing COVID-19 data. Methods were literature review searching. Data were searched in PubMed and Science Direct. Keywords are COVID-19, data, legal aspect. The results showed that each country has its jurisdiction. Data sharing protocols must be done with careful consideration. Recommendations related to data sharing are designing a panel to review data before sharing and report improper data sharing. In some countries, there is consensus regarding COVID-19 criminalization. Conclusion: COVID-19 data must be seen as sensitive data. Therefore, we need to screen before sharing. Suggestion: sharing any data about COVID-19 must be done after determining the relevancy and truth. It is very important to prevent misuse and criminalization due to COVID-19 data sharing.*

Keywords*:* *Covid-19, data, legal aspect*

I. INTRODUCTION

The COVID-19 pandemic has been more than one year. Many data related to COVID-19 had been published locally and internationally. The fatality rate is high, therefore any data about COVID-19 is very essential to be delivered in an accurate way (Suni 2021).[201]

Fighting against the COVID-19 pandemic is challenging. Many newspapers and broadcasts are about COVID-19 every day. However, there are some recommendations and precautions to publish such data legally. Data are associated with privacy. Therefore, we must manage the data carefully (Molldrem, Hussain, and Mcclelland 2021).[202]

Each country has its jurisdiction. Data sharing protocols must be done with careful consideration. Recommendations related to data sharing are designing a panel to review data before sharing and report improper data sharing. In some countries,

[201] Suni, Nur Sholikah Putri. 2021. "Tingginya Kasus Aktif Dan Angka Kematian Akibat COVID-19 Di Indonesia." *Bidang Kesejahteraan Sosial Info Singkat Kajian Singkat Terhadap Isu Aktual Dan Strategis* XIII (3): 13–18.
[202] Molldrem, Stephen, Mustafa I Hussain, and Alexander Mcclelland. 2021. "Alternatives to Sharing COVID-19 Data with Law Enforcement: Recommendations for Stakeholders." *Health Policy* 125 (2): 135–40. https://doi.org/10.1016/j.healthpol.2020.10.015.

there is consensus regarding COVID-19 criminalization (Molldrem, Hussain, and Mcclelland 2021).[2]

Fighting against COVID-19 is begun by sharing precautions and facts about COVID-19. Another way is by collecting data from people's mobile devices. However, there are some important things to be considered when collecting data such as security, access, destruction of the data, and data storage. Besides, the new application might access other preexisting installed data applications in the mobile phone. Therefore, it is a big concern to preserve privacy about COVID-19 data during the COVID-19 pandemic (Ribeiro-navarrete, Saura, and Palacios-marques 2021).[203]

This paper aims to describe the legal aspect of sharing COVID-19 data, about the precaution and the awareness for the public.

II. LEGAL MATERIALS AND METHODS

Methods were literature review searching. Data were searched in PubMed and Science Direct. Keywords are COVID-19, data, legal aspect.

III. RESULT AND DISCUSSION

Government and private companies consider data collection via digital technologies as a special strategy for loosening lockdown during the COVID-19 pandemic. It is practical. Data can be collected from any sources such as mobile phone applications, telephone towers, surveillance video, smart thermometers, social media feeds, and even credit card usage. It is an implementation of big data. On the other side, there are problems in ethical and legal aspects. There is controversy regarding the safeguards and security issues. Therefore, there are emerging needs for proportionality in data processing, social justice, and lawfulness. The best is to focus on public health outcomes and ethical issues at once (Gasser et al. 2020).[204]

Digital technologies can be used for pandemic planning, testing, surveillance, tracing, and health care (telemedicine). Big data is very useful in tracking people during the COVID-19 pandemic. When there was a pandemic epicenter in the Wuhan market, the China government used mobile applications for payment, social media, and map to track people who had visited the Wuhan market around the outbreak time. It was followed by Taiwan health checks in the airplane companies to seek data of travelers from Wuhan. Then SARS-CoV-2 testing was done based on the tracking result. Another example is Sweden. Healthcare in Sweden uses a real-time platform to report ventilator usage, hospital bed capacity, and healthcare resources. These data

[203] Ribeiro-navarrete, Samuel, Jose Ramon Saura, and Daniel Palacios-marques. 2021. "Technological Forecasting & Social Change Towards a New Era of Mass Data Collection: Assessing Pandemic Surveillance Technologies to Preserve User Privacy." *Technological Forecasting & Social Change* 167: 1–14. https://doi.org/10.1016/j.techfore.2021.120681.

[204] Gasser, Urs, Marcello Ienca, James Scheibner, Joanna Sleigh, and Effy Vayena. 2020. "Health Policy Digital Tools against COVID-19: Taxonomy, Ethical Challenges, and Navigation Aid." *The Lancet Digital Health* 2 (8): e425–34. https://doi.org/10.1016/S2589-7500(20)30137-0.

are available across all hospitals' data sharing. It is effective and efficient for COVID-19 patient management (Whitelaw et al. 2020).[205]

Most technologies of application are based on collecting and sharing data. The combination of collected data can conclude the user's behavior and location. It is one of the security problems. The location information is based on service, mobile-based, and social networks. Therefore, it is important to protect the user data and make some standardized regulations about protecting security. It is also a concern of global health. Massive tracking for the possibility of COVID-19 spreading is good. However, the security problem must be handled. Therefore, the application or any information technology companies must declare that the user data will be deleted after a while to ensure security. They must guarantee that the data will not be sold to other parties (Ribeiro-navarrete, Saura, and Palacios-marques 2021).[206]

Determining that public benefits outweigh risks, some digital public health tools are still operated. The aim is to slow down the pandemic. Benefits are forecasting any new infections or maybe new outbreaks. The next step is giving alert and isolation to exposed people. It can reduce new infection (Gasser et al. 2020). Another benefit of a global dataset is planning transport policy. During the COVID-19 pandemic, physical distancing is a must. Therefore, based on the mobility database, people can choose the idlest road to bicycle or jogging. This can be accomplished through the data of pedestrians and bicycles (Combs and Pardo 2021).[207] Work changes also include follow-up digital data of workers' jobs. These conditions need consideration in privacy also (Sorensen et al. 2021).[208]

However, the success rate of the benefits depends on the number of users. If the users are more than 50% of the populations then the success rate is greater. The efficiency of the application depends on socioeconomic condition, trust, and accuracy of self-reporting symptoms. Therefore, the developer has to consider deliberately when launching any applications to the public (Gasser et al. 2020).[209]

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[205] Whitelaw, Sera, Mamas A Mamas, Eric Topol, and Harriette G C Van Spall. 2020. "Viewpoint Applications of Digital Technology in COVID-19 Pandemic Planning and Response." *The Lancet Digital Health* 2 (8): e435–40. https://doi.org/10.1016/S2589-7500(20)30142-4.

[206] Ribeiro-navarrete, Samuel, Jose Ramon Saura, and Daniel Palacios-marques. 2021. "Technological Forecasting & Social Change Towards a New Era of Mass Data Collection: Assessing Pandemic Surveillance Technologies to Preserve User Privacy." *Technological Forecasting & Social Change* 167: 1–14. https://doi.org/10.1016/j.techfore.2021.120681.

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[208] Sorensen, Glorian, Jack T Dennerlein, Susan E Peters, Erika L Sabbath, Erin L Kelly, Gregory R Wagner, Harvard T H Chan, and Public Health. 2021. "Social Science & Medicine The Future of Research on Work, Safety, Health and Wellbeing: A Guiding Conceptual Framework." *Social Science & Medicine* 269: 1–9. https://doi.org/10.1016/j.socscimed.2020.113593.

[209] Gasser, Urs, Marcello Ienca, James Scheibner, Joanna Sleigh, and Effy Vayena. 2020. "Health Policy Digital Tools against COVID-19: Taxonomy, Ethical Challenges, and Navigation Aid." *The Lancet Digital Health* 2 (8): e425–34. https://doi.org/10.1016/S2589-7500(20)30137-0.

Another issue is implementing telemedicine and telehealth to treat the patients. There is controversy regarding the legal and ethical issues. Therefore, clinicians, decision-makers, and patients need to be updated for the guidelines. The benefit is reducing the risk of transmission. Besides, it is time-saving due to transportation reducing time. However, the data sharing on telemedicine applications must be encrypted to ensure privacy for the users. Ensuring confidentiality while maintaining the patients' satisfaction is the key to successful telemedicine (Kaplan 2020).[210]

Challenges in controlling the legal aspect of sharing data and collecting data during the COVID-19 pandemic are the rapid progression of the COVID-19 pandemic, and very abundant information available online, the rapid development of technology. All require quick adaptation. People must be aware of data privacy when sharing, collecting, or filling any data online (Ribeiro-navarrete, Saura, and Palacios-marques 2021).[211] The enclosure of data to the third party is a criminal act. It is harmful to the victim (Molldrem, Hussain, and Mcclelland 2021).[212]

Some important considerations in launching applications are achieving scientific accuracy and validity, avoiding discrimination, maintaining user autonomy, and promoting justice. There are some steps in preparing the applications. The first step is preparation. It includes choosing the right team and establishing ethical principles. The second step is planning. Planning consists of planning the purpose and the pathway. The third one is risk assessments. The fourth one is development. The development consists of testing and privacy setting. The last step is evaluating. Evaluating includes keeping records and actively communicating. When the steps above are done, the challenges are easier to be solved (Gasser et al. 2020).[213] Recommendations to prevent scams or any misuse of data are law enforcement, regulations, audit, monitoring, enhancing awareness among society, and government involvement (Mahmud et al. 2021).[214]

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[210] Kaplan, Bonnie. 2020. "Revisiting Health Information Technology Ethical, Legal, And Social Issues And Evaluation: Telehealth/Telemedicine And Health." *International Journal of Medical Informatics* 143: 1–16. https://doi.org/10.1016/j.ijmedinf.2020.104239

[211] Ribeiro-navarrete, Samuel, Jose Ramon Saura, and Daniel Palacios-marques. 2021. "Technological Forecasting & Social Change Towards a New Era of Mass Data Collection: Assessing Pandemic Surveillance Technologies to Preserve User Privacy." *Technological Forecasting & Social Change* 167: 1–14. https://doi.org/10.1016/j.techfore.2021.120681.

[212] Molldrem, Stephen, Mustafa I Hussain, and Alexander Mcclelland. 2021. "Alternatives to Sharing COVID-19 Data with Law Enforcement: Recommendations for Stakeholders." *Health Policy* 125 (2): 135–40. https://doi.org/10.1016/j.healthpol.2020.10.015.

[213] Gasser, Urs, Marcello Ienca, James Scheibner, Joanna Sleigh, and Effy Vayena. 2020. "Health Policy Digital Tools against COVID-19: Taxonomy, Ethical Challenges, and Navigation Aid." *The Lancet Digital Health* 2 (8): e425–34. https://doi.org/10.1016/S2589-7500(20)30137-0.

[214] Mahmud, Niaz, Sadia Afroj, Imtiaz Mahmud, and Musleh Uddin. 2021. "Heliyon A Content Analysis of Newspaper Coverage of COVID-19 Pandemic for Developing a Pandemic Management Framework." *Heliyon* 7: 1–11. https://doi.org/10.1016/j.heliyon.2021.e06544.

The European government proposed that data storage is only for 2 weeks. This determination is based on the viral transmission time. Meanwhile, the non-essential measurements will be deleted once the pandemic is over. However, some citizens prefer filling the application without entering their names (anonymous) (Whitelaw et al. 2020).[215]

There are two choices about tracing applications, i.e. centralized and decentralized. Centralized systems mean the application can collect more data. However, it is less safe in privacy terms. Decentralized systems maintain more privacy, but they are not useful for a long period. Self-reported data are usually false positives (Darbyshire 2020).[216] Mobile/digital technologies and the internet make the COVID-19 infection management more effective and faster if it can be done proactively (Tambo et al. 2021).[217]

The UK implemented Coronavirus (Safeguards) Bill as following: there is no compulsion to own any smartphone nor install any applications, personal data can be deleted maximal 28 days after the collecting period, and immunization certificates must not be any discriminant for anyone. Data must not be given to anyone without any permission. The ethical and legal issues have to be determined at every stage (Darbyshire 2020).[30]

IV. CONCLUSION AND SUGGESTION

COVID-19 data must be seen as sensitive data. Therefore, we need to screen before sharing. Recommendation: sharing any data about COVID-19 must be done after determining the relevancy and truth. It is very important to prevent misuse and criminalization due to COVID-19 data sharing. Recommendation for future research is the legal aspect of sharing data must be a concern for each application usage. Therefore, it is important to develop a standardized informed consent before using any application. Informed consent can be developed in local, national, and international areas.

[215] Whitelaw, Sera, Mamas A Mamas, Eric Topol, and Harriette G C Van Spall. 2020. "Viewpoint Applications of Digital Technology in COVID-19 Pandemic Planning and Response." *The Lancet Digital Health* 2 (8): e435–40. https://doi.org/10.1016/S2589-7500(20)30142-4.
[216] Darbyshire, Tessa. 2020. "Do We Need a Coronavirus (Safeguards) Act 2020 ? Proposed Legal Safeguards for Digital Contact Tracing and Other Apps in the COVID-19 Crisis." *Patterns* 1 (4): 1–2. https://doi.org/10.1016/j.patter.2020.100072.
[217] Tambo, Ernest, Ingrid C Djuikoue, Gildas K Tazemda, and Michael F Fotsing. 2021. "Early Stage Risk Communication and Community Engagement (RCCE) Strategies and Measures against the Coronavirus Disease 2019 (COVID-19) Pandemic Crisis." *Global Health Journal* 5 (1): 44–50. https://doi.org/10.1016/j.glohj.2021.02.009.

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EFFECTIVENESS OF IMPLEMENTING MEDIATION IN THE RELIGIOUS COURT INDONESIA IN SETTLEMENT OF SHARIA ECONOMIC DISPUTES

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ABSTRACT

The provisions of Article 49 of the Republic of Indonesia Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1979 concerning the Religious Courts (hereinafter written the Law on the Religious Courts) in conjunction with Law Number 50 of 2009 concerning the Second Amendment to Law No. 7 of 1989 concerning the Religious Courts (hereinafter referred to as the Second Amendment Law of the Religious Courts) states that the Religious Courts have the duty and authority to examine, decide and resolve cases at the first level in the field of sharia economic disputes other than those which have been under its authority, namely marital disputes and family disputes. Islam. The Religious Courts as one of the law enforcement instruments have been conducting mediation since 2008. The results of research on the implementation of Mediation in Religious Courts in 2017-2019 found that the success of mediating the Sharia Economic Dispute was 0% -3%. Several cases of reconciliation agreement occurred after peace efforts in court. The cases that go into disputes for the Sharia economy are regarding the execution of a Mortgage or Fiduciary Guarantee. The inhibiting factors for the successful mediation of sharia economic disputes include the implementation of Ad Hoc mediation or settlement of banking disputes at the Financial Services Authority. Most of the Mediators for the settlement of Sharia Economic disputes in the Religious Courts are selected by judges who have obtained Sharia Economic Dispute certification.
Keywords : Disputes, Sharia Economics, Religious Courts, mediation, mediator.

A. INTRODUCTION

The Supreme Court has changed the paradigm of judging to the paradigm of resolving legal disputes / cases. Civil case dispute resolution through litigation has begun to be abandoned and has shifted to Alternative Dispute Resolution / ADR (mediation). The form of this change was carried out by issuing a Supreme Court Regulation (hereinafter written PERMA) Number 2 of 2003, then revised through PERMA No. 1 of 2008 was then last revised with the enactment of PERMA No.1 of 2016 concerning Mediation Procedures in Courts (hereinafter written PERMA No.1 of 2016). The Indonesian government's move is oriented towards developed countries that have succeeded in resolving disputes through mediation, such as Japan, Singapore, the United States, Canada, the Netherlands, and Australia.

To reduce the accumulation of the number of cases that must be examined and decided by Religious Court Judges, Mediation in the Court is one solution. PERMA Number 1 of 2016 which regulates the obligation of Mediation in the

Court, is an obligation requirement that must be taken by the parties in resolving civil disputes at the court of first instance. Based on PERMA No.1 of 2016, all civil disputes at the First Level Court must first seek settlement through peace with the help of a mediator. This means that PERMA No.1 of 2016 is realized as part of the initial process of resolving civil disputes in court to interpret practically the embodiment of the provisions of the judge's obligation to reconcile the disputing parties, as stipulated in Article 130 HIR / 154 RBg.

It is hoped that the institutionalization of the mediation process into the judiciary can also expand access for the parties to obtain a sense of justice. A sense of justice can not only be obtained through the litigation process, but also through a process of deliberation and consensus by the parties which provide opportunities to jointly seek and find the final result. Another objective is to strengthen and maximize the function of the court institution in dispute resolution.

In practice, understanding of the nature of mediation and its benefits is still not optimal. Many people understand that mediation is merely meeting with a third party as a mediator, but they do not see any more benefit from the mediation process. Change in PERMA No. 1 of 2016 contains provisions that are more compelling in encouraging the public to carry out a mediation process in court. The changes are mainly related to the issue of time and measuring the goodwill of the parties to mediate in court.

Several updates in PERMA No. 1 of 2016, among others: (1) Regarding the mediation time limit which is shorter from 40 days to 30 days from the stipulation of the order to conduct Mediation; (2) There is an obligation for the parties (inperson) to directly attend the Mediation meeting with or without being accompanied by a legal representative; (3) There are rules regarding Good Faith in the mediation process with strict sanctions for violating them. Article 7 states that the parties and / or their attorneys are obliged to undertake Mediation in good faith. Article 23 PERMA No. 1 of 2016 regulates that if the plaintiff is declared not in good faith in the Mediation process, then the lawsuit is declared unacceptable by the Case Examining Judge and is also subject to the obligation to pay Mediation fees.

The Religious Courts as one of the law enforcement instruments have been conducting mediation since 2008. Based on the results of the author's research on the implementation of Mediation in the Religious Courts during 2018 - 2020, the percentage of successful mediation in the Religious Courts is still below 10%. This shows that the integration of mediation in the court proceeding system has not been effective. The effectiveness of mediation does not depend entirely on law enforcers (judges, courts). According to Lawrence M. Friedman, the legal system can work well if the three elements of the legal system support each other, namely law enforcement, legal rules and legal culture. Law enforcers can work well if the rule of law is good and clear, and people obey the law. If the three elements do not support each other, law enforcement will be ineffective. Perma No.1 of 2016 clearly regulates the Meiation procedure in the Court, in this case the role of the Mediator and the parties in a case at the Religious Court is very influential on the success of mediation.

The position of the Religious Courts is the perpetrator of the judicial power who has the competence to accept, examine, and judge and resolve every Islamic

shari'ah case submitted to him. The scope of this competency includes: marriage, inheritance, wills, grants, waqf, zakat, donations, shadaqah, and shari'ah economic disputes. The provisions of Article 49 of the Republic of Indonesia Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1979 concerning the Religious Courts (hereinafter written the Law on the Religious Courts) in conjunction with Law Number 50 of 2009 concerning the Second Amendment to Law No. 7 of 1989 concerning the Religious Courts (hereinafter referred to as the Second Amendment Law of the Religious Courts) states that the Religious Courts have the duty and authority to examine, decide and resolve cases at the first level in the field of sharia economic disputes other than those which have been under its authority, namely marital disputes and family disputes. Islam. In the explanation of Article 49 letter (i) of Law Number 3 of 2006, what is meant by sharia economics is:

> *Acts or business activities carried out according to sharia principles, including a) Sharia Banks, b) Sharia Insurance, c) Sharia Reinsurance, d) Sharia Mutual Funds, e) Sharia Bonds and Sharia Medium Term Securities, f) Sharia Securities, g) Sharia Financing, h) Sharia Pawnshops, i) Sharia Financial Institution Pension Funds, j) Sharia Businesses, and k) Sharia Microfinance Institutions.*

Based on the provisions of Article 49 of Law Number 3 of 2006, the Religious Courts currently have absolute competence in resolving disputes in the field of Sharia Economics, civil Islamic family disputes, and disputes relating to property rights or other civil disputes between people who are Muslim.

The expansion of the absolute competence of the Religious Courts at this time, which includes examining, adjudicating and resolving sharia economic disputes, Islamic family civil disputes and Islamic inheritance disputes, has resulted in the increasing number of cases that must be resolved by Religious Court Judges every year. In terms of types of cases, marriage cases have the highest number compared to other cases, especially in cases of divorce (marital divorce). Acceptance of divorce cases in the Religious Courts reaches an average of 80% - 90% of the total number of cases. On the other hand, the number of cases of sharia economic disputes in the Religious Courts is still not many, most of the Religious Courts still have no cases of sharia economic disputes.

Sharia economic dispute cases, which are new to Indonesia, have resulted in Religious Court judges being given certification training in the field of sharia economic dispute resolution. In practice, the settlement of sharia economic disputes at the Religious Courts lasts more than 5 (five) months. This is due to many factors, especially involving Islamic banking as justice seekers. As a new authority, it is a challenge for Religious Court Judges in gaining public trust in providing justice in resolving disputes involving Islamic financial institutions.

B. PROBLEMS

Based on the background of the problems mentioned above, several problems can be formulated which are the focus in this study:

1. How effective is the implementation of sharia economic dispute mediation at the Religious Courts in Indonesia?

2. What are the supporting factors in supporting the success of Mediation in settling sharia economic disputes in the Religious Courts?

C. METHODOLOGY

This research is a juridical-empirical research, meaning that this research is based on legal norms and systematics and is supported by primary data by conducting field research combined with library research. Primary data is the result of interviews with respondents at the religious court and the surrounding community. Sampling in this research on mediation using purposive sampling, so that the total number of respondents reached 100 people.

Analysis of the effectiveness of the implementation of Mediation at the Religious Courts in the sample locations, namely PA Bogor, PA Depok, PA Cibinong, PA Purbalingga, PA Surabaya, PA Banjarmasin, PA Makasar, PA East Jakarta, PA South Jakarta and PA Tangerang. To see its effectiveness in comparing the number of cases of sharia economic disputes that have been submitted compared to the number of cases that were successfully resolved at the Mediation level.

Analysis of what factors have a big influence on the success of a dispute that is resolved at the Mediation level from three economic, legal and socio-cultural aspects using qualitative descriptive.

D. DISCUSSION AND ANALYSIS

1. Absolute Authority of Religious Courts in the Field of Sharia Economic Disputes

The main duties of the Religious Courts in accordance with the provisions of Article 49 of Law Number 3 of 2006 are to examine, decide and resolve certain cases between Muslim people in the areas of: a. Marriage, b. inheritance, c. will, d. grant, e. waqf, f. zakat, g. Infaq, p. shadaqah; and i. shari'ah economy.

Based on the main tasks referred to above, the Religious Courts have the following functions:

a. The function of judging (judicial power), namely receiving, examining, adjudicating and settling cases which fall under the authority of the Religious Courts at the first level (vide: Article 49 of Law Number 3 of 2006).
b. Guidance function, namely providing direction, guidance, and direction to structural and functional officials under their ranks, both in terms of judicial techniques, judicial administration, as well as general administration / equipment, finance, personnel and development. (vide: Article 53 paragraph (3) of Law Number 7 of 1989 in conjunction with Law Number 3 of 2006 in conjunction with KMA Number KMA / 080 / VIII / 2006).
c. The supervisory function, which is to carry out inherent supervision of the implementation of duties and behavior of Judges, Registrars, Secretaries,

Substitute Registrars, and Substitute Bailiffs / Bailiffs under their ranks so that the judiciary is carried out carefully and appropriately (vide: Article 53 paragraph (1) and (2) Law Number 7 of 1989 in conjunction with Law Number 3 of 2006) and on the implementation of general secretarial administration and development. (vide: KMA Number KMA / 080 / VIII / 2006).

d. The function of advice, namely to provide considerations and advice on Islamic law to government agencies in their jurisdiction, when requested. (vide: Article 52 paragraph (1) of Law Number 7 of 1989 in conjunction with Law No. 3 of 2006).
e. Administrative functions, namely organizing judicial administration (technical and trial), and general administration (personnel, finance, and general / equipment) (vide: KMA Number KMA / 080 / VIII / 2006 dated 24 August 2006 in conjunction with KMA Number: 145 / KMA / SK / VII / 2007 dated 29 August 2007).

What is meant by sharia economy is an act or business activity carried out in accordance with sharia principles. The basic principles of sharia that distinguish it from conventional economics are pleasure (freedom of contract), ta'awun, free usury, free gharar, free tadlis, free maisir, objects that are lawful and trustworthy. Ta'awun comes from the Arabic Ta'awana, Ta'awuna, which means helping, mutual assistance, helping fellow humans. In essence, the instinct to live in ta'awun has been owned by humans since they were still children. However, this attitude needs continuous guidance from adults. With adult guidance this attitude can develop well. Al Gharar is "uncertainty". The meaning of uncertainty in muamalah transactions is "there is something that one party wants to hide and it can only cause a sense of injustice and abuse to the other party. In simple terms, gharar is all sale and purchase that contains uncertainty or doubt about the existence of a commodity that is the object of the contract, unclear consequences, and dangers that threaten profit and loss; betting or gambling. In Islam, gharar is a case which is prohibited and it is haraam because it is very detrimental to one of the other parties. Maysir or qimar literally means gambling (speculation). Technically, maysir is any game in which something is required in the form of material taken from the losing party for the winning party.

Sharia economics includes sharia banks, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual funds, sharia securities, sukuk, sharia bonds, sharia financing, sharia pawnshops, pension funds for sharia institutions and sharia business.

Sharia economic disputes can occur between:

a. The parties that make transactions regarding the claim for default, claim for cancellation of the transaction;
b. Third Parties with parties who make transactions regarding cancellation of transactions, cancellation of mortgage deeds, resistance to confiscation of guarantees and / or confiscation of execution and auction cancellation.

The Religious Courts in examining sharia economic disputes must examine the deeds (transactions) made by the parties. If the deed of the parties contains a clause that states that if a dispute occurs, the National Sharia Arbitration

Board (Basyarnas) will choose to settle it, then the ex officio Religious Court is not authorized to examine and adjudicate the dispute. This is because prior to the issuance of Law Number 3 of 2006 in conjunction with Law Number 21 of 2008 concerning Sharia Banking, sharia economic dispute resolution was settled through the national Sharia Arbitration Board (Basyarnas).

Based on data from the Religious Affairs Agency (Badilag), during 2016 the number of cases of sharia economic disputes handled by the Religious Courts totaled 146 cases. When compared with the total number of cases handled by the Sharia / Religious Courts throughout Indonesia, which totaled around 500,000, the number of cases of sharia economy is relatively small. However, in its development since 2006 when the religious court was given the authority to adjudicate cases of sharia economic disputes through Law Number 3 of 2006, the number of sharia economic disputes that have entered the Religious Courts has tended to increase. In the author's 2009 research on sharia economic disputes in 2009, in Jabodetabek there were only 2 cases, namely the South Jakarta Religious Court and the Central Jakarta PA. One of the factors is the issuance of the Constitutional Court Decision Number 93 / PUU / 2013 which confirms the authority of the Religious Courts to handle sharia economic cases. The Directorate General of the Religious Courts and the Center for Education and Training of the Supreme Court have continued to strive for the professionalism of religious court judges in handling sharia economic disputes by making sharia economic training and certification for religious court judges, but in practice the number of judges who have Islamic economic certification is very limited even some Religious Courts do not have certified judges.

1. Mediation of Sharia Economic Disputes in the Religious Courts

Mediation is a dispute mediation procedure where someone acts as an intermediary to communicate between the disputing parties, so that their different views on the dispute can be understood and it is possible to be reconciled. Mediation that creates a peace agreement will be a complete solution because the final result uses the principle of win win solution. The settlement with the mediation process provides many benefits for the parties, the time taken will reduce costs. From an emotional point of view, settlement with mediation can provide comfort for the parties, because the terms of the agreement are made by the parties themselves according to their wishes. Basically, mediation has been around for a long time, because the dispute resolution system in Indonesian society generally uses the principle of Mediation. Mediation is an alternative dispute resolution which is seen as resolving disputes with the aim of a win-win solution.

Table 1 : Recapitulation of Sharia Economic Dispute Accepted Respondent PA 2016- August 2018

No.	The name of PA	Sharia Economic Dispute Case		
		2016	2017	2018
1.	PA. Depok	0	0	0
2.	PA. Cibinong	0	0	0
3.	PA. Bogor	0	0	0

4.	PA. Banjarmasin	1	0	1
5.	PA. Surabaya	6	5	3
6.	PA. Jakarta Timur	0	0	1
7.	PA. Makasar	2	1	1
8.	PA. Purbalingga	5	5	20
9	PA Tangerang	0	1	1
10.	PA Jakarta Selatan	8	1	4
11	PA Jakarta Pusat	1	1	1
12	PA Kualasimpang	0	0	0
13	PA Pontianak	0	0	0
14	PA Kubu Raya	0	0	0
15	PA Pekabaru	0	0	1
16	PA Ambon	0	0	0
17	PA Denpasar	0	0	0
18	PA Negara	0	0	0
19	PA Tiga Raksa	0	0	0
20	PA Serang	0	0	1
21	PA Semarang	0	0	0

Source : PA respondent's annual report data

From the table above, the Islamic economic disputes received by the Respondent Religious Courts from 2016 to August 2018 are still very few (3%), even for the Religious Courts of Depok, Cibinong, Bogor and East Jakarta there are still no sharia economic disputes.

Meanwhile, several Religious Courts that accept sharia economic disputes, some of their cases are claims under Rp. 200,000,000, - (two hundred million rupiah), as happened at the Purbalingga Religious Court.

Table 2 : Recapitulation of Respondents PA Mediation Report for 2016

No	**The name of PA**	**Case accepted**	**Cases cannot be mediated**	**Case mediated**	**Mediation Settlement Report**	
					Success	**Not Success**
1.	PA Cibinong	5248	4499	749	171	592
2.	PA Banjar masin	2260	1899	349	3	346
3.	PA Bogor	1829	1566	266	13	243
4.	PA Depok	3818	3294	524	98	420
5.	PA Surabaya	7803	6649	1354	23	1331
6.	PA Makasar	2529	1785	744	2	498
7.	PA Jakarta Timur	4936			399	
8	PA Jakarta Utara	2267	1796	471	296	148
9	PA Jakarta Selatan	4495	3479	1016	14	1002
9	PA Purbalingga	2531	2306	222	0	222
10	PA Tangerang	2619	2241	378	3	375
	Jumlah	28.688				

Source: data processed from the 2016 Annual Report

Table 3: Recapitulation of Respondents PA Mediation Reports in 2017

No	The Name of PA	Case Accepted	cannot be mediated	Case mediated	Mediation Settlement Report	
					Success	ot Success
1.	PA Cibinong	6708	5918	790	147	590
2.	PA Banjarmasin	2332	2074	287	15	267
3.	PA Bogor	2022	1779	243	10	232
4.	PA Depok	4144	3375	769	167	538
5	PA Purbalingga	2846	2673	173	2	128
6.	PA Surabaya	8094	6947	1181	22	1159
7.	PA Makasar	3024	1981	481	3	300
8.	PA Jakarta Timur	5267	5453	933	37	896
9	PA Jakarta Selatan	5056	4017	1039	18	1021
10	PA Tangerang	2673	2246	427	9 /29	365
	Jumlah	12150				

Source: Data processed from the 2017 Annual Report

From tables 2 and 3 it can be seen that the mediation process at the Respondent Religious Courts, the number of cases that can be mediated is around 10% to 30% of the total number of cases received. In PA Depok in 2017 Cannot be implemented = 134 cases. Of the mediated cases, the number that was successful was still very low, namely below 10%, only two religious courts, namely the East Jakarta Religious Court and the North Jakarta Court, had a mediation success rate of 30%, and even then were classified as successful in part where peace problems were achieved due to their divorce. sharia economic disputes, the success of which is still not being reconciled through mediation (success rate = 0).

The factors causing the unsuccessful mediation of sharia economic disputes at the Religious Courts include the following:

1. The complexity of sharia economic matters

Since cases of Islamic economic disputes are received until they are decided, the average time is more than 5 (five) months. This is because the parties in dispute over the sharia economy in the Religious Courts generally have taken mediation outside the court and failed to reach a peace agreement, so that efforts to go to the Religious Court for the parties are the last way to obtain justice through a judge's decision.

2. The domicile of the parties with different areas of competence for the Religious Court concerned

The addresses of the parties are different so that the summoning process (relax) through the Religious Courts in the domicile area of the parties concerned with a period of more than one month and therefore there is a delay in trial time of more than 1 (one) month, considering that the number of defendants is often more than 2 (two) parties and after that the mediation process can be carried out which is carried out in a maximum of 30 (thirty) days as the time given by PERMA No. 1 of 2016. From the first trial to the mediation process, it has taken 2 (two) months

and then began to enter the trial stage in the third month with an agenda for the mediation report.

3. Mediation of cases of execution of Mortgage Rights on moving legal objects
   Mediation of Mortgage Rights execution cases where the object of execution is moving, such as the recent case of execution of Mortgage Rights in seven Religious Courts, the duration of the case is almost one year, mediation failed which finally reached a peaceful effort and the plaintiff's bank withdrew the case at trial level.
4. The main claim of the plaintiff in a dispute of default is outside the law of the Sharia Bank.
   In the case of sharia economics, especially Islamic banking, there are special procedures for dispute resolution that need to be addressed according to banking regulations, for example the debtor has a debt of 15 billion, asks for IDR 25,000,000 in installments, per month or in other cases the bank customer asks for a cut of the principal debt, while some Islamic banks are unable to provide a discount on these debts.

Table 4: Recapitulation of Respondent Religious Courts Mediation Report for January-September 2018

No.	**The name of PA**	**Case Accepted**	**The number of cases that cannot be mediated**	**Number of Cases mediated**	**Mediation Settlement Report**			
					It worked entirely	**Partially Successful**	**Not Success**	**Cannot be implemented**
1.	PA Cibinong	4189	3732	457	28	73	295	27
2.	PA Banjarmasin	1341	1190	151	3	0	145	2
3.	PA Bogor	950	837	113	17	-	95	-
4.	PA Depok	212	1689	413	20	22	321	2
5.	PA Surabaya	4783	3959	638	22		616	
6.	PA Makasar	1935	1603	1042	13		238	
7.	PA Purbalingga	2600	3006	380	25	73	221	2
8.	PA Jakarta Selatan	3974	524	733	24		707	
9	PA Jakarta Timur	3386	3006	380	25	73	221	2

Given the complexity and complexity of the interests of the parties in sharia economic disputes, the mediator appointed to mediate sharia economic disputes is directly handled by the mediator of judges and the panel of judges is a special panel of sharia economic disputes established by the leadership of the relevant religious court. Only a few CL class 1A and class 1B in Java Island submitted economic dispute mediation to non-judge mediators.

Judges and non-judge mediators appointed to handle sharia economic disputes are judges who have received training certification for sharia economic

disputes. Especially for the Religious Courts in the Jabodetabek area, they have employed the services of Non-Judge Mediators, with an average work schedule of 4 working days, namely Monday until Thursday, because usually on Fridays there are no hearings at the Gamma Court. Some Religious Courts use Friday as the day of internal consolidation or circuit court. For religious courts located in the DKI Jakarta area, the entire implementation of sharia economic dispute mediation is submitted to the Non-Judge Mediators who are on duty or scheduled on the day concerned. And given the complexity of the parties who are litigating in this sharia economic dispute, according to PERMA Regulation No.1 of 2016, the implementation of sharia economic dispute mediation according to the agreement of the parties can be carried out outside the court.

The Central Jakarta Religious Court has a special sharia economic dispute mediator. In contrast to other Non-Judge Mediators who in fact are regularly scheduled on Monday to Thursday, the Sharia Economic Dispute Mediator is available but not officially scheduled, the person concerned will be summoned at any time when there is a sharia economic dispute case that will be mediated, given the lack of disputes. Islamic economics.

According to Yandi Suhendar from Yandi Suhendar & partner Law Firm, who over the past 3 years has handled cases of sharia economic conflicts several times alongside their clients of banking institutions, stated that mediation of cases of sharia economic disputes has always been unsuccessful. And when proceeding to the trial, the banks always won the case in several cases.

Especially for sharia economic disputes with a lawsuit under Rp. 200,000,000, - (two hundred million rupiah) through a simple lawsuit procedure.

Based on Article 3 PERMA No. 2 of 2015 stipulates that

(1) A simple lawsuit is filed against a case of default and / or unlawful action with a material claim value of not more than Rp. 200,000,000, - (two hundred million rupiah).

(2) Not included in a simple lawsuit are:

a. Cases where the dispute settlement is carried out through a special court as regulated in statutory regulations; or

b. Land rights disputes.

The period for settlement is taken in article 5 paragraph 3, namely: Settlement of a simple lawsuit is no later than 25 (twenty five) days from the day of the first trial. The judge in this case is obliged to carry out peace for the parties. In this case, actually the simple lawsuit has fulfilled the peace principle referred to in the function and purpose of mediation. So this means that the success of the judge in reconciling the parties in sharia economic disputes includes the success of the court in implementing peace. Unfortunately, this is not recorded in the report on the success of peace as in the mediation report.

One of the obvious obstacles in conducting mediation in court is the matter of the mediator. It is appropriate for the Religious Courts to establish a separate unit specifically to provide certified mediators (in this case mediators for sharia economic disputes) (Perma No.1 Article 5 also requires this certification). The mediator should not come from among the Religious Court judges but from other professionals who have gone through an education and certification to become a

sharia mediator in a religious court as indicated by Perma No. 1. In reality, according to the Chairman of the National Mediation Center (PMN), mediators other than judges registered at the Court are apparently ineffective in carrying out their duties because a dispute has entered the Court and is mediated, the choice is always directed to be mediated by the existing Judge. It is possible to provide non-judge mediator personnel. One alternative that can be done is in collaboration with the Financial Services Authority (OJK) with the National Mediation Center (PMN).

E. CLOSINGS

1. Conclusion

a. The success rate of mediating cases of sharia economic disputes at the Religious Courts is relatively 0% (zero percent). This is because the parties have conducted mediation outside the court and when bringing this case to court is the final dispute resolution effort to obtain a judge's decision.
b. Supporting factors that support the success of mediation in the resolution of sharia economic disputes in the Religious Courts are:
    1) Professional mediator. Professional mediators who master all aspects related to sharia business have a very positive effect in supporting the success of mediation.
    2) Pelaksanaan Kaukus dan peran para pihak untuk beritikad baik mencari solusi dalam penyelesaian sengketa bersangkutan.

2. Suggestion

a. Mediation in the Religious Courts is a model as an effective solution for sharia economic dispute resolution when linked to the competence of the Religious Courts. Therefore we need mediators who can provide fast and low cost solutions in offering peace and win-win solutions.
b. The Supreme Court should collaborate with the OJK (Financial Services Authority) and the National Mediation Center to intensively conduct training to improve the quality of sharia economic dispute mediators.
c. In order to reduce the burden on judges who already have the number of cases handled, professional non-judge mediators are needed by holding strict and quality admissions selections.

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RI Supreme Court Regulation Number 1 of 2016 concerning Procedure for Mediation in Courts

Richard Burton Simatupang, *Aspek Hukum Dalam Bisnis,* Jakarta. Rineka Cipta. 2003

Suyud Margono, *ADR (Alternative Dispute Resolution) & Arbitrase: Proses Pelembagaan dan Aspek Hukum,* Jakarta: Ghalia Indonesia. 2000.

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The 1945 Constitution

Law No. 7 of 1989 *jo. Law* No. 3 of 2006 *jo. Law* No.50 tahun 2009 concerning Religious Courts.

Law Number 21 Tahun 2008 concerning Shariah Banking

Law Number 30 Tahun 1999 concerning Arbitration and Alternative Dispute Resolution

Law Number 48 Tahun 2009 concerning Judicial Power

EMERGENCY IN INDONESIAN LAW

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A. INTRODUCTION

The administration of the state and government is essentially inseparable from the structure and state regulations. On March 11, 2020, when Tedros Adhanom Gheberysus said in a press conference that the outbreak of Covid-19 was a Global Pandemic, the government was busy debating and claiming that its staff were "good managers" with impeccable quality education.[218] Even so, the Covid Handling Task Force in new regions was formed six months later through the Minister of Home Affairs Circular Number 440/5184/SJ dated 17 September 2020 as a follow-up to Presidential Regulation (Perpres) Number 82 of 2020 which was stipulated on 20 July 2020; data between the center and the regions are also increasingly showing a lack of synchrony with each other; While basic matters related to handling the pandemic that should be an urgency are still being ignored, the "Pilkada" democratic party is still being held. This directly has an impact on the trend of national active cases which in the last week of November after the Pilkada showed an increase of 12.78%.[219]
Indonesia's unresponsiveness also has implications for the economy, including a decline in household consumption by 3.2% to 1.2%; capital outflow reached Rp167.9 trillion; the decline in the Composite Stock Price Index below the 3000 level; and 5.1 percent inflation.[220] Meanwhile in the fiscal sector, tax revenues based on the release of the APBN were recorded as of January 31, 2020, amounting to IDR 80.22 trillion or 4.88% of the total IDR 1,624.57 trillion.[221] In the industrial sector, the pandemic also has an impact on reducing employment.

In the process of law, the impact of the pandemic is also felt by increasingly political nuances in juridical procedures. Several laws and regulations were suddenly passed without heeding the formal legalistic provisions. Jimly Asshiddiqie, the Indonesian professor in Constitutional Law explained how the formulation of laws and regulations during the Covid-19 Emergency Period was disrupted. For example,

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[218] Handling Covid-19 Indonesia and Luhut Panjaitan: "I am a good manager, I am assisted by qualified epidemiologists" obtained https://www.bbc.com/indonesia/indonesia-54206332 (accessed April 27, 2021 at 21:45)
[219] WHO data obtained from https://covid19.who.int/region/searo/country/id (accessed April 15, 2021)
[220] Menkeu: Dampak Covid-19, Pertumbuhan Ekonomi Indonesia 2020 bisa Minus 0,4 persen diperoleh *https://www.voaindonesia.com/a/menkeu-dampak-covid-19-pertumbuhan-ekonomi-indonesia-2020-bisa-minus-0-4- persen/5355838.*html (diakses 28 April 2021 pukul 22.00)
[221] Tax Receipts Threatened To Miss The Target Due to Corona obtained https://katadata.co.id/berita/2020/0 3/11/penerimaan-pajak-terancam- meleset-away-dari-target-due-corona (accessed April 28 2021 at 21:40)

Asshiddiqie argued that the Omnibus Law experienced various procedural defects that reflected a shift in the democratic state administration system towards dictatorship.[222]

In fact, indications of a shift in the democratic system to a different form of government in a State of Danger have been widely postulated by various legal academics. One of them, Zwitter, stated that the authority to determine emergency conditions was given to the executive agency. [223] Meanwhile, according to Venkat Iyer, there are at least 7 types of categories of forms of emergency power action, one of which is the granting of legislative power to the executive.[224] Zwitter and Iyer's opinion is in line with the 1945 Constitution of the Republic of Indonesia which formulates Article 12 in conjunction with Article 22 paragraph 1 of the 1945 Constitution that the President has the authority to declare a State of Danger. The provisions of the '45 Constitution are also supported by the legal instruments of Emergency under it, including Perppu No. 23 of 1959 which states that the activation of a State of Danger can only be carried out by the President as the Supreme Commander of the Armed Forces; and Law 24 of 2007 concerning Disaster Management which states that declarations can be made by the President and regional heads based on the scale of the disaster.

The 1945 Constitution is not the only one that carries the concept of the transfer of power to the executive in a State of Emergency, the Wiemar (Germany) Constitution, Korea's Constitution 1948 and several other Republican constitutions also give authority to the executive, especially the President in an emergency to make decisions without legislative approvals, including amending the constitution.

Thus, it can be concluded that the logical consequence of an emergency is an increase in executive power and authority. However, from several empirical studies, one of the most actual is the research by Kai Ostwald related to the Myanmar coup, it was found that the increase in the repressive tendencies of the leaders also occurred due to such a large authority and tended to be absolute.[225]

However, in the context of the Indonesian state system, this tendency of shifting power must be read in conjunction with the rules in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia is a State of Law. So the authority possessed by the President of the Republic of Indonesia, whether in a State of Danger, must be based on law. Even so, the legal system in Indonesia itself regarding Emergencies is also still experiencing limited definitions.

Various forms of limited articulation of the State of Emergency are signals of the unresponsive attitude of state administration. Even though in his follow-up, the President announced that Covid-19 was a National Disaster through Presidential Decree No. 12 of 2020 (one month after the announcement of WHO) but the

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[222] Keynote Speaker Opening Speech- Jimly Asshiddiqie https://www.youtube.com/watch?v=1D10qoF-sE4&t=10974s minutes 21-44, accessed on 23 April 2021

[223] Zwitter provides three main requirements for a situation to be called an Emergency: Conditions of Necessity Concreteness, and Urgency. These three elements must be determined later by the executive. Zwitter, A. 2012. The Rule of Law in Times of Crisis A Legal Theory on the State of Emergency in the Liberal Democracy. Archiv für Rechts-und Sozialphilosphie, 98 (1), 95-111. p. 108.

[224] Tushnet, M., 2007. The political constitution of emergency powers: parliamentary and separation-of-powers regulation. *Int'l JL Context*, p..275-288

[225] Kai Ostwald and Constant Courtin.. "Malapportionment in Myanmar's Elections" contained in Contemporary Southeast Asia Vol.42 No.2 (August 2020, p.170

explanation of the definition, terms and juridical mechanisms for handling such a situation still experienced a legal vacuum.

However, there is actually one branch of law that is quite comprehensive in interpreting the State of Emergency, namely Civil Law. There are at least two civil terms that are closest to the state of emergency, namely the terminology of overmacht and force majeure. Both actually have a similar definition with a slight difference in meaning. Overmacht is a term in Dutch to describe an emergency situation that places legal subjects with no choice, while force majeure is more often used in English literature to describe "Emergency / Extraordinary Circumstances". The root of the word force majeure comes from the French "*Vis Major*", which literally means: "Extraordinary Power". The definition of force majeure in more detail is comprehensively defined in Black's Law as follows:

> "a loss that occurs instantaneously from a natural consequence without human intervention, and cannot be prevented through caution, thoroughness, and attention. A state of nature and arising solely beyond human control and occurring independently of human action or omission. In the Civil Law system, this understanding is often used as a synonym for the term "vis divina" or "acts of God".[226]

The force majeure clause is a valid legal basis for annulling an error/information/omission in fulfilling an achievement. Thus, a State of Emergency in civil law is often also known as a "forgiving legal basis" or "*rechtsvaardigings-grond*".[227] Given its massive role in annulling obligations, the meaning of force majeure in civil science is also not simple. Force majeure cannot be conditioned separately on the terms of the validity of the agreement and/or the conditions for the occurrence of the engagement. As also affirmed in Articles 1244 and 1245 of the Civil Code which include elements of the absolute enforceability of force majeure, including that it cannot be known/predicted that it will occur at the time of the engagement and the absence of bad faith in the agreement. The logical consequence of this is that the meaning of an emergency becomes more contextual, depending on the content of the agreement or clause that explains the conditions that meet the Emergency Prerequisites.[228]

Meanwhile, the latest law that applies as an extension of Article 12 of the 1945 Constitution of the Republic of Indonesia is the Prp Law. No. 23 of 1959 concerning the Revocation of Law no. 74 of 1957 (State Gazette No. 160 of 1957) and the determination of the state of danger. And Government Regulation in Lieu of Law Number 62 of 1960 concerning Amendments to Article 43 paragraph (5). However, the regulation also only focuses on the contextual conditions of war and has not been able to provide a comprehensive in-depth explanation of what is meant by a State of Emergency.

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[226] 'Force Majeure' is an event or effect that can neither be anticipated nor controlled. It is a contractual provision allocating the risk of loss if performance becomes impossible or impractical, especially as a result of an event that the parties could not have anticipated or controlled. See Black, H.C., 2004. Black's Law Dictionary, sixth edition, Paul, Minn: West Publishing co. p. 1086.

[227] Harahap, M. Y. 1982. Aspects of contract law. Bandung: Alumni Publisher. page 83

[228] The agreement must also specifically state in what cases a situation can be categorized as an Emergency in order to avoid multiple interpretations. In addition, formal legalistic post-Emergency conditions must also be met in order to accept liability/responsibility – for example, the requirement to fulfill the notification obligation a maximum of 7 days after the incident or the official notification requirement by an authorized government official.

In the midst of the limitations of existing legal legislation, the Constitutional Court (MK) as the vanguard of democracy is expected to provide guidance. The Constitutional Court's opinion is considered a Chrystal of Knowledge from matters related to constitutionality. All laws are nothing but and cannot but must be in accordance with the ratio decidendi of the Constitutional Court to formulate the concepts presented in the Constitution. Even though the State of Danger itself in the '45 Constitution has not been comprehensively elaborated. The minutes of the formulation of the 1945 Constitution, if it is relevant to the current conditions, are not necessarily actual.

However, is there really a definition of Emergency that can be used as a reference that covers the entire order of state life, both in terms of economy, ecology and health crises, so that it can then be appointed as one of the references for consideration of the Constitutional Court's decision? Considering that the elements of the Emergency condition itself are very general in nature, the legal studies in this research will not be specific. In conducting the search, the author will conduct case studies on the handling of several National Emergencies that have taken place. In conducting this study, the analytical knife that will be used will refer to the principles of democracy and the rule of law.

It is hoped that at the end of this research, the essential matters of the State of Emergency can be formulated, so that adjustments can be made to constitutional legislation that can anticipate all possible conditions while still being guided by the constitution. Based on this introduction, This article will examine in depth the concept of an emergency in a country and the legal arrangements for an emergency in Indonesia.

B. THEORETICAL FRAMEWORK

The normative-philosophical study in this research will be based on hermeneutic theory which has a frame of reference that states that concept definitions are not absolute and very dynamic. Therefore, the meaning of the concept must always be done with decontextualization.[229] The main theoretical basis that will be the reference for the normative study of this research philosophy is the theory of Hans-Georg Gadamer. He separated the philosophy of hermeneutics into two categories of forms:

First, the ontological or structural elements of an understanding ("*effective history*"). It is different from other schools of thought which place prejudice as an assumption that does not have an adequate rationale. In hermeneutics, preconceived notions are the starting point for further understanding.[230] Prejudice in hermeneutics is assessed as a logical consequence of one's perspective in interpreting concepts related to experience and expectations when interpreting it.[231] This is different from the dichotomous point of view of the Cartesian school which distinguishes between objective and subjective interpretations. Gadamer interprets subjective meaning as occupying a crucial role because it contains a synthesis of civilization traditions.

[229] Ricoeur, P., 1981. Hermeneutics and the human sciences: Essays on language, action and interpretation. Cambridge university press. p. 91. See also, Kleden, L., 1990. Symbolic-Textual Paradigm in the Hermeneutic Philosophy of Paul Ricoeur. Dissertation in Leuven, Katholieke Universiteit Leuven. p. 166-167.
[230] Hamula, J.J., 1984. Philosophical hermeneutics: toward an alternative view of adjudication. BYU L. Rev., p. 356
[231] Warnke, G., 2013. Gadamer: Hermeneutics, tradition and reason. John Wiley & Sons. p. 77

"*Tradition is crucial for it defines the ground and hence horizon which interpretes occupies, as well as determining "in advance both what seems (to be)….. worth inquiring about and what… appears as an object of investigation."*[232] In the context of searching for the meaning of Emergency, the author will also look at the historical context behind the formulation of the rules. The minutes of the BPUPKI and DPR-MPR meetings are essential in reviewing the meaning of the State of Emergency in the constitution and its amendments. The context of historical background and political experience not only serves as a projection of the meaning of the concept of Emergency but also serves as a limit/limitation on the meaning of the concept as previously stated in the constitution.[233] Therefore, it is very possible that contextualization at that time was different from the current conditions. In this case, it is necessary to adjust the context in the meaning of the concept of Emergency itself.

Second, awareness of the party interpreting the understanding of its ontological source ("effective-historical consciousness") Unlike the case with the elemental structure of understanding a concept, what is meant by effective-historical consciousness is a State of Mind determined by the approach to the object. According to Gadamer Awareness is the main thing in determining a thought can be said as an interpretation effort to understand a concept. In the absence of Awareness, interpretation will not move from the level of Prejudice. There are at least two prerequisites for hermeneutical awareness in compiling legal research: (i) the nature of the subject in legal interpretation – the use of text materials and facts in legal interpretation; (ii) The nature of objects in legal interpretation – can legal texts be interpreted hermeneutically?[234] In normative legal research methods in general, the analysis is built by relying on argumentation, but in this study the author will explore things that go beyond written arguments. The Emergency Situations insight structure will also be built by examining things that go beyond the text, including – identifying the subject of the formulation of legislation related to Emergency Situations. In addition, in relation to the object of the text itself the author will elaborate on the possibility of textual interpretation. In this regard, the function of the role and legal background of the author plays an important role in interpreting the concept not only relying on prejudice but also narrating all possible answers from the narrative text. – "let the texts speak for themselves". According to K.C. Wheare in John Pieris Constitution is: a legal framework that establishes the basic framework of a country and regulates the structure of government.[235] In addition, S.W. Couwenberg said that the constitution is all the principles of law, the rule of law and institutions related to the order and direction of development of shared life organized as a state. According to Sri Soemantri, the essence of the constitution is the implementation of the constitutional understanding of "constitutionalism", namely the limitation of

[232] Gadamer, H.G., Weinsheimer, J. and Marshall, D.G., 2004. EPZ truth and method. Bloomsbury Publishing USA, p. 261
[233] History should be interpreted as a space of continuity between the interpreter and the reader. Bleicher, J., 2017. Contemporary hermeneutics: Hermeneutics as method, philosophy and critique (Vol. 2). Routledge. p.112.
[234] Sherman, B., 1988. Hermeneutics in law. The Modern Law Review, 51(3), p. 396
[235] Hamidi, J. and Lutfi, M., 2009. Constitutional Provisions for the Implementation of Emergencies in a Country. Journal of the Constitution, Vol, 6 No. 1. Pg. 44. See also Pieris, J., 2007. Constitutional Restrictions on the Powers of the President of the Republic of Indonesia. Jakarta: Rainbow Scholar. p. 45-46

government power on the one hand and guaranteeing the rights of citizens and every resident on the basis of the state. The Constitution as a written constitution is a formal document that contains: (1) the results of the nation's political struggle in the past, (2) the highest constitutional development, (3) views of the nation's character in the past and in the future, (4) the development of the nation's constitutional life.[236]

C. REGULATION ON EMERGENCY LAW IN INDONESIA

The term emergency itself actually comes from Arabic, "dharuri", which is usually defined as unusual or unusual situation. In English, this understanding is called the word "emergency" or "nood" in Dutch, or "siege" in French. Thus, "etat de siege" in French has the same meaning as "state of emergency" in English or "staatsnood" in Dutch. This scholarly term is sometimes referred to as a "state of exception" and is used in the same sense as a "state of emergency".[237]

Terminologically, an emergency is related to the 'emergency doctrine' quoted by Asshiddieqie in Black's Law dictionary which is defined as follows: [238]

A legal principle exempting a person from the ordinary standard of reasonable care if that person acted instinctively to meet asudden and urgent need for aid.

1) *A legal principle by which consent to medical treatment in a dire situation is inferred when neither the patient nor a responsible party can consent but reasonable person would do so.*
2) *The principle that a police officer may conduct a seacrh without a warrant if the officer has probable cause and reasonable beleieves that immediate action is needed to protect life or property.*

The first understanding relates to the concept of "sudden emergency doctrine". The second definition is commonly used in the world of medicine and medical services, while the third definition relates to the problem of 'emergency exception'. Definitions that have relevance to the first and third legal issues regarding their application in norms and their implementation in the field, there are wide variations from the past until now and from one country to another.[239]

The law that applies in a state of emergency (state of emergency or etat de siege) is an emergency law which according to the Anglo-American tradition is called 'martial law' while in the French tradition and other continental countries it is referred to as *'etat de siege'*. '. Emergency constitutional law in the Netherlands is referred to as *"staatsnoodrecht*". The meaning of emergency (nood) between the words *"staatsnoodrecht"* and *"noodstaatsrech"* has a different meaning. The word *"nood"* in *"staatsnoodrecht"* refers to a state of emergency, while the meaning of *"nood"* in *"noodstaatsrecht"* refers to an emergency law. In addition, in *"staatsnoodrecht"* is *"staatsnood"* which means, what is being questioned in the term *"noodstaatsrecht"* is *"the constitutional law which is in a state of emergency*", while in the term *"staatsnoodrecht"* the country is in a state of emergency so that the applicable law is laws that are intended to apply in an emergency. Thus, the legal understanding referred

[236] Ibid.
[237] Sahputra, M., 2020. Negara Dalam Keadaan Darurat Menurut UUD 1945. *Jurnal Transformasi Administrasi*, *10*(1), pp.80-98.
[238] Ibid.
[239] Ibid.

to in *"staatnoodrecht"* is broader than *"noodstaatrecht"* which only concerns constitutional law.[240]

In general, there are two views of the state of danger. In the theoretical setting, there are views that support the rule of law approach where the state of emergency must be subject to the constitution or law, and views that criticize the state of emergency/exception cannot be reduced to legal. norms) which is then understood that the state of danger is part of the extrajudicial or as something higher than the legal position.[241] Proponents of this view put forward the sovereignty approach which argues that it is impossible to control the actions of the executive in a state of danger using standard legal mechanisms. In this case Schmitt stated that:

"*The precise details of an emergency cannot be anticipated, nor can one spell out what may take place in such a case, especially when it is truly a matter of an extreme emergency and of how it is to be eliminated. The precondition as well as the content of jurisdictional competence in such a case must necessarily be unlimited. From the liberal constitutional point of view, there would be no jurisdictional competence at all. The most guidance the constitution can provide is to indicate who can act in such a case*".[242]

Schmitt's statement is widely used and supported by many writers who examine the issue of the September 11 Tragedy in the United States in relation to the debate on the President's authority in responding to the dangers stipulated in the United States Constitution. But not with Georgio Agamben, a state of exception expert who rejected Schmitt's opinion. Agamben called the state of exception "a fictio iuris par excellence" which means that the law must be enforced even in critical conditions as part of upholding the law.[243] The most important thing to understand is that the imposition of a state of danger is related to the condition of a country, whether it is democratic or undemocratic. In this case Agamben argues "It is important not to forget that the modern state of exception is a creation of the democratic–revolutionary tradition and not the absolutist one".[244]

Based on the explanation above, there are two views, each of which proposes a theory of justification for the actions taken during a state of danger. The author in this case adheres to the theory that the state of danger cannot eliminate the legal position, as stated by Georgio Agamben above. Thus the law in this case, whether in the form of a constitution or a law has legitimacy to apply during a state of danger, so that the President as the administrator of emergency power still has relations with other branches of power as regulated in the constitution or law.

Referring to the opinion of John Armitage who argues that a state of danger is a certain condition that cannot be classified. The indication of a state of danger is a threat that comes both from within and from outside. Rules regarding indications of danger conditions must be carried out in general considering that currently the danger conditions that can threaten national security and defense are not limited to classical

[240] Sahputra, M., 2020. Negara Dalam Keadaan Darurat Menurut UUD 1945. *Jurnal Transformasi Administrasi*, *10*(1), pp.80-98.
[241] Humphreys, S., 2006. Legalizing lawlessness: On Giorgio Agamben's state of exception. *European Journal of International Law*, *17*(3), pp.677-687.
[242] Schmitt, C., 2005. *Political theology: Four chapters on the concept of sovereignty*. University of Chicago Press.
[243] Agamben, G., 2020. *The omnibus homo sacer*. Stanford University Press.
[244] Agamben, G., 2005. *The state of exception* (pp. 284-298). Duke University Press.

factors such as riots and disasters, but the economic crisis is also a part that can threaten national security and defense. Hazard conditions are classified in the types of conditions that can threaten humans or the state.[245] These types include; internal armed conflict, such as armed rebellion by groups that threaten national security and defense. Then the international armed conflict or war that occurs between countries and this type of war is subject to the provisions of the 1949 Geneva Conventions. In addition to war, the state of danger is also related to natural disasters and disease outbreaks that occur suddenly beyond prediction or are not caused by human error. Terrorism is also a type of situation related to a state of danger because it threatens national security and defense. Then another type of situation related to the state of danger is a financial crisis or economic crisis that occurs in a country. These types are the basic conditions for a country to be in a state of danger.

From these types of hazard conditions, one character is then born, namely a threat to both humans and the state. The threatening nature is a trait that cannot be predicted so that it can be called a sudden attack. Due to its sudden nature, the method of dealing with it needs to be specifically regulated. This then gave birth to the concept of emergency constitutional law or a state administration system that specifically occurs when the country is in a state of danger. This system separates the administration of the state under normal circumstances.[246]

In the Indonesian state administration system there is a situation where the state situation is not in a normal state and there is a downturn in people's lives caused by certain conditions. Such conditions require a legal provision which in constitutional terms is known as the state in a state of danger. This is as stipulated in Article 12 of the 1945 Constitution which states "The President declares a state of danger, the conditions and consequences of a state of danger are determined by law". The consequences of this provision are then regulated in Article 22 of the 1945 Constitution which states "in the case of an emergency that forces the President to stipulate government regulations substitute laws".

The state of emergency can be seen from two aspects, namely the state of danger and the circumstances of the forcing urgency. Both conditions have the same consequences on the basis of emergency conditions in the country, but both have differences where the state of danger places more emphasis on its structure and matters of urgency that force more emphasis on its content.

On the other hand, the use of the two articles is also different, where Article 12 of the 1945 Constitution regulates the authority of the president as head of state in saving the country from external threats. While the provisions of Article 22 of the 1945 Constitution are within the scope of the regulation concerning the president's authority in issuing Perppu, so he places more emphasis on the internal aspects of the urgent legal need.

Dengan demikian pada ketentuan UUD 1945 terdapat tiga unsur penting yang Thus, in the provisions of the 1945 Constitution, there are three important elements that occur simultaneously which state that the country is in a state of emergency and

[245] Adhari, A., 2019. Ambiguitas Pengaturan Keadaan Bahaya Dalam Sistem Ketatanegaraan Indonesia. *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi*, *11*(1), pp.43-61.
[246] Ibid.

creates a compelling urgency, namely: dangerous threat, reasonable necessity, and limited time.[247]

In addition, a country in a state of emergency is also based on the principle of proportionality as contained in international law.[248] This principle provides a standard of reasonability[249], so that the criteria for determining the existence of a need become clearer when it is formulated as a justification for taking an emergency action that is proportional, so that there is a reasonable limit. Therefore, the action in question must not exceed the provisions of reasonableness which are the justification for carrying out the action.[250]

Regarding the state of emergency, there are three forms of emergency status, namely: civil emergency, military emergency, disaster emergency, and public health emergency:[251]

a) Civil Emergency
   Stipulated by the president because of a security threat in the territory of the country due to rebellion, riots or natural disasters. Then there are wars and violations of territorial sovereignty, as well as threats to the life of the state. Provisions regarding civil emergencies are regulated in Chapter II, starting from article 8 to article 21 of the government regulation in lieu of law no. 23 of 1959. A civil emergency is an emergency whose level of danger is considered the lowest in terms of the least threat of danger. Because of this level of danger, there was no need for a counter operation led by a military command.
b) Military Emergency
   The provisions regarding this military emergency are regulated in Chapter III starting from article 22 to article 34 of the government regulation in lieu of law no. 23 of 1959 concerning the State of Danger.
c) State of War Emergency
   The provisions regarding the State of War Emergency are regulated in Chapter IV starting from article 35 to article 45 of the government regulation in lieu of law no. 23 of 1959 concerning the state of danger. The state of war arises because of a threat that endangers the sovereignty of the state, the safety of the geese, and the integrity of all or part of the territory of the state that comes from foreign military powers, within the territory of the state or outside the territory of the state. national defense tool. Battlefields can take place within the territory of the country, if not necessarily in the entire territory of the country, nor do they always have to be in the entire territory of the country, but can occur only in certain areas.
d) Public health emergency

[247] Chandranegara, I.S., 2012. Pengujian PERPPU terkait Sengketa Kewenangan Konstitusional Antar-Lembaga Negara. *Jurnal Yudisial*, *5*(1), pp.1-16.
[248] Nuh, M.S.N.S., 2011. Hakekat Keadaan Darurat Negara (State Of Emergency) sebagai Dasar Pembentukan Peraturan Pemerintah Pengganti Undang-Undang. *Jurnal Hukum IUS QUIA IUSTUM*, *18*(2), pp.229-246.
[249] Garrett, B.L., 2017. Constitutional Reasonableness. *Minn. L. Rev.*, *102*,
[250] Matompo, O.S., 2014. Pembatasan Terhadap Hak Asasi Manusia Dalam Prespektif Keadaan Darurat. *Jurnal media hukum*, *21*(1), p.16.
[251] Effendi, B., 2020. Tafsir Konstitusi Negara Dalam Keadaan Darurat (State Of Emergency) Dalam Menghadapi Darurat Kesehatan Masyarakat. *Jurnal Transformasi Administrasi*, *10*(1), pp.67-79.

This public health emergency is based on an extraordinary public health event. It can also be caused by infectious diseases, nuclear radiation, biological contamination, chemical contamination, bioterrorism, and food. These things are considered to pose a health hazard and have the potential to spread across regions or across countries. Regarding public health emergencies, it is regulated in Article 10 of Law No. 6 of 2018. The state of public health emergency status is determined by the central government through the determination of the type of disease and all risk factors that can cause a public health emergency.

Discussing the emergency situation in Indonesia (darurat), known as danger (bahaya) as normative term in Indonesia's legal system. Therefore, the use danger and emergency is interchangeable in this regards. Nationally, a danger situation is regulated by four laws:[252]

1) The Law 23/1959 on Determination of the State of Danger. Second, Law 24/2007 on Disaster Management; Third, Law 7/2012 on the Handling of Social Conflicts; Fourth, Law 6/2018 on Health Quarantine.
   Article 1 Law 23/1959 defines the following 'state of danger' conditions:
   The President / Supreme Commander of the Armed Forces declares the whole or part of the territory of the Republic of Indonesia to be in jeopardy with the level of civilian emergency or military emergency or war situation, if, by rebellion, riot or natural disaster, so far as it is concerned that it cannot be solved by the usual equipments; 2. arising from war or danger of war or concerned about the rape of the territory of the Republic of Indonesia in other ways; 3. State life is in jeopardy or under special circumstances it appears or it is feared that there are symptoms that could endanger the life of the State.[253]
   Law 23/1959 defines 'state of danger' as a condition that occurs in the event of a rebellion, riot, natural disaster, war, or war danger that endangers the life of the nation. In its elucidation it, mentions the five conditions categorised as the President's policy of dealing with the three levels of danger; civilian emergency, military emergency and state of war. The five conditions are: rebellion (armed conflict), riots, civil war, natural disasters and war.
2) Then, Law 24/2007 on Disaster Management, which also has different 'content' conditions, defines 'danger' as:
   Disasters are events or series of threatening events which threaten and suffer living and lives of people caused either by nature and/or by non-nature, or by human factors resulting in human casualties, environmental damage, property loss, and psychological affects.
   Law 24/2007 further divides disasters into three types: natural disasters, non-natural disasters and social disasters. There are two types of disasters called natural disasters and social conflicts that fall into the social disaster section. In

[252] Wiratraman, H.P., 2020. Does Indonesian COVID-19 Emergency Law Secure Rule of Law and Human Rights?. *JSEAHR*, *4*, p.306.
[253] In its elucidation of Article 1 of the Law 23/1959 states that: The statement of danger, made by the President in his responsibility and in this case the President is responsible for the People's Consultative Assembly. Evaluation of the events mentioned in paragraph 1 as a reason for the danger to be declared, submitted solely to the President; then the judge cannot test a statement of danger whether it is lawful or not. Vide: Elucidation of the 1945 Constitution before the amendment.

relation to social disasters, the law defines them as "a disaster caused by events or series of events caused by humans involved in social conflicts among groups or civil society groups, and terror".

Law 24/2007 formulates a matter of declaration or statement relating to disasters, as described, a disaster in the partly territory or the whole territory of Indonesia, so then the applicable status includes: national disaster emergency status, provincial disaster emergency and district / city disaster emergency.

3) Regarding Social Conflict law, the Law 7/2012 also regulates part of a state of emergency that defines social conflict as follows:
"Social conflict is a feud and/or physical clash with violence between two or more community groups that takes place at a particular time and has a significant impact on social insecurity and disintegration that impairs national stability and impedes national development".
The Law 7/2012 also regulates the status used in the event of social conflicts. In the event of social conflict occurring then the status used is the state status of the national conflict, the state status of the provincial conflict and the state status of the district/city conflict.
4) Law No. 6/2018 on Health Quarantine. The application of emergency in the law refers to the term of Kedaruratan Kesehatan Masyarakat, or Public Health Emergency (PHE). PHE means a community phenomenon characterized by the spread of infectious diseases and/or incidents caused by nuclear radiation, biological contamination, chemical contamination, bioterrorism, and food that pose a health hazard and potentially spread across region or cross-country" (article 1 number 2).
5) The PHE is formulated at Chapter IV, article 10-14 of the Law. As stated at article 11, "In maintaining health quarantine in PHE, the Central Government quickly and accurately based on the importance of threats, effectiveness, support of resources, and operational techniques taking into account state sovereignty, security, economic, social, and cultural."
In conclusion, these four laws generally govern the same type of danger but with different concepts. The Law 23/1959 mentions five conditions that are part of the status of civilian emergency, military emergency and state of war. Whereas Law 24/2007 uses national disaster emergency status, provincial disaster emergency status and municipal disaster emergency status. Law 7/2012 uses the state status of the national conflict, the state status of the provincial conflict and the state status of the district/city conflict. While Law 6/2018 uses the term PHE or Public Health Emergency. Compare to those laws, Law on 23/1959 is the oldest legal framework for emergency power in Indonesia, however it is less adoptive of human rights, enacted prior to International Covenant on Civil and Political Rights (ICCPR).

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