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Urgensi Peraturan Daerah Kabupaten Malinau tentang Penempatan dan Perlindungan Tenaga Kerja Lokal

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Abstract

This paper aims to analyze the placement and legal protection of local workers through the establishment of Regional Regulations. This research uses normative legal research with statutory and conceptual approaches, using qualitative descriptions and conclusions using the deductive method. The results show that based on the analysis of the provisions of laws and regulations related to the placement and protection of local workers, it is in accordance with the concurrent authority of local governments to regulate the placement and protection of local workers and in order to form good quality and comprehensive local regulations, a critical analysis has been carried out through the three foundations. Philosophical foundation, which provides protection for local workers in improving their welfare. Sociological basis, Malinau Regency is experiencing rapid economic growth characterized by the growth of new industries engaged in various fields so that it has an impact on the need for local workers who have good skills in order to compete with workers from outside the region and Juridical basis, the local government has the right to establish regional regulations and every citizen has the right to work and a decent livelihood for humanity.

Abstrak

Tulisan ini bertujuan menganalisis penempatan dan perlindungan hukum tenaga kerja lokal melalui pembentukan Peraturan Daerah. Penelitian ini menggunakan tipe penelitian hukum normatif dengan pendekatan peraturan perundang-undangan dan konseptual, dengan menggunakan deskripsi kualitatif dan menarik kesimpulan dengan metode deduktif. Hasil penelitian menunjukan bahwa berdasarkan pada analisis ketentuan peraturan perundang-undangan terkait dengan penempatan dan perlindungan bagi tenaga kerja lokal telah sesuai dengan kewenangan konkuren pemerintah daerah untuk mengatur penempatan dan perlindungan tenaga kerja lokal dan agar pembentukan peraturan daerah yang berkualitas Baik dan komprehensif telah dilakukan analisis kritis melalui ketiga landasan yaitu landasan filosofis, yang memberikan perlindungan bagi tenaga kerja lokal dalam meningkatkan kesejahteraannya. Landasan sosiologis, Kabupaten Malinau mengalami pertumbuhan ekonomi yang cepat yang ditandai dengan tumbuhnya industri baru yang bergerak diberbagai bidang sehingga berdampak pada kebutuhan akan tenaga kerja lokal yang memiliki keterampilan yang baik agar bisa bersaing dengan tenaga kerja dari luar daerah dan Landasan yuridis, pemerintah daerah berhak menetapkan peraturan daerah dan tiap-tiap warga negara berhak atas pekerjaan dan penghidupan yang layak bagi kemanusian.

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PENDAHULUAN

Pemerintah memberikan perlindungan dan mengusahakan kesejahteraan bagi setiap tenaga kerja sebagai sebuah sumber daya manusia dengan didasarkan Pasal 27 ayat (2) dan Pasal 28D ayat (2) UUD NRI Tahun 1945 terkait hak setiap warga negara dalam mendapatkan pekerjaan dan penghidupan yang layak dan negara wajib untuk melakukan pemenuhan hak tersebut.[1] konsekuensi dari ketentuan tersebut adanya keharusan pemerintah mewujudkannya dengan menyediakan kesempatan untuk warga masyarakat melakukan suatu pekerjaan. Kebijakan hukum ketenagakerjaan juga mengupayakan adanya pengembangan tenaga kerja yang bersifat luas serta memiliki keterpaduan yang bertujuan untuk meningkatkan kualitas dari suatu pekerjaan, pembayaran upah, jaminan kesejahteraan, serta adanya upaya untuk perlindungan tenaga kerja. Hal ini dilakukan tidak lain disebabkan tenaga kerja memiliki kedudukan yang berarti dalam bidang pembangunan terutama dalam perekonomian bangsa.[2]

Perusahaan-perusahaan dan industri-industri baik lokal dan asing semakin banyak dan perkembangannya cukup signifikan. Industri sektor jasa, pertanian dan kehutanan, pertambangan, industri berat, makanan kesehatan dan lain sebagainya semakin banyak membutuhkan tenaga kerja, yang berdampak pada semakin ketatnya persaingan guna memperoleh pekerjaan yang sesuai dengan syarat yang dibutuhkan. Tidak hanya bersaing dengan pekerja lokal indonesia saja, melainkan juga pencari kerja akan bersaing dengan pekerja asing dimana di era pasar bebas ini, semua orang diberikan kesempatan untuk memperoleh pekerjaan. Kondisi perekonomian yang kurang menarik di negaranya sendiri atau adanya investasi asing masuk ke dalam negeri yang dapat membawa tenaga kerja asing masuk dapat menjadi pemicu terjadinya mobilitas tenaga kerja secara internasional. Pendapatan yang meningkat di negara yang sedang berkembang untuk pergi melintas batas negara, informasi yang sudah mendunia dan kemudahan transportasi juga berperan

[1] Fara Marisda Martias, "Dampak Kebijakan Tenaga Kerja Asing Era Pemerintah Joko Widodo (2014 – 2019) terhadap Tenaga Kerja Lokal di Indonesia", Vol 3, No. 1, 2021, hal 67 – 124.

[2] Asri Wijayanti, 2009, *Hukum Ketenagakerjaan Pasca Reformasi*, Jakarta: Sinar Grafika, hal. 6.

meningkatkan mobilitas tenaga kerja secara internasional.[3] Hal yang lainnya adalah pergerakan masyarakat antar pulau di wilayah Indonesia juga menyebabkan terjadinya persaingan dalam memperoleh pekerjaan.

Masalah persaingan tenaga kerja lokal ini sangat dirasakan langsung di daerah, khususnya daerah yang wilayahnya memiliki potensi sumber daya alam yang besar seperti perkebunaan, pertambangan, kehutanan.[4] Kabupaten Malinau pada sektor perkebunan memiliki luas areal tanaman perkebunan pada tahun 2022 adalah 5,033.2 Ha dengan jenis tanaman kelapa sawit, karet, kopi dan kakao.[5] Sektor kehutanan pada tahun 2022 memiliki luas kawasan sebesar 2,276,306.62 Ha dengan kategori Hutan Produksi Terbatas, Hutan Produksi Tetap, Hutan Produksi Dapat dikonversi, dan Areal Penggunaan Lain.[6] Pada sektor pertambangan di tahun 2022 seluas 41,041.44 Ha dengan jenis pertambangan mineral batuan dan batu bara.[7] Sedangkan nilai investasi di Kabupaten Malinau pada tahun 2021 mencapai 0.2220 (triliun) Rupiah (meningkat sebesar 304.7% dari nilai investasi pada tahun 2020 yaitu 0.0549 (triliun) Rupiah).[8] Pemerintah Daerah guna mewujudkan visi, misi dan tujuannya terkait dengan kesejahteraan masyarakat lokal, berupaya dengan memberikan kesempatan kepada masyarakat lokal untuk dapat mengakses dan memperoleh pekerjaan di wilayah tersebut, juga memberikan pendidikan dan keterampilan kepada tenaga kerja, sehingga jika ada investor masuk, pemerintah telah menyediakan tenaga kerja terampil.

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[3] Aris Ananta, 1996, *Ekonomi Sumber Daya Manusia*, Jakarta: Lembaga Demografi FE-UI, hal. 245.

[4] La Ode Dedihasriadi, "Peran Pemerintah Daerah Kabupaten/Kota dalam Pengawasan Tenaga Kerja Asing di Indonesia" , *Al-Daulah*: *Jurnal Hukum dan Perundingan Islam*, Vol. 9, No. 2, 2019, hal 323 – 337.

[5] https://kaltara.bps.go.id/indicator/54/330/1/luas-areal-tanaman-perkebunan.html, diakses 11 Agustus 2023, (09.39).

[6] https://kaltara.bps.go.id/indicator/60/333/1/luas-kawasan-hutan-dan-konservasi-perairan.html, tanggal kunjung 11 Agustus 2023, (10.13).

[7] https://momi.minerba.esdm.go.id/public/, diakses 12 Agustus 2023, (12.40).

[8] https://nswi.bkpm.go.id/tableau/show_eis?app_name=Investasi%20Per%20Kabupaten%20/%20Kota&content_url=2018_12_DB-Desktop-Apps/DB-per-KABKOT, diakses 11 Agustus 2023, (11.41).

Tabel 1: Elemen Data Tenaga Kerja

Data	2019	2020	2021	2022	2023	Ket	Sumber Data
Jumlah Perusahaan yang Terdaftar	46	46	48	52	85	Perusahaan	Disnaker
Jumlah Tenaga Kerja							
Tenaga Kerja Kab. Malinau	3.869	4.942	5.121	4.991	7.024	org	Disnaker
Tenaga Kerja Asing	9	8	4	7	6	org	Disnaker
Jumlah Pencari Kerja (AK-I) dan Jumlah yang ditempakan:							
Pencari Kerja Terdaftar	41	460	437	376	126	Org	Disnaker
Penempatan	39	122	120	183	3	Org	Disnaker
Lowongan Kerja	11	14	13	21	4	Org	Disnaker
Pengangguran/belum dapat pekerjaan	9	338	317	286	99	Org	Disnaker
Jumlah Penduduk Usia 15 Tahun ke Atas							
Konstruksi Jumlah Laki-Laki			4.635		-	Org	BPS
Jumlah Perempuan			490			Org	BPS
Jumlah Partisipasi Angkatan Kerja		6.644	7.149			Org	BPS
Jumlah Penduduk Kerja			45.659	65.502		Org	BPS
Jumlah Angkatan Kerja			45.659	48.174		Org	BPS
Jumlah Angkatan (BAK)			18.205	17.328		Org	BPS
Jumlah Penduduk yang Bekerja			43.770	46.542		Org	BPS
Jumlah Pengangguran Terbuka			1.889	1.592		Org	BPS

Sumber: Dinas Ketenagakerjaan Kabupaten Malinau, 2024

Berdasarkan data antara jumlah perusahaan yang terdaftar dengan jumlah partisipasi angkatan kerja yang begitu tidak seimbang, maka perlu adanya perlindungan dan penempatan bagi tenaga kerja lokal yang dilakukan oleh pemerintah daerah melalui pembentukan Peraturan Daerah, substansi perlindungan hukum di focuskan pada melindungi tenaga kerja lokal dalam memperoleh akses pekerjaan. Guna mewujudkan tujuan kesejahteraan masyarakat dalam hal ini kesempatan dalam memperoleh pekerjaan ada beberapa pengaturan yang menjadi dasar hukum mengenai ketenagakerjaan di Indonesia yaitu Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan, Undang-Undang Nomor 6 Tahun 2023 tentang tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang dan Peraturan

Menteri Ketenagakerjaan Nomor 39 Tahun 2016 Tentang Penempatan Tenaga Kerja.

METODE PENELITIAN

Penelitian ini adalah jenis penelitian hukum yuridis normatif dengan pendekatan yang digunakan adalah pendekatan peraturan perundang-undangan *(Statute approach)* dan pendekatan konseptual (*conceptual approach*). Analisis data dilakukan secara deskripsi kualitatif. Kesimpulan dengan metode deduktif yaitu menarik kesimpulan dari yang sifatnya umum ke khusus terutama yang berkaitan dengan topik penelitian.[9]

PEMBAHASAN

A. Analisis Pengaturan Pembentukan Peraturan Daerah tentang Penempatan dan Perlindungan Hukum Bagi Tenaga Kerja Lokal di Kabupaten Malinau

Pembentukan Peraturan Daerah tentang Penempatan dan Perlindungan Hukum Bagi Tenaga Kerja Lokal di Daerah bukan hanya dilihat dari sisi kompetensi formal atau dari kepentingan daerah tersebut, tetapi memperhatikan kepentingan daerah tetangga, kepentingan nasional secara umum dan ketentuan peraturan perundang-undangan terkait dengan perlindungan hukum bagi tenaga kerja lokal.[10] Hal ini diharapkan agar tidak terjadinya produk hukum daerah yang bertentangan dengan ketentuan peraturan yang lebih tinggi.

Berdasarkan persoalan tersebut, maka penyusunan peraturan daerah mengenai perlindungan hukum tenaga kerja lokal perlu dilakukan analisis mengenai ketentuan peraturan perundang-undangan yang terkait, agar tidak adanya tumpang tindih serta sesuai dengan susunan peraturan perundang-undangan.

[9] Wiwin Budi Pratiwi dan Devi Andani, “Perlindungan Hukum Tenaga Kerja Dengan Sistem *Outsourcing* Di Indonesia”, Vol. 29, Issue 3, 2022, hal. 652 – 673.

[10] Nuvazria Achir, “Anotasi Normatif Terhadap Peraturan Daerah Tentang Transparansi”, *JALREV*, Vol. 2, Issue. 1, 2020, hal 83 – 100.

1. Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan

Pembangunan ketenagakerjaan di Indonesia bertujuan terwujudnya tenaga kerja yang optimal dan manusiawi, pemerataan kesempatan kerja dan penyediaan tenaga kerja yang sesuai dengan kebutuhan pembangunan nasional dan daerah, serta memberikan perlindungan kepada tenaga kerja dalam mewujudkan kesejahteraan umum.[11] Selain mewujudkan kesejahteraan umum, penyerapan tenaga kerja lokal dapat mendukung terwujudnya keadilan sosial bagi seluruh rakyat Indonesia, hal ini dipertegas dengan adanya kewajiban negara untuk menciptakan kesejahteraan umum bagi seluruh rakyat Indonesia.[12]

Penyerapan tenaga kerja lokal di Kabupaten Malinau masih kurang memberdayakan tenaga kerja lokal sehingga berdampak banyaknya tenaga kerja luar daerah yang bekerja di perusahaan dengan keahlian khusus. Keahlian khusus yang dimaksud dalam hal ini ialah kemampuan seseorang untuk melakukan sesuatu yang membutuhkan waktu tertentu untuk mempelajarinya dan dapat dibuktikan. Skill apapun dapat dipelajari namun membutuhkan dedikasi yang kuat untuk mempelajari ilmu tersebut. Perusahaan seharusnya mengutamakan tenaga kerja lokal yang terserap dan tenaga kerja yang belum memiliki keterampilan diberikan pelatihan sehingga mendapatkan kesempatan yang sama dalam bekerja.

Pasal 42 ayat (4) " Tenaga kerja asing/luar daerah dapat dipekerjakan di Indonesia dalam hubungan kerja untuk jabatan tertentu dan waktu tertentu" dan pasal 43 huruf (d) juga menjelaskan bahwa "penunjukan tenaga kerja warga negara Indonesia sebagai pendamping tenaga kerja asing yang dipekerjakan" Peran pemerintah terhadap perlindungan tenaga kerja lokal masih kurang dalam pengaturan ini, yang mana dalam aturan ini hanya menjelaskan tenaga kerja mendapatkan kesempatan dan perlakuan yang sama. Undang-undang ini belum ada mengatur perbandingan penggunaan tenaga kerja lokal atau tenaga kerja dari luar

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[11] Aprilia, Haris Retno Susmiyati, Erna Susanti, "Implementasi Peraturan Daerah Tentang Tenaga Kerja Lokal pada Perusahaan Pertambangan Batubara di Kabupaten Berau Provinsi Kalimantan Timur", *Risalah Hukum*, Vol. 15, No. 1, 2019, hal. 11 – 31.

[12] Yusinta Hidayat, Lutfi Fahrul Rizal, Aji Saptaji, "Efektivitas Pengaturan Penyerapan Tenaga Kerja Lokal di Kabupaten Karawang Dalam Meminimalisir Angka Pengangguran Perspektif Siyasah Dusturiyah, *UNES LAW REVIEW*, Vol. 6, No. 4, 2024, hal. 11809 – 11817.

daerah dalam satu perusahaan. Sehingga masih ada saja perusahaan yang belum mengutamakan tenaga kerja lokal dalam kegiatan pertambangan batubara di perusahaan yang mengakibatkan perekrutan tenaga kerja dari luar dan tidak terserapnya tenaga kerja lokal. Pemerintah sebagai pemegang kewenangan sesuai Undang-undang ini seharusnya lebih memperhatikan tenaga kerja lokal yang wajib di utamakan dalam penyerapan tenaga kerja di suatu perusahaan demi mewujudkan kesejahteraan dan kepastian hukum bagi masyarakat dalam suatu negara.

2. Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah

Keberadaan pengaturan hukum penyelenggaraan pemerintahan daerah sejak tahun 1945 adalah untuk melaksanakan Pasal 18 ayat (5) UUD NRI Tahun 1945, dengan salah satu tujuan untuk merealisasikan apa yang menjadi tujuan negara secara ideal yang hendak dicapai negara Republik Indonesia.[13] Hal ini dapat dilihat dalam konsideran menimbang Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah yang menyatakan, "bahwa penyelenggaraan pemerintahan daerah diarahkan untuk mempercepat terwujudnya kesejahteraan masyarakat melalui peningkatan pelayanan, pemberdayaan, dan peran serta masyarakat, serta peningkatan daya saing daerah dengan memperhatikan prinsip demokrasi, pemerataan, keadilan, dan kekhasan suatu daerah dalam sistem Negara Kesatuan Republik Indonesia.

Dalam Undang-Undang ini menekankan pada asas otonomi daerah. Otonomi daerah adalah hak, wewenang dan kewajiban daerah otonom untuk mengatur sendiri urusan pemerintah dan kepentingan masyarakat setempat sesuai dengan peraturan perundang-undangan. Sistem otonomi daerah memungkinkan daerah mempunyai hak dan kewajiban untuk mengatur daerahnya sendiri, dalam pelaksanaannya prinsip otonomi daerah tetap diawasi oleh pemerintah pusat. Pemerintah pusat memiliki kewenangan untuk menyerahkan Sebagian

[13] Zainuri, “Pembentukan Hukum dan Perlakukan Khusus Wilayah Provinsi Kepulauan dalam Sistem Pemerintahan Daerah di Indonesia”, *Perspektif Hukum*, Vol. 18, No 1, 2018, hal 76 – 92.

kekuasaannya ke pemerintah daerah berdasarkan hak otonom, penyerahan sebagian kekuasaan itu Indonesia adalah negara kesatuan dengan sistem desentralisasi.

Pembentukan Peraturan Daerah tentang perlindungan dan penempatan tenaga kerja lokal sangat terkait dengan ketentuan Pasal 12 ayat (1) huruf a, b, c, dan d dan Pasal 12 ayat (2) huruf a, g dan k Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah khususnya sebagai bagian dari urusan pemerintah wajib yang berkaitan dan tidak berkaitan dengan pelayanan dasar dengan begitu pengaturan terhadap ketenagakerjaan berjalan efektif. Subtansi penyelenggaraan pemerintah daerah baik Provinsi dan Kabupaten/Kota yaitu terkait dengan kewenangan untuk mengatur dan mengurus daerahnya untuk terwujudnya kesejahteraan dan pembangunan, salah satunya ialah memberikan penempatan dan perlindungan bagi tenaga kerja lokal di daerah.

3. Undang-Undang Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Menjadi Undang-Undang

Terbentuknya undang-undang ini merupakan langkah untuk mendorong pertumbuhan ekonomi melalui kemudahan investasi, undang-undang ini sebagai aturan penyebaranisasi undang-undang ketenagakerjaan dengan menggunakan metode *omnibus law.*[14] *Omnibus law* memang diperlukan untuk pertumbuhan ekonomi dan perluasan pembukaan lapangan kerja namun perlindungan dan peningkatan kesejahteraan terhadap pekerja/buruh bukan menjadi fokus utama dari Undang-undang *Omnibus Law* Cipta Kerja.[15]

Untuk menjamin setiap warga negara mendapatkan kesempatan kerja (*demand for labour*) yang layak,[16] serta mendapat imbalan dan perlakuan yang adil

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[14] Sarah, Wasiatur Riskiyah, M. Adi Saputra, Ismail Pettanase, “Perlindungan Hukum Tenaga Kerja Lokal Pasca Regulasi UU Ketenagakerjaan Studi Siyasah Shar’iyyah”, *Jurnal Penegakan Hukum Indonesia (JPHI)*, Vol. 4, Issue. 3, 2023, hal. 1 – 23.

[15] May Linda Iswaningsih, I Nyoman Putu Budiartha, Ni Made Puspasutari Ujianti, "Perlindungan Hukum Terhadap Tenaga Kerja Lokal Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Omnibus Law Cipta Kerja", *Jurnal Preferensi Hukum*, Vol. 2, 2021. hal. 483.

[16] Mohammad Bangsu, Rachmat Ihya, Nor Cholis, “Telaah Hukum Omnibus Law dan Perlindungan Tenaga Kerja Indonesia”, *Jurnal Legisia*, Vol 15, No. 1, 2023, hal. 64 – 78.

dalam hubungan kerja Undang-Undang Cipta Kerja mengatur kebijakan strategis cipta kerja yang salah satunya meliputi ketenagakerjaan, untuk lebih mengutamakan penggunaan tenaga kerja lokal, serta meningkatkan kompetensi tenaga kerja lokal melalui pendidikan dan pelatihan. Terlihat dari kebijakan pengaturan terhadap perusahan penanaman modal dan penggunaan tenaga kerja asing merupakan bentuk perlindungan terhadap tenaga kerja lokal, dengan adanya pengaturan penggunaan tenaga kerja asing dengan kualifikasi tinggi dapat memberikan sumbangan peningkatan produktivitas dan alih keterampilan serta pengetahuan bagi tenaga kerja lokal.

4. Peraturan Presiden Nomor 20 Tahun 2018 tentang Penggunaan Tenaga Kerja Asing

Di Indonesia para pekerja bukan hanya warga Indonesia saja melainkan terdapat pekerja dari luar negeri atau warga negara asing yang disebut TKA. Kehadiran para TKA diperlukan karena dalam pembangunan nasional diperlukan modal, teknologi dan tenaga ahli asing sedangkan pasar kerja dalam negeri belum sepenuhnya mampu menyediakan tenaga ahli baik secara kuantitas maupun kualitas. TKA diperlukan mengingat kualitas sumber daya manusia dalam negeri terbatas untuk mengoperasikan teknologi maju dan sekaligus untuk melakukan alih pengetahuan kepada tenaga kerja.[17]

TKA yang bekerja di Indonesia harus memiliki keterampilan yang lebih baik daripada tenaga kerja lokal karena dikhususkan untuk jabatan yang lebih tinggi. Tetapi ketentuan tersebut tetap dibatasi oleh UU Ketenagakerjaan dimana tidak semua jabatan yang lebih tinggi dapat diduduki oleh TKA. Serta harus diketahui juga bahwa TKA dapat dipekerjakan di Indonesia hanya dalam hubungan kerja untuk jabatan tertentu dan waktu tertentu sesuai kesepakatan. Jenis pekerjaan yang dapat diduduki oleh TKA adalah hanya untuk tenaga kerja ahli dan bukan sebagai pekerja kasar. Pemerintah senantiasa dari dulu melarang adanya TKA yang tidak

[17] Sisis Noer Anindita, "Perlindungan Hukum Tenaga Kerja Lokal Atas Masuknya Tenaga Kerja Asing Pasca Berlakunya Perpres No. 20 Tahun 2018", *Jurist-Diction*, Vol. 2 No. 3, Mei 2019. hal. 1129.

memiliki keahlian dan kemampuan yang dibutuhkan oleh pekerjaan di Indonesia. Tetapi pada kenyataannya sedang banyak terjadi kasus mengenai TKA yang melakukan pekerjaan kasar di Indonesia. mereka melakukan pekerjaan yang seharusnya tidak diperbolehkan untuk dilakukan untuk para TKA.

B. Urgensi Pembentukan Peraturan Daerah Kabupaten Malinau Tentang Penempatan Dan Perlindungan Tenaga Kerja Lokal

1. Prinsip Otonomi Daerah Dalam Menciptakan Peluang Kerja, Menempatkan dan Memberikan Perlindungan Hukum Terhadap Tenaga Kerja Lokal di Kabupaten Malinau

Secara umum dapat digambarkan bahwa pemerintah pusat menyelenggarakan pemerintahan nasional dan pemerintah daerah menyelenggarakan pemerintahan di daerah.[18] pemerintah pusat dan pemerintah daerah secara bersama-sama bertanggung jawab dalam rangka meningkatkan kesejahteraan rakyat. Model hubungan antara pemerintah pusat dan pemerintah daerah di Indonesia sesuai dengan model relatif sebagaimana telah disampaikan oleh Clarke dan Stewart yang membagi kedalam tiga model hubungan yaitu: model interaksi, model agensi, dan model relatif. Adapun penjelasannya sebagai berikut:[19]

> “Model interaksi, yaitu model yang sulit untuk menentukan ruang lingkup kegiatan pemerintah pusat dan pemerintah daerah, karena mereka terlibat dalam pola hubungan yang rumit, penekanannya pada pengaruh yang menguntungkan saja. Petugas pada kedua tingkat terlinat dalam diskusi bersama tentang projek dan perencanaan. Model ini sulit ditentukan tanggung jawab masing-masing otoritas, karena penekanannya adalah kerja sama.
> Model agensi, yaitu pemerintah daerah berfungsi sebagai agen pelaksana kebijakan pemerintah pusat. Hal ini diyakinkan melalui spesifikasi yang terperinci dalam peraturan, perkembangan peraturan dan pengawasan. Model relatif, focus pada memberikan kebebasan bertindak pada pemerintah daerah dalam kerangka kerja kekuasaan dan kewajiban yang telah ditentukan. Pemerintah daerah dapat membuat kebijakan yang ditetapkan oleh pemerintah pusat.”

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[18] Fuqoha, "Perlindungan Hukum Terhadap Kesempatan Kerja Bagi Masyarakat Lokal Di Kota Cilegon", *Jurnal Wawasan Yuridika*, Vol. 2, 2018. hal. 136.

[19] Marthen Bunga, “Model Pembentukan Peraturan Daerah Yang Ideal Dalam Penyelenggaraan Otonomi Daerah”, *Jurnal Hukum & Pembangunan*, Vol. 49, No. 4, 2019, 818 – 833.

Penyelenggaraan urusan wajib oleh pemerintah daerah beberapa diantaranya yang berkenaan dengan meningkatkan kesejahteraan masyarakat yaitu perencanaan dan pengendalian pembangunan, penanggulangan masalah sosial dan pelayanan pada bidang ketenagakerjaan.[20] Dalam prinsip otonomi daerah, salah satu semangat digulirkannya otonomi daerah yaitu dengan adanya otonomi yang seluas-luasnya dalam menyelenggarakan pemerintahan sendiri, sehingga masyarakat di daerah memiliki kesempatan untuk membangun daerahnya dalam rangka mewujudkan kesejahteraan masyarakat daerah.

Konsepsi otonomi daerah memberikan hak, wewenang dan kewajiban bagi daerah untuk mengurus dan mengatur rumah tangganya sendiri sesuai dengan peraturan perundang-undangan yang berlaku.[21] Menjadi tanggung jawab dan kewenangan pemerintah daerah berkenaan dengan urusan menciptakan kesejahteraan masyarakat daerah sesuai dengan prinsip otonomi daerah bahwa pemerintah daerah diberikan kekuasaan dan kewenangan untuk mengatur dan mengurus daerah sendiri. Dalam penyelenggaraan urusan pemerintahan yang menjadi kewenangan pemerintah daerah terdiri dari urusan wajib dan urusan pilihan.

Pengaturan urusan tenaga kerja di daerah dapat ditemukan dibagian pemerintahan konkuran wajib yang tidak terkait dengan pelayanan dasar.[22] Sehingga memberikan peluang dan kesempatan dalam ketenagakerjaan, pemerintah daerah harus mampu mengatur mekanisme penempatan maupun kesempatan kerja bagi masyarakat daerah. untuk memberikan peluang dan kesempatan dalam ketenagakerjaan, pemerintah daerah harus mampu mengatur mekanisme penempatan maupun kesempatan kerja bagi masyarakat daerah.

Dengan adanya kepastian hukum bagi masyarakat untuk memperoleh pekerjaan, maka peran pemerintah pusat dan pemerintah daerah adalah memastikan bahwa peluang dan kesempatan kerja bagi masyarakat di daerah masing-masing dapat menciptakan kesejahteraan bagi masyarakat di daerahnya dan secara umum

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[20] Siswanto Sunarno, 2012, *Hukum Pemerintahan Daerah Di Indonesia,* Cet. Ke-4, Jakarta: Sinar Grafika. hal. 35.

[21] Darwin Ginting, "Konsepsi Otonomi Daerah Sebagai Alternatif Pilihan Dari Tuntutan Bentuk Negara Federal Di Indonesia", *Jurnal Wawasan Yuridika*, Vol. 25 No. 2, 2011. hal. 349.

[22] Helmi, “Kewenangan Daerah Dalam Perizinan Berusaha Dalam UU Cipta Kerja”, *Simbur Cahaya*, Vol. 28, No. 1, 2021, hal 15 – 39.

kesejahteraan bagi seluruh rakyat Indonesia. Dengan prinsip otonomi seluas-luasnya maka peran pemerintah daerah baik melalui kepala daerah dalam desentralisasi fungsional maupun melalui lembaga/alat pemerintah pusat dalam desentralisasi administratif harus mampu menciptakan peluang kerja bagi masyarakat daerah masing-masing.[23]

2. Landasan Filosofis, Sosiologis, Yuridis Pembentukan Perda Malinau Tentang Penempatan dan Perlindungan Hukum Tenaga Kerja Lokal di Kabupaten Malinau

a. Landasan Filosofis

Mengenai landasan filosofis ketenagakerjaan, yang menjadi acuan dalam norma dasar telah memberikan landasan bagi aturan dasar yang merupakan tatanan suatu negara yang menjiwai sila – sila Pancasila[24] dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (selanjutnya disingkat dengan UUD NRI 1845) maka aturan dasar tersebut pada gilirannya merupakan landasan hukum perundang-undangan (*gesetzesrecht*) yang berlaku dalam negara.[25] Oleh karena itu, UUD NRI 1945 sebagai landasan konstitusional merupakan arah politik hukum ketenagakerjaan nasional yang dimuat pada Alinea Keempat Pembukaan UUD NRI 1945, yaitu: "...melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia, memajukan kesejahteraan umum..." yang berkorelasi dengan Pasal 1 ayat (3) UUD NRI 1945, bahwa: "Negara Indonesia adalah negara hukum".

Pasal 1 ayat (3) UUD NRI Tahun 1945 tersebut dapat dikorelasikan dengan pasal-pasal yang mengatur tentang ketenagakerjaan, seperti Pasal 27 Ayat yang berbunyi: "Tiap-tiap warga negara berhak atas pekerjaan dan penghidupan yang layak bagi kemanusiaan", Pasal 28D ayat (2) berbunyi: "Setiap orang berhak untuk bekerja serta mendapat imbalan dan perlakuan yang adil dan layak dalam hubungan kerja". Kemudian dipertegas oleh Pasal 28I ayat (2) UUD NRI Tahun 1945 yang

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[23] Fuqoha, "Perlindungan Hukum Terhadap Kesempatan Kerja Bagi Masyarakat Lokal di Kota Cilegon", *Jurnal Wawasan Yuridika*, Vol. 2, 2018. hal. 140.

[24] Ali Yusran Gea, "Urgensi Landasan Filosofis, Sosiologis, dan Yuridis dalam Pembentukan Undang-Undang di Indonesia", *UNES LAW REVIEW*, Vol. 6, No. 4, 2024, hal 10967 – 10988.

[25] Ni'matul Huda, 2005, *Negara Hukum, Demokrasi & Judicial Review,* Yogyakarta: UII Press, hal. 52.

menyatakan, sebagai berikut: "Setiap orang berhak bebas dari perlakuan yang bersifat diskriminatif atas dasar apapun dan berhak mendapatkan perlindungan terhadap perlakuan yang bersifat diskriminatif itu".

Suatu negara memiliki tujuan yang menurut Aristoteles bahwa negara itu ada untuk kepentingan warga negaranya, agar mereka dapat hidup baik dan bahagia. Oleh Epicurus, selain menyelenggarakan ketertiban dan keamanan, negara juga bertujuan untuk menyelenggarakan kepentingan perseorangan baik bersifat materialistis maupun bersifat kejiwaan dan kerohanian. Kepentingan warga yang materialistis mencakup kepentingan untuk memperoleh kesejahteraan, baik pendidikan maupun pekerjaan yang dijamin melalui konstitusi negara.[26]

Secara filosofis peraturan daerah tentang perlindungan terhadap tenaga kerja lokal adalah untuk menjamin bahwa pelaksanaan ketenagakerjaan tepat guna dan dapat berjalan dengan efektif, karena tujuan atau hakikat penyelenggaraannya semata-mata untuk memenuhi dan melindungi hak warga negara, sebagaimana dijamin dalam UUD NRI Tahun 1945 dan Pancasila.

Pasal 27 ayat (2) UUD NRI Tahun 1945 harus ditafsirkan sebagai berikut:

> "*…bahwa pemerintah berkewajiban untuk memberantas pengangguran dan harus mengusahakan supaya setiap warga negara bisa mendapat pekerjaan dengan nafkah yang layak untuk hidup, bukan hanya asal bekerja saja sekalipun dengan penindasan atau eksploitasi, melainkan harus layak untuk penghidupan".*

Secara fundamental hukum ketenagakerjaan Indonesia bukan hanya harus berlandaskan pada Pasal 27 ayat (2), Pasal 28D ayat (2), Pasal 28I ayat (2) UUD 1945, tetapi berlandaskan pula pada Pasal 33 ayat (1) UUD 1945 yang mengatur tentang dasar perekonomian negara Indonesia yang secara historis pernah dikemukakan oleh Moch. Hatta yang memberikan konseptual Pasal 33 dengan istilah demokrasi ekonomi dengan mengedepankan kemakmuran rakyat dan bukan kemakmuran orang perseorangan, sehingga perekonomian Indonesia disusun sebagai usaha bersama berdasarkan asas kekeluargaan.[27]

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[26] I Gde Pantja Astawa Dan Suprin Na'a, 2009, *Memahami Ilmu Negara Dan Teori Negara,* Cet. Ke-1, Bandung: Refika Aditama, hal. 45-46.

[27] Muh. Hatta Dalam Sri Bintang Pamungkas, 1996, *Pokok-Pokok Pikiran Tentang Demokrasi Ekonomi Dan Pembangunan,* Jakarta: Yayasan Daulat Rakyat, hal. 1.

Secara filosofis peraturan daerah tentang perlindungan terhadap tenaga kerja lokal adalah untuk menjamin bahwa pelaksanaan ketenagakerjaan tepat guna dan dapat berjalan dengan efektif, karena tujuan atau hakikat penyelenggaraannya semata-mata untuk memenuhi dan melindungi hak warga negara, sebagaimana dijamin dalam UUD NRI Tahun 1945 dan Pancasila.

b. Landasan Sosiologis

Landasan ini akan menguraikan tentang fakta empiris mengenai perkembangan masalah dan kebutuhan masyarakat khususnya tenaga kerja lokal di Kabupaten Malinau.[28] Penyusunan peraturan daerah ini, Pemerintah harus memprioritaskan tenaga kerja lokal untuk mensejahterakan warga daerah. Tujuannya untuk menekan angka pengangguran yang ada di daerah perusahaan tersebut berdiri sehingga dapat meningkatkan taraf hidup masyarakat agar menjadi sejahtera. Bagi perusahaan, penggunaan tenaga kerja lokal dapat menekan biaya dibandingkan dengen penggunaan tenaga kerja asing.

Kabupaten Malinau merupakan wilayah yang memiliki sumber daya alam dimana terdapat perusahaan baik nasional maupun swasta yang bergerak diberbagai bidang. Dengan adanya perusahaan-perusahaan tersebut tentunya membutuhkan banyak tenaga kerja baik yang berasal dari luar Kabupaten Malinau maupun tenaga kerja lokal. Banyaknya perusahaan tersebut tentu saja memiliki dampak pada persaingan tenaga kerja, dimana masing-masing tenaga kerja akan berkompetensi sesuai dengan keahliannya dan kemampuan yang mereka miliki sehingga pemerintah daerah juga harus mempersiapkan masyarakatnya untuk dapat bersaing dan memberikan kesempatan kepada masyarakatnya untuk dapat bekerja di daerahnya sendiri.

Di Kabupaten Malinau Pertumbuhan ekonomi yang sangat cepat ditandai dengan tumbuhnya industri-industri baru yang menimbulkan banyak peluang bagi angkatan kerja pria maupun wanita. Sebagian besar lapangan kerja di perusahaan pada tingkat organisasi yang rendah yang tidak membutuhkan keterampilan yang khusus lebih banyak memberi peluang bagi tenaga kerja wanita. Tuntutan ekonomi yang mendesak dan berkurangnya peluang serta penghasilan di bidang pertanian

[28] Otti Ilham Khair, "Analisis Landasan Filosofis, Sosiologis dan Yuridis Pada Pembentukan Undang-Undang Ibu Kota Negara", *ACADEMIA*: *Jurnal Inovasi Riset Akademik*, Vol. 2, No. 1, 2022, h. 1 – 10.

yang tidak memberikan suatu hasil yang tepat dan rutuin, dan adanya kesempatan untuk bekerja di bidang industri telah memberikan daya tarik yang kuat bagi tenaga kerja wanita. Tidak hanya pada tenaga kerja wanita yang sudah dewasa yang sudah dapat digolongkan pada angkatan kerja.

c. Landasan Yuridis

Peraturan Daerah memiliki landasan konstitusional yang termuat pada Pasal 18 ayat (6) UUD NRI Tahun 1945: "Pemerintah daerah berhak menetapkan peraturan daerah dan peraturan – peraturan lain untuk melaksanakan otonomi dan tugas pembantuan". Ketentuan Pasal 18 ayat (6) UUD NRI Tahun 1945, bermakna bahwa pemerintah daerah bersama dengan Dewan Perwakilan Rakyat Daerah mendapatkan kewenangan berupa atributif dalam pelaksanaan membentuk produk hukum daerah berupa peraturan daerah dalam melaksakan penyelenggaraan pemerimtahan daerah.[29]

Landasan ini merupakan dasar kewenangan dalam pembuatan Peraturan Daerah tentang Perlindungan Tenaga Kerja Lokal,[30] yaitu Pasal 27 ayat (2) dan Pasal 28 UUD NRI 1945 yang menyatakan: Tiap-tiap warga negara berhak atas pekerjaan dan penghidupan yang layak bagi kemanusiaan. Dalam amandemen UUD NRI 1945 yang berkaitan dengan Ketenagakerjaan juga disebutkan dalam Pasal 28D ayat (2) UUD NRI 1945. Hal tersebut berimplikasi pada kewajiban negara untuk memfasilitasi warga negara agar dapat memperoleh pekerjaan yang layak bagi kemanusiaan. Oleh karena itu, perlu perencanaan yang matang di bidang ketenagakerjaan untuk mewujudkan kewajiban negara tersebut.

Sebagaimana penjelasan pada paragraf sebelumnya, berdasarkan analisis ketentuan peraturan perundang-undangan terkait dan ketiga landasan pembentukan peraturan daerah maka dibutuhkan pembentukan peraturan daerah yang materi muatannya memberikan perlindungan hukum bagi penempatan tenaga kerja lokal di Kabupaten Malinau.

[29] King Faisal Sulaiman, "Implikasi Hukum Pengujian Peraturan Daerah Pasca Amandemen Undang-Undang Dasar 1945", *Perspektif Hukum*, Vol. 1, No. 1, 2019, hal 60 – 81.

[30] Ni Made Jaya Senastri, Luh Putu Suryani, Fungsi Naskah Akademik (NA) Dalam Pembentukan Rancangan Peraturan Daerah, *KERTHA WICAKSANA*, Vol. 12, No. 1, 2018, h. 38 – 45.

PENUTUP

KESIMPULAN

Penelitian ini menyimpulkan sebagai berikut: *Pertama*, berdasarkan analisis ketentuan pembentukan peraturan daerah tentang penempatan dan perlindungan tenaga kerja lokal di Kabupaten Malinau ditemukan bahwa telah berpedoman pada ketentuan peraturan perundang-undangan yang lebih tinggi. Hal ini dilakukan agar terwujudnya peraturan daerah yang menjadi satu kesatuan utuh dalam kerangka Negara Kesatuan Republik Indonesia dan agar menghindari terjadinya tumpang tindihnya peraturan daerah dengan peraturan yang lebih tinggi (*lex superiori derogat legi inferiori*). *Kedua*, Urgensi pembentukan peraturan daerah tentang penempatan dan perlindungan tenaga kerja lokal di Kabupaten Malinau dapat ditemukan dari kewenangan dan kewajiban daerah untuk mengatur rumah tangganya sendiri terkait dengan urusan tenaga kerja yang merupakan bagian dari urusan wajib yang tidak terkait dengan pelayanan dasar dan pertegas lagi dengan ketiga landasan dalam pembentukan peraturan daerah meliputi landasan filosofis meliputi Pasal 27 ayat (2), Pasal 28D ayat (2), Pasal 28I ayat (2), dan Pasal 33 ayat (1) UUD NRI Tahun 1945. Landasan sosiologis, bahwa Kabupaten Malinau memiliki sumber daya alam yang banyak yang ditandai dengan terdapatnya perusahaan nasional maupun swasta yang membutuhkan banyak tenaga kerja lokal, dan Landasan yuridis terdapat pada Pasal 18 ayat (6) UUD NRI Tahun 1945 Pemerintah daerah berhak menetapkan peraturan daerah dan peraturan – peraturan lain untuk melaksanakan otonomi dan tugas pembantuan.

SARAN

Pertama, Pemerintah Daerah Kabupaten Malinau bersama dengan DPRD Kabupaten Malinau melakukan pembahasan bersama terhadap rancangan Peraturan Daerah tentang Penempatan dan Perlindungan Tenaga Kerja Lokal melalui tingkat pembicaraan tingkat 1 maupun tingkat II, Apabila rancangan peraturan daerah tersebut telah disetujui bersama oleh Pemerintah Daerah Kabupaten Malinau bersama dengan DPRD Kabupaten Malinau agar tetapkan menjadi Peraturan Daerah. *Kedua*, Pemerintah Daerah Kabupaten Malinau agar memfasilitasi tenaga kerja lokal untuk meningkatkan keterampilan maupun kompetensi melalui program pelatiha kerja yang sesuai dengan kebutuhan industri kerja dan perlu adanya kerjasama antara Pemerintah Daerah Kabupaten Malinau dengan lembaga pendidikan vokasi di daerah untuk mengadakan pelatihan kerja bersertifikat sehingga tenaga kerja lokal mendapatkan kesempatan yang sama dalam bekerja.

DAFTAR PUSTAKA

Buku:

Asri Wijayanti, 2009, *Hukum Ketenagakerjaan Pasca Reformasi*, Jakarta: Sinar Grafika.

Aris Ananta, 1996, *Ekonomi Sumber Daya Manusia*, Jakarta: Lembaga Demografi FE-UI.

I Gde Pantja Astawa Dan Suprin Na'a, 2009, *Memahami Ilmu Negara Dan Teori Negara,* Cet. Ke-1, Bandung: Refika Aditama.

Muh. Hatta Dalam Sri Bintang Pamungkas, 1996, *Pokok-Pokok Pikiran Tentang Demokrasi Ekonomi Dan Pembangunan,* Jakarta: Yayasan Daulat Rakyat.

Ni'matul Huda, 2005, *Negara Hukum, Demokrasi & Judicial Review*, Yogyakarta: UII Press.

Siswanto Sunarno, 2012, *Hukum Pemerintahan Daerah Di Indonesia,* Cet. Ke-4, Jakarta: Sinar Grafika.

Jurnal:

Ali Yusran Gea, "Urgensi Landasan Filosofis, Sosiologis, dan Yuridis dalam Pembentukan Undang-Undang di Indonesia", *UNES LAW REVIEW*, Vol. 6, No. 4, 2024.

Aprilia, Haris Retno Susmiyati, Erna Susanti, "Implementasi Peraturan Daerah Tentang Tenaga Kerja Lokal pada Perusahaan Pertambangan Batubara di Kabupaten Berau Provinsi Kalimantan Timur", *Risalah Hukum,* Vol. 15, No. 1, 2019.

Darwin Ginting, "Konsepsi Otonomi Daerah Sebagai Alternatif Pilihan Dari Tuntutan Bentuk Negara Federal Di Indonesia", *Jurnal Wawasan Yuridika*, Vol. 25 No. 2, 2011.

Fara Marisda Martias, "Dampak Kebijakan Tenaga Kerja Asing Era Pemerintah Joko Widodo (2014 – 2019) terhadap Tenaga Kerja Lokal di Indonesia", *Jurnal PolGov*, Vol 3, No. 1, 2021.

Fuqoha, "Perlindungan Hukum Terhadap Kesempatan Kerja Bagi Masyarakat Lokal Di Kota Cilegon", *Jurnal Wawasan Yuridika*, Vol. 2, 2018.

Helmi, “Kewenangan Daerah Dalam Perizinan Berusaha Dalam UU Cipta Kerja”, *Simbur Cahaya*, Vol. 28, No. 1, 2021

King Faisal Sulaiman, “Implikasi Hukum Pengujian Peraturan Daerah Pasca Amandemen Undang-Undang Dasar 1945”, *Perspektif Hukum*, Vol. 1, No. 1, 2019

La Ode Dedihasriadi, ”Peran Pemerintah Daerah Kabupaten/Kota dalam Pengawasan Tenaga Kerja Asing di Indonesia” , *Al-Daulah*: *Jurnal Hukum dan Perundingan Islam*, Vol. 9, No. 2, 2019.

May Linda Iswaningsih, I Nyoman Putu Budiartha, Ni Made Puspasutari Ujianti, "Perlindungan Hukum Terhadap Tenaga Kerja Lokal Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Omnibus Law Cipta Kerja", *Jurnal Preferensi Hukum*, Vol. 2, 2021.

Marthen Bunga, “Model Pembentukan Peraturan Daerah Yang Ideal Dalam Penyelenggaraan Otonomi Daerah”, *Jurnal Hukum & Pembangunan*, Vol. 49, No. 4, 2019

Mohammad Bangsu, Rachmat Ihya, Nor Cholis, “Telaah Hukum Omnibus Law dan Perlindungan Tenaga Kerja Indonesia”, *Jurnal Legisia*, Vol 15, No. 1, 2023.

Ni Made Jaya Senastri, Luh Putu Suryani, Fungsi Naskah Akademik (NA) Dalam Pembentukan Rancangan Peraturan Daerah, *KERTHA WICAKSANA*, Vol. 12, No. 1, 2018.

Nuvazria Achir, “Anotasi Normatif Terhadap Peraturan Daerah Tentang Transparansi”, *JALREV*, Vol. 2, Issue. 1, 2020.

Otti Ilham Khair, “Analisis Landasan Filosofis, Sosiologis dan Yuridis Pada Pembentukan Undang-Undang Ibu Kota Negara”, *ACADEMIA*: *Jurnal Inovasi Riset Akademik*, Vol. 2, No. 1, 2022.

Sarah, Wasiatur Riskiyah, M. Adi Saputra, Ismail Pettanase, “Perlindungan Hukum Tenaga Kerja Lokal Pasca Regulasi UU Ketenagakerjaan Studi Siyasah Shar’iyyah”, *Jurnal Penegakan Hukum Indonesia (JPHI)*, Vol. 4, Issue. 3, 2023.

Sisis Noer Anindita, "Perlindungan Hukum Tenaga Kerja Lokal Atas Masuknya Tenaga Kerja Asing Pasca Berlakunya Perpres No. 20 Tahun 2018", *Jurist-Diction*, Vol. 2 No. 3, Mei 2019.

Yusinta Hidayat, Lutfi Fahrul Rizal, Aji Saptaji, “Efektivitas Pengaturan Penyerapan Tenaga Kerja Lokal di Kabupaten Karawang Dalam Meminimalisir Angka Pengangguran Perspektif Siyasah Dusturiyah, *UNES LAW REVIEW*, Vol. 6, No. 4, 2024.

Wiwin Budi Pratiwi dan Devi Andani, "Perlindungan Hukum Tenaga Kerja Dengan Sistem *Outsourcing* Di Indonesia", Vol. 29, Issue 3, 2022.

Zainuri, "Pembentukan Hukum dan Perlakukan Khusus Wilayah Provinsi Kepulauan dalam Sistem Pemerintahan Daerah di Indonesia", *Perspektif Hukum*, Vol. 18, No 1, 2018.

Website:
https://kaltara.bps.go.id/indicator/54/330/1/luas-areal-tanaman-perkebunan.html, diakses 11 Agustus 2023, (09.39).

https://kaltara.bps.go.id/indicator/60/333/1/luas-kawasan-hutan-dan-konservasi-perairan .html, tanggal kunjung 11 Agustus 2023, (10.13).

https://momi.minerba.esdm.go.id/public/, diakses 12 Agustus 2023, (12.40).

https://nswi.bkpm.go.id/tableau/show_eis?app_name=Investasi%20Per%20Kabupaten%20/%20Kota&content_url=2018_12_DB-Desktop-Apps/DB-per-KABKOT, diakses 11 Agustus 2023, (11.41).

Peraturan Perundang-Undangan:
Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 39)

Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah (Lembaran Negara Republik Indonesia Tahun 2014 Nomor 244)

Undang-Undang Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Menjadi Undang-Undang (Lembaran Negara Republik Indonesia Tahun 2023 Nomor 41)

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Resolution of Disputes Regarding the Election of Village Head in Villages in Pringgasela District, East Lombok Regency

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Abstract

The implementation of the Village Head Election is also a manifestation of the community at the village level practicing direct politics. Based on Law Number 6 of 2014 concerning Villages (Village Law), the regulation of village head elections begins with nomination, voting and determination. However, the regulation regarding the resolution of disputes over the results of village head elections is not included in the Village Law. The regulation regarding disputes over the results of village head elections is stated in Article 37 paragraph (6) of the Village Law. In this article, the authority to resolve disputes over the results of village head elections is the authority of the regent/ mayor. Furthermore, regarding the time period for resolving disputes over the results of village head elections for 30 (thirty) days. This research is based on reports of disputes over village head elections. For this reason, it is necessary to resolve disputes over village head elections in accordance with procedures and laws and regulations. This research is anormative research. The results of this study are expected to be the Settlement of Village Head Election Disputes in accordance with applicable Procedures and Laws.

Abstrak

Pelaksanaan Pilkades juga merupakan wujud bahwa masyarakat di tingkat desa melakukan praktik berpolitik secara langsung. Berdasarkan Undang-Undang Nomor 6 Tahun 2014 tentang Desa (UU Desa), pengaturan pemilihan kepala desa dimulai dari pencalonan, pemungutan suara dan penetapan. Namun, pengaturan mengenai penyelesaian perselisihan hasil pemilihan kepala desa tidak termuat dalam UU Desa. Pengaturan mengenai perselisihan hasil pilkades dicantumkan pada Pasal 37 ayat (6) UU Desa. Pada Pasal tersebut, kewenangan penyelesaian sengketa hasil pilkades merupakan kewenangan bupati/walikota. Selanjutnya mengenai jangka waktu penyelesaian sengketa hasil pilkades selama 30 (tiga puluh) hari. Peneltian ini didasarkan pada laporan adanya sengketa pemilihan kepala desa. Untuk itu diperlukan penyelesaian sengketa pemilihan kepala desa yang sesuai prosedur dan peraturan perundang-undangan. Penelitian ini merupakan penelitian normative dengan pendekatan undang-undang, pendekatan konseptual dan pendekatan kasus. Hasil penelitian ini diharapkan ialah Penyelesaian Sengketa Pemilihan Kepala Desa yang sesuai dengan Prosedur dan Peraturan perundang-undangan yang berlaku.

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INTRODUCTION

Indonesia is a unitary state. This is based on the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia also contains arrangement that the Unitary State of the Republic of Indonesia is divided on area provinces and regions province That shared on districts and cities where each province, district, and city has a regional government. Furthermore, in each district or city there are government units called villages and sub-districts.

Legally, the regulations regarding villages are determined in Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). In chapter the determined that the state recognizes and respects Unity public law custom along right traditional throughout Still there is and there isn't contradictory with principle or rules of the Republic of Indonesia. Rules about the village is also regulated in Constitution The village was enacted in 2014, in Article 1 number 1 it is explained that village is village and village custom or what is called with another name, where village is unity public law that has territorial boundaries and has authority for arrange affairs government and the interests of village communities.

The formation of the government in Indonesia is based on from existence village, where village has there is far away in Indonesia before the formation of the unitary state of Indonesia. [1]In building social institutions among villagers, the components used in its development consist of customary law, indigenous peoples, social structures, and local values. [2]Evidence of the existence of villages that existed long before the formation of the Indonesian state can be seen in the explanation of Article 18 of the 1945 Constitution of the Republic of Indonesia before the amendment, it is explained that the territorial area of the State of Indonesia consists of villages in Java and Bali, nagari in Minangkabau, hamlets and

[1] Ananto Basuki and Shofwan , 2006, *Strengthening Government Village Based on Good Governance*, Secretariat Autonomy Village Faculty of Economics, Brawijaya University, Malang, p. 27.

[2] Sunu , IGKA (2014). Harmonization , Village Integration Customs with Multi-ethnic and Multi-religious Administrative Village Face Shift, Conservation, and Conflict in Bali. *Journal Knowledge Social and Humanities* , 3(2.

clans in Palembang and so on. These areas have an original structure, therefore these areas are special.

In Law Number 6 of 2014 concerning the village has regulations regarding the village head as stated in articles 26 to 47 which essentially explain the authority, rights and obligations, procedures for electing, and dismissing the village head. Likewise, in Government Regulation Number 11 of 2019 concerning the Implementing Regulations of Law Number 6 of 2014 concerning Villages, there are regulations regarding the village head, namely starting from articles 40 to 60 which are more or less the same in regulating the authority, rights and obligations, procedures for electing, and dismissing the village head, but Government Regulation Number 11 of 2019 is more technical and detailed because it is an implementing regulation.

To carry out the functions of village authority in arrange his government, then need existence head village that can carry out function village government, this is emphasized in the Village Law. The village head has a significant role in regulating the implementation of the village government system in accordance with state regulations that have been mandated to the village head in order to create an independent and high-quality village.[3]

Village head elections are often abbreviated to with village head elections, maybe No foreign term Again For currently. As a forum to accommodate the political aspirations of the community as well as a means of changing or continuing the village government, the village head election is expected to be able to fulfill the desires and hopes of certain village communities, to appoint worthy candidates as village heads. The village head election is an instrument in the formation of a modern and democratic government. The democratic party held at the smallest regional level is basically regulated by government laws and regulations on how to organize the village head election.

So that the entire series of stages begins from formation committee village head election until the inauguration head village selected expected in accordance

[3] Roza, D., & Arliman , L. (2017). The Role of the Consultative Body Villages in Village Development and Supervision Finance Village . *Padjadjaran Journal of Law* , 4(3), 606-624.

with provisions that have been determined. This the process of electing the village head will run well without affecting the integrity of the community. And the community's hopes can be fulfilled for the election of a new village head and declared worthy to lead and run the village government. This is what every village community desires in order to achieve a conducive situation.

However, in practice, the village head elections have already been held regulated by law government for moment this is very difficult held smoothly and qualitatively because of the playing of elite political interest factors, interests to want to fight for power rather than the essence desired by the village head election, namely a legitimate village government. In addition, the implementation of the village head election is also touched and cannot be separated from the influence of village community cultures, so that culture often plays a role in it.

Based on the background that has been explained, the researcher tried to research the Settlement of Village Head Election Disputes in the Village, therefore the author felt interested in conducting research by raising the theme of "Resolution of Village Head Election Disputes in Villages in the Sub-district of "Pringgasela, East Lombok Regency".

RESEARCH METHODS

The type of research used is juridical normative, namely research based on regulations legislation or legal norms that are bind and have relevance to research discussed and applied.[4] Study legal normative is research conducted based on material main law by examining theories, concepts, legal principles and laws and regulations related to this research. This approach is called the literature approach.

Meuwissen mentions two types of Legal Science, namely: Dogmatic Legal Science and Empirical Legal Science. Based on difference type knowledge law This

[4]Peter Mahmud Marzuki, *Research Law (Edition) Revision)*, Charisma Son Main, Jakarta , 2005, p.93.

also has implications for differences method research used Good from side characteristic and object his research.[5]

Likewise, Bernard Arief Sidharta expressed that activity development knowledge law That always involves two aspects, namely rules law and facts (social reality), and that in the development process these two aspects interact with each other and must be interacted with.[6]

Hamid S Attamimi stated that science law No Once become knowledge normative pure and never becomes a pure social science, because law can come from sollen -sein and can also come from sein- sollen. In principle, law always contains aspects of ideals and reality, or in other words, law contains normative and empirical aspects.[7]

With this *socio-legal research*, it is hoped that researchers will be able to describe the problems raised in more depth and holistically. Because *socio-legal research* does not only focus on empirical research but also combines both aspects. namely normative and empirical.

RESULT AND DISCUSSION

A. Completion Dispute Election Head Village by the Regional Government of East Lombok Regency

Understanding Village Head Election new found in Regulation of the Minister of Home Affairs Number 112 of 2014 (Permendagri No. 112 of 2014) concerning Election Head Village as act carry on from Regulation Government Number 43 of 2014 was formulated that election head village is " implementation" people's sovereignty in the village in frame choose head village which is direct, general, free, confidential, honest and fair ”.[8]

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[5] Soetando Wignyosoebroto , Without Years , Laws and Methods The study . p . 228.

[6]Bernard Arief Sidharta , 2007, Legal Development , Legal Science , Legal Theory and Legal Philosophy , published by PT. Refika Aditama . Bandung . p . 193

[7]A. Hamid S Attamimi , 1992, Speech Inauguration of Professor , University of Indonesia, Jakarta, p . 18.

[8]Article 1 paragraph (5) of the Regulation of the Minister of Home Affairs Number 112 of 2014 concerning Election Head Village (State Gazette of the Republic of Indonesia 2014 Number 2092).

If you look closely understanding election head village in a way juridical, linear with understanding election head regions (governors, regents / mayors), even election general in general For choose members of the DPR, members of the DPD, the President and Vice President, and members of the DPRD, namely contains 3 (three) elements :[9]

a. First, as means or implementation people's sovereignty;
b. The position to be held filled (head village, chief regions, President and Vice President, and members of the DPR, DPD and DPRD); and
c. The principle that becomes base implementation: LUBER and Jurdil (direct, general, free, secret, honest and fair).

In Constitution Number 6 of 2014, Article 37 paragraph (6) only determine " in matter happen dispute results election Head Village, Regent / Mayor must finish dispute in term time as referred to in paragraph (5)", while in paragraph (5) of Article 37 , the determine maximum time 30 (twenty) days since date received delivery results election from committee election Head Village . So Article 37 paragraph (5) and paragraph (6) of the Law Number 6 of 2014 only determine who is authorized, namely Regent / Mayor and term the time allocated, namely 30 twenty) days For finish dispute results Village Head Election, meanwhile what are the related procedures, methods and mechanisms with the solution results election to village No set up The same very.[10]

Likewise the Regulations Government Number 43 of 2014 in conjunction with the Regulations Government Number 47 of 2015 as act carry on from Law Number 6 of 2014 also does not arrange problem settlement dispute results Village Head Election. In Regulation Government This only There are 7 (seven) articles, namely : Articles 40 to 45. with Article 46 which regulates procedure problem election head village and only 1 (one) verse, namely Article (7) of Article 41, the norm of which is The same with Article 37 paragraph (6) of the Republic of Indonesia Law Number 6 of 2014, namely: " in matter happen dispute results

[9]Supriyadi, Juridical Studies Completion Election Result Dispute Head Village , Journal Legal Horizons , DOI: https://doi.org/10.26905/idjch.v10i2.3541.

[10] *Ibid* .

election head Village, regent / mayor must finish dispute in term time 30 (twenty) days ".[11]

As act carry on from Regulation Government Number 43 of 2014, the Minister of Home Affairs issued Minister of Home Affairs Regulation Number 112 of 2014 as amended with Minister of Home Affairs Regulation Number 65 of 2021.[12] Minister of Home Affairs Regulation This issued special For arrange problem election head village , but it is very unfortunate of the 50 (fifty) articles contained in This Minister of Home Affairs Regulation precisely No mentioned a bit about problem settlement dispute results Village head elections, especially solution to violation of the implementation process Village Head Election.

If There is offensive provisions problem related solutions with implementation election head village in general, it is also very vague as arranged in Article 5 paragraph (2) letter f Minister of Home Affairs Regulation No. 112 of 2014 as one of the task Committee Village Head Election level district/city that determines that "the committee elections in the Regency / City have task among them is facilitate settlement problem election head village level district / city". Of course, the provisions the still very vague What do you mean by "facilitating settlement problem election head village level district / city".[13]

Election Head Village in a way implemented simultaneously government area East Lombok Regency according to the message contained in Constitution Number 6 of 2014 Concerning Village, then furthermore poured out in form Regional Regulations that become runway law implementation Election Head Village In general Simultaneously in East Lombok Regency, namely, East Lombok Regency Regional Regulation Number 4 of 2015 concerning Procedures for Election and Dismissal Head Village , as regulation implementation from bylaw the so set up Again in form Regulation Regent namely Regulation East Lombok Regent Regulation Number 15 of 2016 Concerning Regulation Implementation Regional Regulation of East Lombok Regency Number 4 of 2015 Concerning Procedures for Election and Dismissal Head Village.

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[11] *Ibid* .

[12] Regulation of the Minister of Home Affairs Country Number 65 of 2017 Concerning Change Ministerial regulation In Country Number 112 of 2014 Concerning Election Head Village .

[13] *Ibid* .

Based on Constitution Number 6 of 2014 Concerning Village, authority for do inauguration namely is at in hand Regent. This is confirmed in Article 37 of the Village Law the has mentioned that:

(1) Candidate for Head The declared village selected is candidates who obtain voice the most;
(2) Committee election Head Village set candidate Head Village selected;
(3) Committee election Head Village convey Name candidate Head Village selected to the Consultative Body Village maximum 7 (seven) days after determination candidate Head Village selected as referred to in paragraph (2);
(4) Consultative Body Village maximum 7 (seven) days after accept report committee election convey Name candidate Head Village selected to Regent / Mayor;
(5) Regent / Mayor to validate candidate Head Village selected as referred to in paragraph (3) becomes Head Villages no later than 30 (twenty) days since date received delivery results election from Committee election Head Village in form decision Regent / Mayor;
(6) In matter happen dispute results election Head Village, Regent / Mayor must finish dispute in term time as referred to in paragraph (5). Furthermore authority regent For do inauguration mentioned Article 38 Paragraph (1) states: Candidates for Head Village selected inaugurated by the Regent / Mayor or appointed officials no later than 30 (twenty) days after issuance of the Regent / Mayor's Decree.

Determination candidate selected If There is between candidate head the village that has voice The same as provision Regional Regulation East Lombok Regency Number 4 of 2015 namely " In Head Candidate Matters The village that received voice the same majority, determination of the Candidate for Head Village Selected based on acquisition area more sound calculated area based on amount acquisition voice the most and the distribution of TPS is wider many. If still obtained voice the most and the same distribution of TPS, determination candidate head village selected set based on voice the most at TPS with amount voters the most”.

Regulation the executor who regulates Regional Regulation Number 4 of 2015, namely in provision Article 56 of the Regulations East Lombok Regent Regulation Number 15 of 2016 Concerning Implementation Regional Regulation Number 4 of 2015 Concerning Procedures for Election and Dismissal Head Village arrange the same thing in determination candidate selected with the same voice No to describe in a way technical and detailed like What should determination candidate voice The same the done. Even in committee election level regency No There is the rules that govern matter voice The same said, so that cause different interpretations from candidate head village.

Several changes to the regulations on village head elections have been made up to now, since the enactment of Law Number 6 of 2014 concerning Villages (hereinafter abbreviated as the Village Law), the government has regulated that village head elections will be held together or simultaneously like regional head elections (pilkada), these provisions are regulated in provisions of Article 31 paragraph (1) of the Village Law. Furthermore, in the implementing regulations of the Village Law, namely in the provisions of Article 40 paragraph (1) and (2) of the Government Regulation (hereinafter abbreviated as PP) Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages2, which states, paragraph (1) "Village head elections are held simultaneously in all districts/cities", while paragraph (2) states "Simultaneous village head elections as referred to in paragraph (1) can be held in waves a maximum of 3 (three) times within a period of 6 (six) years".

Based on this, the Minister of Home Affairs as the executor of duties and functions (hereinafter abbreviated as tufoksi) who manages regional government and the village government issues a Regulation of the Minister of Home Affairs (hereinafter abbreviated as Minister of Home Affairs Regulation) Number 112 of 2014 Concerning Village Head Elections, as stated in Article 2, "Village Head Elections are conducted simultaneously once or can be in waves". Furthermore, Article 4 paragraph (2) states, "Village Head Elections in waves as referred to in paragraph (1) are conducted a maximum of 3 (three) times within a period of 6 (six) years". And paragraph (3) states, "Village Head Elections in waves as referred to inin paragraph (2) is carried out at intervals of no more than 2 (two) years."

So that the implementation of village head elections must be carried out simultaneously throughout the region. district or city, by stipulating the Regional Regulation (Perda) of East Lombok Regency Number 4 of 2015 concerning Procedures for the Election and Dismissal of Village Heads, Article 4 state :

1) Simultaneous village head elections as referred to in Article 3 letter a are held throughout the region.
2) Simultaneous village head elections as referred to in paragraph (1) may be held in waves a maximum of 3 (three) times within a period of 6 (six) years.
3) The wave-based election of Village Heads as referred to in paragraph (2) is carried out with a maximum time interval of 2 (two) years.
4) Simultaneous village head elections were held for the first time in 2016.
5) The schedule for holding simultaneous Village Head elections is determined by the Regent upon the recommendation of the district election committee.

One of the basic principles of village head elections is direct, general, free and secret democracy, which has been known as LUBER, as 1. The implementation of village head the principles of the General Election since 1971[14] must truly be in accordance with produce democratic leaders substantively and procedurally. So that in order to implement this, it is important to have clear and consistent rules in the implementation of village head elections, including dispute resolution mechanisms that will definitely occur. Because the joint record of conflicts that often occur in Indonesia is partly due to the election process, both regional heads and village heads. It always starts from a process of dissatisfaction one of the candidates who lost in the election.

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[14] Basri Mulyani and Zainul Fikri, Voting Behavior: Analysis of the High Number of Invalid Ballots (Study Case Study of Mataram City), Research Results Report, http:/,repository.gac,id:1015/id/eperint/18, (accessed February 25, 2025).

If the village head election process is ongoing and has been completed, then the vote counting stage becomes the main point of the election, until the process of appointing the Elected Village Head. On the other hand, if there is a dispute over the results of the village head election vote count, a fair and transparent resolution institution is needed in its implementation. Which institution must truly understand the law of general elections and the dispute resolution process according to statutory regulations so that the resulting decision is truly in accordance with the sense of justice of the community seeking a leader.

B. Settlement of Village Head Election Disputes at the State Administrative Court

From settings the No clear mechanism settlement regulated dispute from Regional Regulation Number 4 of 2015 in conjunction with the Regent Regulation Number 15 of 2016. So that interpretation on rule the cause dispute more carry on to Mataram State Administrative Court, Masdar as candidate head the village that feels disadvantaged from side rule in a way administrative state The Regent of East Lombok has violate Principles General Good government. As for the Aasa-the principles General Good governance (AUPB) which is violated as in argument his lawsuit is :[15]

a) The Principle of Legal Certainty, what is meant by the Principle of Legal Certainty law is principle prioritize regulation legislation, certainty law and justice, in every policy state administrators, Principle of certainty law Already Become rules law as mentioned in articles 8. 9, and 10. Law Number 30 of 2014, concerning Administration Government, with existence principle This a decision must be formulated in a way clear and firm, so that the decision conveyed No cause various interpretation.

b) Principle Justice and Fairness, which is meant principle This is *willekeureg* or *common sense* state forbidden a action, which if the

[15] Decision Panel of Judges at Mataran Administrative Court Number : 08/G/2018/PTUN Mtr

governing body contradictory with principles this, then action That the can be canceled .

c) Principle Interest General, meant with principle interest general.

d) (AUPB) is the principle of priority welfare general with method aspiring, accommodating and selective.

As has been described above, where in the reality No existence strict rules in regulation legislation from level center until rule implementation at the level areas that are firm arrange mechanisms and procedures for the settlement process dispute Village Head Election at level villages formed by the BPD or Committee District level village head elections were formed Regent, no capable give solution on problem both related with the process and results. Even Committee Election Head District Level Village only give answer on application dispute without inspect complaint submitted by the complainant.

Based on Article 58 Paragraph (1) of the Regulations East Lombok Regent Regulation Number 15 of 2016 Concerning Regulation Regional Implementation Regulation Number 4 of 2015 Concerning Procedures for Election and Dismissal Head Village stated as following Article (1): objection to determination results Election Head Village only can submitted by the Head Village to Regent in latest time three day after determination results election. That let go from authority Regent For to finish object to results calculation sound, no there is Regulation as base existence Administrative appeal submission to settlement dispute results calculation voice besides Basic Rules regarding effort administrative in the form of submission letter objection (written). Legal remedies that can be taken on dissatisfaction to results settlement object the is can submitted lawsuit State Administrative Court as court level first, with Submitted Committee Decision Election Head Village.

CONCLUSION

The procedures and mechanisms carried out by the Regent of East Lombok in settlement dispute on Election Head Village that is with Notice input from Committee Election Head Village, BPD, Subdistrict Head, and Team formed by the Regent. And if after settlement the dispute carried out by the Regent of East

Lombok, is still there is submission object on determination candidate Head village selected so inauguration candidate head Village Selected still implemented. Problems Village head elections at the level district, can carried out by the committee election head village level district, as set up in Article 5 paragraph (2) letter f of the Minister of Home Affairs Regulation Number 112 of 2014 which regulates repeat in Article 6 paragraph (2) letter f of East Lombok Regency Regional Regulation Number 4 of 2015. However in a way rule technical namely Regulation Regent Number 15 of 2016 Article 58 paragraph (4) only limited to rule with consider suggestions and opinions committee formed by the Regent in to cut off case whereas the fact inspection to the party submitting the application object No Once done. Settings election head village at level Regency as act carry on from Constitution about Village and regulations its implementation containing about obligation committee election convey determination results acquisition the voice that determines candidate selected to candidate (s) for head village , besides to BPD, mechanisms and procedures submission object according to the specified time limit , obligations regent / mayor or the team formed For bring together the disputing parties , and if No happen agreement , then regent / mayor together the team formed must finish dispute Results. Rules technical This important made immediately by the government East Lombok district. The Supreme Court needs to make guidelines technical settlement dispute election head village. so that there is guide for judges at the level First For finish case Village Head Election as case The regional elections have already been set up in Perma.

BIBLIOGRAPHY

Books:

Arief Sidharta, Bernard, 2007, Pengembanan Hukum, Ilmu Hukum, Teori Hukum dan Filsafat Hukum, terbitan PT. Refika Aditama. Bandung.

Attamimi, A. Hamid S, 1992, Speech Inauguration of Professor, University of Indonesia, Jakarta.

Basiang, Martin, 2016, *The Contemporary Law Dictionary*, PT Gramedia Pustaka Utama: Jakarta.

Department For Work and Pensions, 2017, *Financial Redress for Maladministration*, cited from A'an Efendi and Freddy Poernomo, Administrative Law, Sinar Graphics, Jakarta.

Isra, Saldi in the Foreword by Zainal Arifin Mochtar , 2017, *Independent State Institutions : Dynamics Development and Urgency Its Reorganization After Amendment Constitution* I, Rajawali Press: Jakarta.

Jhonny Ibrahim, Theory and Methodology Normative Legal Research, Pusaka : Jakarta.

Lotulung, Paulus Effendie, 2013, *State Administrative Law and Power*, Salemba Humanika : Jakarta.

Lukman, Media , 2013, *Service Agency General from Bureaucracy Going to Corporation*, Bumi Aksara: Jakarta.

Manan, Bagir in the Foreword book Taufiqukohman, 2015, *Optimization Improvement Investigation of the Republic of Indonesia Ombudsman to Improve Quality Public Service*, Publisher Faculty Knowledge Social and Science Politics of Prof. Dr. Moestopo University Religion ; Jakarta.

Nurtjahjo, Hendra et.al., 2013, *Understanding Maladministration*, Ombudsman of the Republic of Indonesia, Jakarta.

Rhode, quoted from A'an Efendi and Freddy Poernomo, See dissertation Yvonne Maria van der Vlugt, De Nationale ombudsman en behavior politieoptrede, (de Universiteit Leiden, 2011).

Ridwan HR and Nurmalita Ayuningtyas Harahap, 2018, *Civil Service Law*, UII Press: Yogyakarta.

Rod Hague and Martin Harrop, 2001, *Comparative Government and Politics: An Introduction*, Palgrave: New York.

Shidarta, Arief. 2009. Reflection About Structure Legal Science, Mandar Maju : Bandung.

Soetandyo Wignyosoebroto, *Without Years, Laws and Methods His study*. Rays Graphics : Jakarta.

Widodo, Joko, 2001, *Good Governance*, Human Scholar : Surabaya.

Journals and Scientific Papers:

Alexander, Larry. *Originalism, or who is Fred?*, Harvard Journal of Law and Public Policy; Cambridge Vol. 19, Iss . 2, (Winter 1996): 321.

Attamimi, A. Hamid S., The Role of the Decree of the President of the Republic of

Indonesia in Implementation State Government; A Studies Analysis Regarding Functioning Presidential Decrees Arrangement in The Period of Pelita I–Pelita IV. Dissertation Faculty of Law Postgraduate Program, University of Indonesia. Jakarta: 1990.

___________________. 1992. Speech Inauguration of Professors. University of Indonesia. Jakarta.

Irianto, Sulistyiowati. Hacking the Path to Justice For People Marginalized and Women (A Review Socio -Legal). Speech Inauguration of Professor Still in Knowledge Legal Anthropology at the Faculty of Law, University of Indonesia, April 22, 2019.

Suharto, R.B. (2020). *Strengthening the law in order to maintain the existence of the unitary state of the republic of Indonesia.* International Journal of Law Reconstruction, 4(1).

Tan, David., and Lu Sudirman, *Final Income Tax: A Classic Contemporary Concept to Increase Voluntary Tax Compliance Among Legal Professions In Indonesia*. Journal of Indonesian Legal Studies, Volume 5(1).

Wignyosoebroto, Soetandyo Without Years, Laws and Methods The study.

Ratna Sari Dewi Assistant to the Central Indonesian Ombudsman "19 Years of the Ombudsman, Towards “Prime Public Service”, https://news.detik.com/kolom/d-4463476/19-tahun-ombudsman-menuju-pelayanan-publik-prima, accessed, March 1, 2023.

Rody Wahyudi et.al., “Behavior Maladministration Bureaucracy In Public Services in Pekanbaru City, Province Riau: Factor Causes and Solutions”, *Journal Public Administration,* No. 1, Volume 12, (2015).

Sulistyowati Irianto, Hacking the Path to Justice For People Marginalized and Women (A Review *Socio -Legal*). Speech Inauguration of Professor Still in Knowledge Legal Anthropology at the Faculty of Law, University of Indonesia, April 22, 2019.

Regulation Legislation and Other Sources of Law:

1945 Constitution of the Republic of Indonesia (State Gazette No. 75 of 1959).

Law of the Republic of Indonesia Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, State Gazette of the Republic of Indonesia Year 2008 Number 139, Supplement to the State Gazette of the Republic of Indonesia Indonesia Number 4899).

Law of the Republic of Indonesia Number 6 of 2014 concerning Village , State Gazette of the Republic of Indonesia Year 2014 Number 7 , Supplement to the State Gazette of the Republic of Indonesia Indonesia Number 5495).

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Sanksi Administratif sebagai Primum Remidium Pelanggaran Pemanfaatan Ruang Laut: Efek Jera atau Negosiasi

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Negotiation;

Abstract

One form of control over the utilisation of marine space is the imposition of administrative sanctions. However, the number of violations in the past four years (2021–2024) has shown a continuous increase each year, with a significant rise in 2024. The aim of this study is to evaluate the administrative sanctions on violations of marine spatial utilisation as a form of Primum Remedium. This research employs an empirical legal research method using the analytical tools of the Theory of Legal Effectiveness and the Integrative Law Theory. Data were collected through interviews and secondary data gathering, then analysed using qualitative juridical techniques. The findings indicate that only the legal factor can be considered effective, whereas law enforcement, infrastructure, society, and cultural factors still face obstacles that hinder the successful implementation of administrative sanctions. Therefore, regulatory simplification and an increase in the number of law enforcement officers are needed, as well as enhanced public education.

Abstrak

Salah satu bentuk pengendalian terhadap pemanfaatan ruang laut adalah pengenaan sanksi administratif, namun demikian jumlah pelanggaran dalam 4 tahun terakhir (2021 – 2024) menunjukkan jumlah pelanggaran dari tahun ketahun terus bertambah bahkan meningkat signifikan ditahun 2024. Tujuan penelitian ini adalah untuk melakukan evalusasi sanksi administratif terhadap pelanggaran pemanfaatan ruang laut sebagai bentuk Primum Remedium. Penelitian ini mengguankan metode penelitian hukum empiris dengan menggunakan pisau analisis Teori Hukum Efektivitas dan Teori Hukum Integratif. Pengumpulan data dilakukan dengan wawancara dan mengumpulkan data sekunder, selanjutnya dianalisis menggunakan teknik yuridis kualitatif. Hasil penelitian menunjukkan bahwa hanya faktor hukum yang dapat dikatakan efektif, sementara faktor penegakan hukum, sarana prasarana, masyarakat, dan budaya masih menghadapi kendala yang menghambat keberhasilan penerapan sanksi administratif. Untuk itu, diperlukan penyederhanaan regulasi dan peningkatan jumlah aparat penegak hukum, serta peningkatan edukasi kepada masyarakat.

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PENDAHULUAN

Dibutuhkan waktu 75 tahun atau setara dengan usia bangsa Indonesia untuk mencapai kematangan dalam tatanan hukum pengelolaan laut Indonesia, mulai dari peletakan landasan, pembentukan perangkat hukum, hingga pencarian formasi kelembagaan dalam pengelolaannya. Keseriusan Indonesia dalam mengelola kelautan ditandai dengan terbitnya Peraturan Presiden Nomor 16 Tahun 2017 tentang Kebijakan Kelautan Indonesia (KKI) yang lahir seiring dengan perkembangan narasi terkait potensi Indonesia sebagai Poros Maritim Dunia. Salah satu pilar dalam kebijakan ini adalah Pengelolaan ruang laut dan perlindungan lingkungan laut.[1]

Sebenarnya dalam Pasal 33 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (UUD NRI 1945) merupakan landasan konstitusional untuk pengelolaan sumber daya alam.[2] Salah satu bentuk penerjemahan Pasal 33 UUD NRI 1945 adalah dengan lahirnya Undang-Undang Nomor 26 Tahun 2007 Tentang Penataan Ruang (UU Penataan Ruang) yang menjadikan prinsip keselarasan dan keseimbangan sebagai landasan penting dalam penyusunan dan pelaksanaan Rencana Tata Ruang Wilayah (RTRW).[3]

Prinsip ini memastikan adanya koordinasi yang baik dalam penyusunan RTRW serta pembangunan yang seimbang dan berkelanjutan untuk memberikan manfaat jangka panjang bagi masyarakat dan lingkungan.[4] Pasal 15 UU Penataan Ruang yang merubah Undang-Undang Nomor 24 Tahun 1992 Tentang Penataan Ruang mengamanatkan bahwa RTRW Nasional Provinsi dan Kabupaten/Kota mencakup ruang darat, ruang laut dan ruang udara termasuk ruang di dalam bumi.

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[1] Muh Rasman Manafi, *Menata Ruang Laut Indonesia*, 1st ed. (Jakarta: Kementerian Koordinator Bidang Kemaritiman dan Investasi, 2021). Hal 8

[2] Suyanto Edi Wibowo, "Memahami Makna Pasal 33 Undang-Undang Dasar Negara Republik Inodonesia," *Jurnal Legislasi Indonesia* 12, no. 4 (2015): 1689–99, https://doi.org/10.54629/jli.v12i4.424.

[3] Eko Noer Kristiyanto, "Kedudukan Kearifan Lokal Dan Peranan Masyarakat Dalam Penataan Ruang Di Daerah," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 2 (August 31, 2017): 151, https://doi.org/10.33331/rechtsvinding.v6i2.172.

[4] Fatma Ulfatun Najicha Muhammad Huda Nuryanto, "Analisis Ketentuan Perancangan Tata Ruang Wilayah Yang Baik Berdasarkan Undang-Undang Nomor 26 Tahun 2007," *Jurnal Hukum Positum* 8, no. 1 (2023): 96–110, https://doi.org/10.35706/positum.v8i1.9508.

Undang-Undang Penataan Ruang mewajibkan Pemerintah Daerah untuk menyusun Rencana Tata Ruang Wilayah Provinsi dan Kabupaten/Kota sedangkan Undang-Undang Nomor 27 Tahun 2007 tentang Pengelolaan Wilayah Pesisir dan Pulau-pulau Kecil (UU 27 RZWP-3-K) mengamanatkan Pemerintah Daerah untuk menyusun Rencana Zonasi Wilayah Pesisir dan Pulau-Pulau Kecil (RZWP-3-K) Provinsi sebagai arahan pemanfaatan ruang wilayah pesisir dan pulau-pulau kecil.[5] Melalui UU Cipta Kerja, terdapat perubahan pada Pasal 42 Ayat 2 UU No. 32 Tahun 2014 terkait pengelolaan ruang laut. Pengelolaan ruang laut kini mencakup perencanaan, pemanfaatan, pengawasan, dan pengendalian ruang laut yang merupakan bagian integral dari pengelolaan tata ruang secara keseluruhan. Perubahan ini berdampak pada produk-produk perencanaan di wilayah pesisir dan laut, serta menuntut agar rencana tata ruang laut diintegrasikan ke dalam rencana tata ruang darat sesuai dengan tingkatannya[6].

Berdasarkan Undang-Undang No. 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang, semua bentuk pemanfaatan ruang laut memerlukan izin dari Direktorat Jenderal Pengelolaan Ruang Laut. Setiap orang atau badan usaha yang ingin melakukan kegiatan pemanfaatan ruang laut secara menetap di wilayah perairan pesisir, wilayah perairan, dan/atau wilayah yurisdiksi sebagian ruang laut wajib memiliki Kesesuaian Kegiatan Pemanfaatan Ruang Laut (KKPRL).[7] Plt. Direktur Perencanaan Ruang Laut Suharyanto menjelaskan bahwa Kementerian Kelautan dan perikanan memastikan akan terus melaksanakan mekanisme pengendalian pemanfaatan ruang laut sebagai bagian dari evaluasi terhadap semua perizinan pemanfaatan ruang laut yang diterbitkan.[8]

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[5] Khusnul Nur Kasanah, "RZWP-3-K Kepastian Hukum Bagi Pesisir Dan Pulau-Pulau Kecil," Sekretaris Kabinet Repiblik Indonesia, 2016, https://setkab.go.id/rzwp-3-k-kepastian-hukum-bagi-pesisir-dan-pulau-pulau-kecil/.

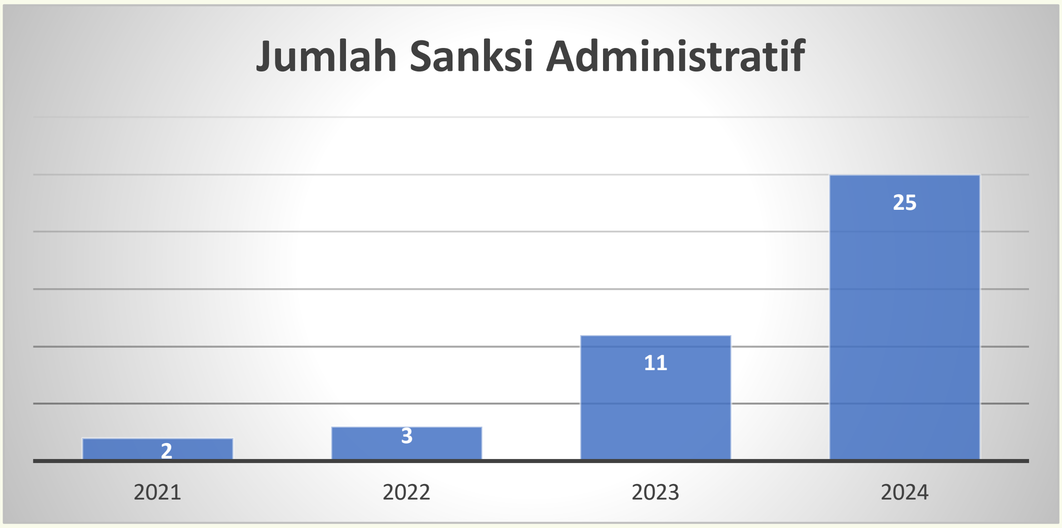
[6] Manafi, *Menata Ruang Laut Indonesia*. Hal 9

[7] Dzaky Fauzan, Taufiqur Rachman, and Muhammad Fadly, "Evaluasi Aspek Teknis Persetujuan Kesesuaian Kegiatan Pemanfaatan Ruang Laut (Pkkprl) Sesuai Undang-Undang No. 6 Tahun 2023," *Riset Sains Dan Teknologi Kelautan* 6, no. 2 (2023): 287–95, https://doi.org/10.62012/sensistek.v6i2.32541.

[8] Muhammad Nursyamsi, "KKP Bakal Evaluasi Izin Pemanfaatan Ruang Laut _ Republika Online," republika.co.id, 2024, https://ekonomi.republika.co.id/berita/saahpv490/kkp-bakal-evaluasi-izin-pemanfaatan-ruang-laut.

Salah satu bentuk pengendalian terhadap ruang laut adalah pengenaan sanksi. Sanksi merupakan bentuk penegakan hukum oleh pemerintah terhadap warga negara melalui penerapan sanksi sebagai upaya pemaksaan kepatuhan terhadap perintah, kewajiban, atau larangan yang ditetapkan dalam peraturan perundang-undangan, termasuk di dalamnya peraturan mengenai perizinan, apabila warga negara melanggar ketentuan tersebut.[9] Pemanfaatan ruang laut yang tidak sesuai peraturan akan dikenakan sanksi administratif, ini sesuai dengan Pasal 18 angka 13 dan angka 31 Undang - undang Nomor 6 tahun 2023.

Dalam naskah akademik Undang-undang cipta kerja menyebutkan bahwa pengenaan sanksi administratif lebih diutamakan dari pada sanksi pidana.[10] Sejak diberlakukannya Peraturan Menteri Kelautan dan Perikanan Nomor 31 tahun 2021 tentang Pengenaan sanksi administratif bidang kelautan dan perikanan, pelaku usaha yang melakukan pelanggaran terkait ruang laut semuanya dikenai sanksi adminitratif. Berdasarkan data yang ada, Pelaku usaha yang melakukan pelanggaran ruang laut di Kepulauan Riau hingga akhir 2024 berjumlah 41 Pelaku usaha.



Sumber : Kantor Pangkalan PSDKP Batam

[9] Ivan Fauzani Raharja, "Penegakan Hukum Sanksi Administrasi Terhadap Pelanggaran Perizinan," *Inovatif Jurnal Ilmu Hukum* VII, no. II (2014): 117–38, https://mail.online-journal.unja.ac.id/jimih/article/view/2064.

[10] Kementerian Hukum dan Hak Asasi Manusia, "Naskah Akademik Rancangan Undang-Undang Tentang Cipta Kerja," 2020, 1–1982.

Data diatas menunjukkan ada sesuatu yang harus diperbaiki. Jumlah sanksi yang diberikan kepada pelaku usaha dalam 4 tahun terakhir (2021 – 2024) menunjukkan dari tahun ketahun terus bertambah, bahkan meningkat signifikan ditahun 2024. Pada tahun 2021 tercatat 2 sanksi, jumlah ini meningkat menjadi 3 sanksi ditahun 2022 dan 11 sanksi pada tahun 2023, pelanggaran pada tahun 2024 meningkat signifikan mecapai 25 sanksi. Berdasarkan penetapan sanksi administratif di Kepulauan Riau yang diputuskan oleh Kementerian Kelautan dan Perikanan melalui Direktur Jenderal PSDKP, Pelanggaran didominasi oleh Pelanggaran Pemanfaatan Ruang Laut berupa reklamasi yang belum memiliki izin pemanfaatan ruang laut. Pelanggaran lainnya berupa penambangan dan dermaga yang belum memiliki PKKPRL. Hal ini mengusik penulis untuk menganalisa apakah sanksi administratif sebagai bentuk *Primum Remedium* tidak memberikan efek jera, ataukah perlu jalan lain untuk menekan jumlah pelanggaran?

Penelitian terkait ruang laut masih belum banyak yang meneliti, beberapa penelitian yang mirip dengan ini adalah artikel berjudul Implementasi Pengendalian Pemanfaatan Ruang dan Sanksi Administratif Dalam Rencana Tata Ruang Wilayah Kabupaten Sidoarjo. Penelitian ini lebih menekankan pada RTRW yang notabennya adalah tata ruang di darat.[11] Penelitian lainnya membahas terkait persetujuan permohonan izin PKKPRL dengan judul artikel tentang Evaluasi Aspek Teknis Persetujuan Kesesuaian Kegiatan Pemanfaatan Ruang Laut (PKKPRL) Sesuai Undang-Undang No. 6 Tahun 2023.[12]

Berdasarkan latar belakang di atas, maka permasalahan yang akan diteliti oleh peneliti adalah Bagaimana Efektivitas Penerapan sanksi administratif terhadap pelanggaran perizinan pemanfaatan ruang laut di Provinsi Kepualaun Riau?, kemudian Bagaimana mengatasi kendala penerapan sanksi administratif pemanfaatan ruang laut di Provinsi Kepualaun Riau?

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[11] Agus Sugiarto, "Implementasi Pengendalian Pemanfaatan Ruang Dan Sanksi Administratif Dalam Rencana Tata Ruang Wilayah Kabupaten Sidoarjo," *JKMP (Jurnal Kebijakan Dan Manajemen Publik)* 5, no. 1 (2017): 41–60, https://doi.org/10.21070/jkmp.v5i1.812.

[12] Fauzan, Rachman, and Fadly, "Evaluasi Aspek Teknis Persetujuan Kesesuaian Kegiatan Pemanfaatan Ruang Laut (Pkkprl) Sesuai Undang-Undang No. 6 Tahun 2023."

METODE PENELITIAN

Jenis penelitian yang digunakan dalam penelitan ini adalah metode penelitian yuridis empiris dengan pendekatan yuridis sosiologis karena peneliti ingin menguji efektivitas pelaksaan peraturan perundang-undangan.[13] Metode hukum empiris diterapkan dengan cara mengumpulkan data primer dan sekunder yang relevan dengan penerapan sanksi administratif dalam pengendalian pemanfaatan ruang laut. Data yang dikumpulkan meliputi data sekunder berupa dokumen peraturan perundang-undangan, laporan kegiatan pengawasan, berita acara keterangan serta data primer yang diperoleh dengan cara melakukan wawancara dengan pihak-pihak terkait, seperti Dinas Kelautan dan Perikanan Provinsi kepulauan Riau, Pangkalan PSDKP Batam, dan Kantor Pelayanan Perizinan Balai Pengelolaan Sumber Daya Pesisir Dan Laut (BPSPL) Padang di Batam untuk memperoleh data pelanggaran yang terjadi, proses pemberian izin, Rencana Tata Ruang Laut, serta penerapan sanksi terhadap pelaku pelanggaran.

Analisa data akan menggunakan teknik yuridis kualitatif.[14] Penelitian kualitatif adalah metode yang digunakan dalam konteks kehidupan nyata untuk menyelidiki dan memahami fenomena, termasuk apa yang terjadi, mengapa terjadi, dan bagaimana terjadinya.[15] Analisis data akan menghubungkan temuan empiris dengan teori efektivitas hukum dan teori hukum integratif untuk mendapatkan gambaran menyeluruh mengenai efektivitas sanksi administratif sebagai *Primum Remedium.*

Landasan teori penelitian ini menggunakan teori efektivitas Soerjono Soekanto dengan membuktikan efektifitas penegakan hukum di masyarakat dengan memperhatikan 5 (lima) faktor yaitu: 1. Faktor hukumnya sendiri, 2. Faktor penegak hukum (pihak yang membuat dan yang menerapkan hukum), 3. Faktor sasaran atau prasarana yang mendukung penegakan hukum, 4. Faktor masyarakat

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[13] Imam Jalaludin dkk Rifa'i, *Metode Penelitian Hukum* (banten: sada kurnia pustaka, 2023).

[14] Said Rizal et al., "Tinjauan Yuridis Atas Sengketa Kepemilikan Tanah Di Desa Pematang Johar, Kecamatan Labuan Deli Kabupaten Deli Serdang (Studi Kasus Putusan Pn No.112/Pdt.G/2017/Pn.Lbp)," *UNES Law Review* 4, no. 3 (2022): 407–16, https://doi.org/10.31933/unesrev.v4i3.263.

[15] Dadang Sumarna and Ayyub Kadriah, "Penelitian Kualitatif Terhadap Hukum Empiris," *Jurnal Penelitian Serambi Hukum* 16, no. 02 (2023): 101–13, https://doi.org/10.59582/sh.v16i02.730.

yakni lingkungan dimana hukum tersebut berlaku atau diterapkan, dan 5. Faktor kebudayaan sebagai hasil karya cipta dan rasa yang didasarkan pada karsa manusia dalam pergaulan.[16] Pisau analisis lain yang akan digunakan adalah teori hukum integratif Romli Atmasasmita[17]. Teori ini merupakan gabungan pemikiran dari teori pembangunan dan teori hukum progresif dalam konteks Indonesia, yang terinspirasi oleh konsep hukum Hart.[18] Secara mendalam, teori ini merujuk pada falsafah bangsa Indonesia, yaitu Pancasila, dan menekankan bahwa hukum secara hakikat terdiri dari norma, pelaku, dan nilai, yang disebut sebagai *tripartite character of Indonesia's social engineering*.[19]

Teori hukum efektivitas dan Teori hukum integratif ini dapat saling melengkapi dalam konteks pengembangan hukum di Indonesia. Teori Efektivitas Hukum Soerjono Soekanto memberikan pandangan yang komprehensif tentang faktor-faktor yang mempengaruhi kinerja hukum, sementara Teori Hukum Integratif Romly menekankan pada integrasi nilai-nilai yang bersumber dari ideologi dan konstitusi negara. Penerapan Teori Efektivitas Hukum dapat membantu dalam mengevaluasi sejauh mana hukum yang diterapkan efektif dalam mencapai tujuan tertentu, sementara Teori Hukum Integratif dapat memberikan landasan nilai yang kokoh untuk memberikan solusi terhadap kendala penerapan efektivitas hukum yang ada agar selaras dengan nilai-nilai yang dijunjung tinggi oleh masyarakat dan negara.

[16] Bagus Armanda, "Parkir Liar Dalam Perspektif Teori Efektifitas Hukum," *Jurnal Pelita Nusantara* 1, no. 4 (2024): 477–81, https://doi.org/10.59996/jurnalpelitanusantara.v1i4.351.

[17] Romli Atmasasmita, "Memahami Teori Hukum Integratif," *Legalitas Edisi Desember* III, no. 2 (2012): 1–17.

[18] Purwanto Panji Sasongko et al., "Kajian Hukum Pemeriksaan Selaput Dara Dari Perspektif Ham Dan Ditinjau Dari Sistem Hukum Negara," *Jurnal Syntax Admiration* 4, no. 10 (2023): 1822–32, https://doi.org/10.46799/jsa.v4i10.762.

[19] Muhammad Fatahillah Akbar, "Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia," *Masalah-Masalah Hukum* 51, no. 2 (2022): 199–208, https://doi.org/10.14710/mmh.51.2.2022.199-208.

PEMBAHASAN

A. Efektivitas Penerapan sanksi administratif terhadap pelanggaran perizinan pemanfaatan ruang laut

Mengelola wilayah laut Indonesia dengan baik sangat penting untuk menjaga keberlanjutan ekosistem laut, mendukung kehidupan masyarakat pesisir, dan memastikan bahwa sumber daya laut dapat dimanfaatkan untuk kesejahteraan generasi sekarang dan mendatang. Pengelolaan ruang laut sangat penting karena ruang laut mencakup ekosistem yang vital bagi kehidupan di bumi, termasuk perikanan, terumbu karang, dan habitat laut lainnya.[20] Pengelolaan yang baik memastikan keberlanjutan sumber daya laut, yang menjadi sumber pangan, mata pencaharian, dan ekonomi bagi jutaan orang. Selain itu, pengelolaan ruang laut yang efektif dapat membantu melindungi keanekaragaman hayati, mengurangi dampak perubahan iklim, dan mencegah kerusakan lingkungan akibat aktivitas manusia seperti penangkapan ikan berlebihan, polusi, dan pembangunan pesisir yang tidak terkendali. Dengan demikian, pengelolaan ruang laut yang berkelanjutan adalah kunci untuk menjaga keseimbangan ekologi, ekonomi, dan sosial di wilayah pesisir dan laut.[21]

Menurut Undang-Undang Nomor 32 Tahun 2014 tentang Kelautan, pengelolaan laut adalah segala bentuk kegiatan perencanaan, pemanfaatan, pengawasan, dan pengendalian sumber daya laut serta ruang laut. Pengelolaan ini bertujuan untuk mencapai keberlanjutan ekosistem laut, menjaga keseimbangan lingkungan, serta meningkatkan kesejahteraan masyarakat yang bergantung pada sumber daya laut. Pengelolaan laut mencakup aspek-aspek seperti konservasi, eksploitasi, perlindungan, dan rehabilitasi sumber daya alam laut, serta pengaturan kegiatan manusia di wilayah laut agar tidak merusak ekosistem yang ada. Undang-Undang ini menekankan pentingnya kerjasama antara pemerintah pusat dan daerah,

[20] Kania Tamara Pratiwi, Siti Kotijah, and Rini Apriyani, "Penerapan Asas Primum Remedium Tindak Pidana Lingkungan Hidup," *SASI* 27, no. 3 (October 7, 2021): 363, https://doi.org/10.47268/sasi.v27i3.471.

[21] Hasan Basri, "Pengelolaan, Pengawasan Kawasan Pesisir Dan Laut Di Indonesia," *REUSAM: Jurnal Ilmu Hukum* 8, no. 2 (2021): 1, https://doi.org/10.29103/reusam.v8i2.3713.

serta keterlibatan masyarakat dalam menjaga dan memanfaatkan laut secara berkelanjutan.[22]

Siapa pun yang merusak ekosistem laut atau melakukan pelanggaran terhadap peraturan kelautan perlu diberikan sanksi yang tegas. Sanksi ini bisa berupa sanksi administratif seperti denda atau pencabutan izin, serta sanksi pidana untuk pelanggaran yang lebih berat. Pemberian sanksi ini bertujuan untuk menegakkan hukum, mencegah kerusakan lebih lanjut, dan memastikan bahwa sumber daya laut dikelola dengan baik untuk kesejahteraan masyarakat dan keberlanjutan lingkungan.[23] Undang-Undang yang mengatur sanksi terhadap perusakan laut di Indonesia adalah Undang-Undang No. 32 Tahun 2014 tentang Kelautan. Selain itu, beberapa ketentuan terkait juga terdapat dalam Undang-Undang No. 27 Tahun 2007 tentang Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil, serta Undang-Undang No. 5 Tahun 1990 tentang Konservasi Sumber Daya Alam Hayati dan Ekosistemnya.[24]

Sanksi administratif sebagai primum remidium terhadap pengelolaan ruang laut berfungsi sebagai upaya pertama dan utama dalam penegakan hukum sebelum beralih ke sanksi pidana atau perdata. Tujuan utama dari penerapan sanksi administratif ini adalah untuk mencegah dan memperbaiki pelanggaran tanpa harus melalui proses hukum yang lebih panjang dan kompleks. Dengan demikian, pelanggar diberi kesempatan untuk memperbaiki kesalahan mereka melalui denda, peringatan, atau tindakan korektif lainnya yang bersifat administratif. Pendekatan ini diharapkan dapat meningkatkan kepatuhan terhadap peraturan pengelolaan ruang laut, melindungi ekosistem laut, dan memastikan pemanfaatan sumber daya laut yang berkelanjutan.[25]

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[22] Muhammad Rafli Saniah and Isrina Siregar, "Dinamika Kebijakan Poros Maritim Indonesia Pada Masa Pemerintahan Joko Widodo Periode Tahun 2014-Sekarang," *JEJAK : Jurnal Pendidikan Sejarah & Sejarah* 1, no. 2 (2021): 64–72, https://doi.org/10.22437/jejak.v1i2.16408.

[23] Mohamad Rifki, "Reformulasi Sanksi Administrasi Bersifat Primum Remedium Dalam Pengelolaan Perikanan (Sebuah Upaya Memberi Efek Jera Bagi Korporasi Pelanggar Ketentuan Di Bidang Perikanan)," *Esensi Hukum* 1, no. 1 (2019): 51–69, https://journal.upnvj.ac.id/index.php/esensihukum/index%0AReformulasi.

[24] Rae Anggrainy et al., "Penerapan Sanksi Hukum Terhadap Pencemaran Lingkungan," *Siyasah Jurnal Hukum Tata Negara* 3, no. 1 (2023): 101–13, https://doi.org/https://doi.org/10.32332/siyasah.v4i2.

[25] Pratiwi, Kotijah, and Apriyani, "Penerapan Asas Primum Remedium Tindak Pidana Lingkungan Hidup."

Berdasarkan Pasal 4 Peraturan Menteri Kelautan dan Perikanan, Pelanggaran ketentuan pemanfaatan ruang Laut sebagaimana dimaksud dalam Pasal 2 huruf b berupa:

a. penggunaan dokumen persetujuan/konfirmasi KKPRL yang tidak sah;
b. tidak melaporkan pendirian dan/atau penempatan bangunan dan instalasi di Laut kepada Menteri;
c. tidak menyampaikan laporan tertulis tentang pelaksanaan kegiatan pemanfaatan ruang laut secara berkala setiap 1 (satu) tahun sekali kepada Menteri;
d. pelaksanaan dokumen persetujuan/konfirmasi KKPRL yang tidak sesuai dengan RTR, RZ, KAW, RZ KSNT;
e. pelaksanaan dokumen persetujuan/konfirmasi KKPRL yang mengganggu ruang penghidupan dan akses nelayan kecil, nelayan tradisional, dan pembudi daya ikan kecil;
f. pemanfaatan ruang yang tidak memiliki dokumen persetujuan/konfirmasi KKPRL;
g. pemanfaatan ruang yang tidak mematuhi ketentuan dalam dokumen persetujuan/konfirmasi KKPRL; dan/atau
h. menghalangi akses terhadap kawasan yang oleh ketentuan peraturan perundang-undangan dinyatakan sebagai milik umum, baik berupa penutupan akses secara sementara maupun permanen.

Selanjutnya dalam Pasal 7 ayat (2) disebutkan bahwa Sanksi administratif terhadap pelanggaran ketentuan pemanfaatan ruang Laut sebagaimana dimaksud dalam Pasal 4, terdiri atas:

a. peringatan/teguran tertulis;
b. denda administratif;
c. penghentian sementara kegiatan:
d. penghentian sementara pelayanan umum;
e. penutupan lokasi;
f. pencabutan dokumen persetujuan/konfirmasi KKPRL;
g. pembatalan dokumen persetujuan/konfirmasi KKPRL;

h. pembongkaran bangunan; dan/atau

i. pemulihan fungsi ruang Laut

Penelitian ini bertujuan untuk mengevaluasi efektivitas pengenaan sanksi administratif dalam pengendalian pemanfaatan ruang laut sebagai bentuk Primum Remedium. Evaluasi ini bertujuan untuk menentukan apakah sanksi administratif dapat memberikan efek jera kepada pelaku pelanggaran dan mencegah peningkatan pelanggaran lebih lanjut. Analisis dilakukan untuk mengidentifikasi faktor-faktor yang mempengaruhi efektivitas sanksi, termasuk keterbatasan dalam pengawasan, transparansi perizinan, dan tingkat kesadaran masyarakat terhadap peraturan yang berlaku.

Prinsip primum remedium adalah prisip yang digunakan pada konteks perusakan laut menekankan penggunaan sanksi administratif sebagai langkah awal sebelum menerapkan sanksi pidana. Pendekatan ini bertujuan untuk menyelesaikan pelanggaran dengan cara yang lebih cepat dan efektif tanpa harus langsung menggunakan proses hukum yang lebih berat dan kompleks.[26] Berdasarkan wawancara dan data yang diperoleh dari Pangkalan PSDKP Batam diketahui bahwa Kementerian Kelautan dan Perikanan melalui Direktort Jenderal Pengawasan Sumber Daya Kelautan Dan Perikanan, pengenaan sanksi administratif terhadap pemanfaatn ruang laut telah dilakukan sejak tahun 2021. Jumlah pelangaran dari tahun ketahun terus bertambah hingga terakumulasi hingga akhir 2024 jumlah sanksi administratif yang dikenai KKP kepada pelaku usaha di Kepulauan Riau berjumlah 41 sanksi. Pelanggaran tersebut berupa pelanggaran pemanfaatan ruang yang tidak memiliki dokumen persetujuan/konfirmasi KKPRL dan pelaksanaan dokumen persetujuan/konfirmasi KKPRL yang tidak sesuai dengan RTR, RZ, KAW, RZ KSNT.

Berdasarkan penelitian yang dilakukan oleh peneliti, pelaksanaan sanksi administratif terhadap pemanfaatan ruang laut belum sepenuhnya efektif. Hal ini didukung oleh hasil wawancara dan data sekunder sejalan dengan 5 faktor yang disampaikan oleh Soerjono Soekanto dalam teori efektifitas hukum yaitu: 1. Faktor

[26] Mashuril Anwar, "Holistic Paradigm Contradiction of the Ultimate Principle of Remedium Against the Principle of Legality in Environmental Criminal Law Enforcement," *Administrative and Environmental Law Review* 1, no. 1 (September 29, 2020): 43–52, https://doi.org/10.25041/aelr.v1i1.2083.

hukumnya sendiri, 2. Faktor penegak hukum (pihak yang membuat dan yang menerapkan hukum), 3. Faktor sasaran atau prasarana yang mendukung penegakan hukum, 4. Faktor masyarakat yakni lingkungan dimana hukum tersebut berlaku atau diterapkan, dan 5. Faktor kebudayaan sebagai hasil karya cipta dan rasa yang didasarkan pada karsa manusia dalam pergaulan.

1. Faktor Hukum

Peraturan yang mengatur terkait pemanfaatan ruang laut telah diatur dengan detail dalam undang-undang hingga Keputusan Direktur Jenderal Pengawasan Sumber Daya Kelautan dan Perikanan (Kepdirje PSDKP).

Peraturan	Tentang
Undang-Undang Nomor 27 tahun 2007	Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil
Undang-Undang Nomor 1 tahun 2014	Perubahan Undang-Undang Nomor 27 tahun 2007 tentang Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil
Undang-Undang Nomor 32 tahun 2014	Kelautan
Undang-Undang Nomor 6 tahun 2023	Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja
Peraturan Pemerintah Nomor 5 tahun 2021	Penyelenggaraan Perizinan Berusaha Berbasis Resiko
Peraturan Pemerintah Nomor 21 tahun 2021	Penyelenggaraan Penataan Ruang
Peraturan Pemerintah Nomor 27 tahun 2021	Penyelenggaraan Bidang Kelautan dan Perikanan
Peraturan Pemerintah Nomor 85 tahun 2021	Jenis Tarif atas jenis penerimaan negara bukan pajak yang berlaku pada kementerian kelautan dan perikanan
Peraturan Menteri Kelautan dan Perikanan Nomor 28 Tahun 2021	Penyelenggaraan Penataan Ruang Laut

Peraturan Menteri Kelautan dan Perikanan Nomor 30 Tahun 2021	Pengawasan Ruang Laut
Peraturan Menteri Kelautan dan Perikanan Nomor 31 Tahun 2021	Pengenaan Sanksi Administratif di Bidang Kelautan dan Perikanan
Peraturan Menteri Kelautan dan Perikanan Nomor 26 Tahun 2021	Perubahan atas Peraturan Menteri Kelautan dan Perikanan Nomor 31 Tahun 2021 tentang Pengenaan Sanksi Administratif di Bidang Kelautan dan Perikanan
Keputusan Direktur Jenderal Pengawasan Sumber Daya Kelautan dan Perikanan Nomor 94 tahun 2022	Petunjuk teknis Pengenaan Sanksi Administratif Di Bidang Kelautan dan Perikanan

Tabel 1. Peraturan Perundang-undnagan terkait Pemanfaatan Ruang laut

Dalam Peraturan ini mengatur terkait norma pemanfaatan ruang laut hingga bagaimana sanksi yang diberikan terhadap pelanggaran dan bagaimana prosedur pengenaan sanksi terhadap pelanggaran pemanfaatan ruang laut. Detail pelaksanaan sanksi administratif tertuang dalam Keputusan Direktur Jenderal Pengawasan

Gambar 1. Alur Pengenaan Sanksi Administratif Pelanggaran Perizinan Berusaha di Bidang Kelautan dan Perikanan, **Pemanfaatan Ruang Laut**, Importasi Komoditas Perikanan dan Pergaraman, Penangkapan Ikan Terukur dan Pengelolaan Hasil Sedimentasi di Laut (Tertuang dalam Kepdirjen 94 Tahun 2022)

Sumber Daya Kelautan dan Perikanan Nomor 94 tahun 2022 Petunjuk teknis Pengenaan Sanksi Administratif Di Bidang Kelautan dan Perikanan.

Pelaksaanan sanksi bermula dari laporan pengawasan oleh Pengawas Kelautan yang disampaikan oleh Kepala UPT (Unit Pelaksana Teknis) kepada Direktur Pengawasan Pengelolaan Sumber Daya Kelautan untuk disupervisi apakah hasil pengawasan terdapat indikasi pelanggaran atau tidak. Jika hasil supervisi terdapat indikasi pelanggaran selanjutnya UPT melaporkan hasil temuan atau indikasi pelanggaran kepada Direktur Jenderal PSDKP untuk dilakukan ekpose yang dikoordinatori oleh Direktur Penanganan Pelanggaran.

Direktur Penanganan pelanggaran melakukan Ekpose dengan dihadiri oleh tim pengenaan sanksi administratif Ditjen PSDKP dan UPT, Polsus PWP3K/Pengawas Kelautan, Inspektorat Jenderal KKP, Biro Hukum KKP, serta Perwakilan Direktorat Teknis terkait. Hasil Ekpose akan menetapkan sanksi administratif yang dikenakan kepada pelaku usaha untuk selanjutnya disampaikan kepada pelaku usaha.

Mengingat peraturan terkait pengenaan sanksi adminsistrasi telah diatur secara utuh dari Undang-undang, Peraturan Pemerintah, Peraturan Menteri Kelautann dan Perikanan hingga Kepdirjen PSDKP. Dalam pelaksanaannya pengenaan sanksi adminsitarsi telah sesuai dengan peraturan dimaksud, maka Peneliti menyimpulkan bahwa pelaksanaan sanksi administratif pengelolaan ruang laut telah efektif.

2. Faktor Penegak Hukum

Dalam melaksanakan pengawasan pemanfaatan ruang laut Menteri Kelautan membentuk Pengawas Kelautan, hal ini tertuang dalam pasal 217 Peraturan Pemerintah Nomor 21 Tahun 2021 tentang penyelenggaraan penataan ruang. Selanjutnya dalam Peraturan Menteri kelautan dan Perikanan dalam Pasal 3 ayat (3) menyebutkan bahwa Pengawas kelautan dilaksanakan oleh Polsus PWP-3-K.

Dalam melaksanakan tugasnya Polsus PWP-3-K harus mengawasi Wilayah Perairan dan Wilayah Yuridiksi. Dimana Wilayah perairan mencakup Perairan Pedalaman yang berupa Laut Pedalaman, Perairan Kepulauan dan Laut Teritorial. Sedangkan Wilayah Yuridiksi mencakup Zona tambahan, Zona Ekonomi Ekslusif, dan Landas Kontingen.

Berdasarkan data dari Pangkalan PSDKP Batam, Polsus yang ada di Provinsi Kepulauan Riau berjumlah 14 orang yang tersebar di Natuna, Anambas, Karimun, Tanjungpinang dan Batam. Sejak disahkannya Undang-undang Cipta kerja para polsus telah dibekali dengan berbagai sosialisasi, pelatihan dan bimbingan teknis seperti pengenalan peraturan baru, Sertifikasi Pemetaan, Sertifikasi menyelam, sertifikasi drone, pembentukan dasar Polsus PWP-3-K, dan selalu melibatkan semua Polsus PWP-3-K dalam ekpose indikasi pelanggaran pemanfaatan ruang laut untuk dapat dikenai sanksi administratif.

Menurut Kepala Pangkalan PSDKP Batam, secara pengetahuan, pemahaman dan keahlian dalam pengawasan dan penanganan indikasi pelanggaran Polsus PWP-3-K tidak dapat diragukan lagi. Semua Polsus dinilai telah merata dalam sisi pengetahuan dan pemahaman peraturan perundang-undangan. Namun pemahaman ini tidak diimbangi dengan jumlah Polsus PWP3-K yang ideal.

Merujuk pada Keputusan Menteri Kelautan dan Perikanan Nomor 51 Tahun 2024 Tentang Peta Jabatan di Lingkungan Kementerian Kelautan dan Perikanan[27] kebutuhan jumlah Pengawas Kelautan atau Polsus PWP-3-K di Wilayah Pangkalan PSDKP Batam berjumlah 55 orang. Kenyataanya jumlah Polsus PWP-3-K di Kepulauan Riau hanya 14 Orang. Jumlah ini tentu saja jauh dari ideal untuk mengawasi potensi Provinsi Kepulauan Riau dengan wilayah yang luas dengan 96% wilayahnya berupa Perairan bahkan garis pantai sepanjang 2367.6 km.[28] Keterbatasan ini menurut peneliti efektifitas pengawasan ruang laut belum efektif. Jika pengawasan belum dikatakan efektif, maka dapat disimpulkan bahwa pengenaan sanksi administratif belum efektif.

3. Fasilitas Sarana dan Prasarana

Pengawasan di Wilayah Perairan Kepulauan Riau tentu tidak akan tercapai tanpa didukung oleh sarana dan prasarana yang memadai. Dalam melaksanakan tugasnya sesuai dengan amanat Permen KP 30 tahun 2021 tentang pengawasan

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[27] " Keputusan Menteri Kelautan dan Perikanan Nomor 51 Tahun 2024 Tentang Peta Jabatan di Lingkungan Kementerian Kelautan dan Perikanan," 2024, https://jdih.kkp.go.id/Homedev/DetailPeraturan/6628.

[28] Badan Perencanaan Penelitian dan Pengembangan Provinsi Kepulauan Riau, "Potensi Kepri," Barenlitbang.kepriprov.go.id, n.d., https://barenlitbang.kepriprov.go.id/potensi-kepri/#:~:text=Provinsi Kepri memiliki luas wilayah 251%2C810.71 km2%2C terdiri dari lautan,terutama potensi marikultur dan pariwisata.

ruang laut, dalam pasal 10 ayat (1) huruf d dan e menyatakan bahwa Polsus PWP-3-K dalam melakukan patroli/perondaan harus dilengkapi dengan peralatan pengaman diri berupa pentungan, borgol, senjata api dan/atau senjata tajam. Pada kenyataan dilapangan Polsus PWP-3-K melakukan pengawasan dipersenjatai hanya saat melakukan tugas menggunakan Kapal Pengawas Kelautan dan Perikanan, padahal amanat Permen KP tidak bermaksud demikian.

Dirjen PSDKP KKP Laksamana Muda TNI Dr. Adin Nurawaluddin menyampaikan tentang alat-alat yang mereka gunakan untuk mengawasi. Mereka memiliki 1.796 orang yang membantu pengawasan perairan dan penangkapan ikan, 34 kapal khusus untuk pengecekan lautan, 2 pesawat terbang untuk terbang di atas air, 91 kapal cepat, dan tim yang mampu merespon permasalahan dengan cepat. Mereka juga menggunakan teknologi khusus untuk membantu menjaga semuanya tetap aman dan terorganisir (Integrated Surveillance System).[29] 34 Kapal Pengawas Kelautan dan perikanan yang dibagi menjadi beberapa kelas. Terdapat 6 kapal besar yang disebut Kelas I (bernama Orca 01 sd 06), 5 kapal sedang yang disebut Kelas II (bernama Hiu Macan Tutul, Paus, dan Barakuda), 12 kapal kecil disebut Kelas III (bernama Hiu 11 sd 17, Hiu Macan 01, dan Hiu Macan 03 hingga 06), 10 kapal yang lebih kecil lagi disebut Kelas IV (bernama Hiu 01 hingga 10), dan 1 kapal khusus disebut Kelas V (bernama Akar Bahar)[30]. Idealnya untuk mengawasi seluruh indonesia harus memiliki 70 kapal pengawas.[31] Bahkan Pangkalan PSDKP yang mengawal 4 provinsi dimana 2 provinsi merupakan kepulauan hanya memiliki 3 Armada kapal pengawas.

Armada	Wilayah Operasi
KP. HIU 03	Yuridiksi
KP. HIU 017	Yuridiksi
KP. HIU MACAN 05	Yuridiksi

[29] KKP WEB DJPSDKP, "KKP Pastikan Armada Dan Personil Pengawasan Siap Kawal Program Ekonomi Biru," 2024, https://kkp.go.id/djpsdkp/kkp-pastikan-armada-dan-personil-pengawasan-siap-kawal-program-ekonomi-biru65c3055c81949/detail.html.

[30] Pemerintah Provinsi and Kepulauan Riau, "Menteri Kelautan Dan Perikanan Didampingi Gubernur Kepri Luncurkan 2 Kapal Pengawas Berkecepatan Tinggi," 2023, https://kepriprov.go.id/berita/gubernur/menteri-kelautan-dan-perikanan-didampingi-gubernur-kepri-luncurkan-2-kapal-pengawas-berkecepatan-tinggi.

[31] Bantolo, "Awasi Sumber Daya Laut Dan Pesisir, KKP Siapkan Kapal Pengawas Orca 05," agrofarm, 2023, https://www.agrofarm.co.id/2023/07/awasi-sumber-daya-laut-dan-pesisir-kkp-siapkan-kapal-pengawas-orca-05/.

SB. NAPOLEON 015	Teritorial
SB. NAPOLEON 016	Teritorial
SB. NAPOLEON 027	Teritorial
SB. NAPOLEON 035	Teritorial
SB. DOLPHIN 008	Teritorial
SB. DOLPHIN 015	Teritorial
SB. DOLPHIN 018	Teritorial
SB. DOLPHIN 023	Teritorial
SB. DOLPHIN 024	Teritorial
URC. HIU BIRU 01	Teritorial
URC. HIU BIRU 02	Teritorial

Tabel 2. Armada Kapal Pengawas Pangkalan PSDKP Batam

Berdasarkan sarana dan prasarana yang dimiliki oleh Ditjen PSDKP dalam mengawasi WPP 711 (Selat Karimata, Laut Natuna, Laut Natuna Utara) jumlah ini masih jauh dari ideal. Pelaksanaan pengawasan dapat dikatakan belum efektif dengan sarana dan prasarana yang dimiliki.

Namun demikian, minimnya sarana pengawasan tidak menghambat Polsus PWP-3-K dalam melaksanakan sanksi administratif. Pelaksanaan sanksi administratif selama ini dilakukan dengan melakukan ekpose melalui daring. Jadi sarana dan prasarana yang diperlukan hanyalah ruangan, koneksi internet dan Laptop/komputer. Pangkalan PSDKP Batam telah menyiapkan ruangan yang dapat digunakan untuk melakukan ekpose online dengan jaringan internet yang lancar. Selain itu setiap Polsus PWP-3-K telah diberikan fasilitas laptop untuk mendukung pelaksanaan sanksi administratif. Dilihat dari sudut pandang sarana dan prasarana dalam pelaksanaan sanksi administratif dapat dikatakan telah efektif. Namun demikian, pengawasan dan pelaksanaan sanksi administratif adalah satu kesatuan, jadi dapat dikatakan faktor Sarana dan prasarana belum efektif.

4. Faktor Masyarakat

Faktor masyarakat yang mempengaruhi efektivitas pengenaan sanksi administratif berdasarkan Pasal 114 ayat (2) Peraturan Menteri Kelautan dan Perikanan Nomor 28 Tahun 2021 tentang Penyelenggaraan Penataan Ruang Laut menyebutkan KKPRL sebagaimana dimaksud pada ayat (1) dilaksanakan melalui:

a. Persetujuan untuk kegiatan berusaha; atau b. Persetujuan atau Konfirmasi untuk kegiatan.[32] Peneliti membedakan masyarakat dalam beberapa kategori yaitu:

1. Masyarakat yang memanfaatkan ruang laut nonberusaha
2. Masyarakat yang memanfaatkan ruang laut untuk berusaha
    a. Memanfaatkan ruang laut sebelum berlakunya Undang-undanga Cipta Kerja
    b. Memanfaatkan ruang laut setelah berlakunya Undang-undanga Cipta Kerja

Dalam penelitian ini peneliti hanya akan menganalisa pemanfaatan ruang laut untuk berusaha. Pelaku usaha yang melakukan pemanfaatan ruang laut sebelum berlakunya Undang-undang Cipta Kerja maka berlaku Pasal 182 Undang-Undang Nomor 6 tahun 2023 Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja yang menyatakan Perizinan Berusaha dan/ atau sertifikat yang sudah terbit berdasarkan Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja masih tetap berlaku sampai dengan berakhirnya Perizinan Berusaha dan/atau sertifikat.

Untuk mengakomodir kegiatan berusaha yang belum memiliki Izin lokasi atau KKPRL sebelum berlakunya UUCK, Peraturan Menteri Kelautan dan Perikanan Nomor 28 tahun 2021 tentang penyelenggaraan penataan ruang laut memberikan kesempatan untuk melakukan pengurusan izin melalui pasal 239 dengan menyebutkan Kegiatan pemanfaatan secara menetap di Perairan Pesisir, wilayah perairan, dan wilayah yurisdiksi yang belum memiliki izin lokasi harus mengajukan KKPRL paling lama 2 (dua) tahun sejak Peraturan Menteri ini mulai berlaku (17 Juni 2021).

Menurut Koordinator Kantor Pelayanan Perizinan BPSPL Padang di Batam Peraturan Menteri ini telah disosialisasikan oleh Direktorat Jenderal Pengelolaan Kelautan dan Ruang laut (Ditjen PKRL) Kementerian Kelautan dan Perikanan setiap tahun sejak tahun 2021. Sosialisasi ini bertujuan agar masyarakat memahami bahwa kegiatan pemanfaatan ruang laut secara menetap disebagian ruang laut dan dilakukan secara terus menerus minimal 30 (tiga puluh) hari wajib memiliki

[32] "Peraturan Menteri Kelautan Dan Perikanan Nomor 28 Tahun 2021 Tentang Penyelenggaraan Penataan Ruang Laut," Pub. L. No. 28 (2021), https://peraturan.bpk.go.id/Details/190275/permen-kkp-no-28-tahun-2021.

KKPRL. Untuk Wilayah Provinsi Kepulauan Riau pelaksanakan Sosialisasi diadakan di Kota Batam dan Kabupaten Karimun dengan mengundang pelaku usaha yang ada di Wilayah Provinsi Kepulauan Riau, bahkan Ditjen PKRL membuka gerai perizinan setiap kali melakukan sosialisasi guna mempermudah pelaku usaha melakukan permohonan dan memberikan bimbingan dalam melengkapi berkas permohonan.

Sosialisasi ini ternyata tidak mampu menyadarkan semua pelaku usaha untuk membuat perizinan KKPRL, bahkan pelaku usaha yang dikenai Sanksi administratif oleh Ditjen PSDKP merupakan pelaku usaha yang pernah mendapatkan sosialisasi dan enggan mengurus perizinan. Alasan lain pelaku usaha yang telah dikenai sanksi administratif adalah karena merasa kesulitan untuk menyusun permohonan perizinan KKPRL. Dalih lain yang sering diberikan adalah karena belum tahu aturan dimaksud.

Argumen pelaku pelanggaran yang paling menjadi perhatian peneliti adalah mereka yang baru akan mulai berusaha namun perizinan tidak kunjung selesai. Bahkan ada yang telah mengajukan Permohonan Perizinan KKPRL hingga 1 tahun namun tidak ada kejelasan apakah permohonan disetujui atau ditolak. Lamanya pengurusan izin ini memaksa pelaku pelanggaran nekad berusaha sebelum mendapatkan perizinan.

Disisi lain, pengetahuan yang dimiliki masyarakat ini menjadi dasar bagi oknum-oknum masyarakat untuk mendapatkan keuntungan dari Pelaku usaha. Sebagai contoh beberapa laporan yang masuk ke Pangkalan PSDKP Batam didasari oleh tidak adanya pemberian uang atau barang dari pelaku usaha kepada mereka. Hal ini telah dijelaskan oleh Polsus PWP-3-K bahwa setiap laporan indikasi pelanggaran yang masuk tidak akan ditindak lanjuti untuk memberikan uang atau barang ke pelapor, namun akan dikenakan sanksi berdasarkan peraturan yang berlaku. Tentu kebiasaan masyrakat ini mengurangi efektivitas pengenaan sanksi administratif karena jika tidak ada hubungan dengan keuntunganyang akan mereka peroleh maka tindakan pelanggaran akan dianggap biasa saja.

Dalam memahami masyarakat ini peneliti beranggapan bahwa faktor masyarakat dalam menentukan efektivitas pengenaan sanksi adminitrasi belum efektif. Walaupun Sosialisasi telah dilakukan dengan gencar, namun masyarakat sendiri masih ada yang tidak mengurus perizinan KKPRL.

5. Faktor Kebudayaan

Penegakan hukum dan pemahaman masyarakat tidak dapat dipisahkan dari faktor budaya yang ada dalam masyarakat. Budaya berperan sebagai kerangka acuan yang membentuk sikap dan perilaku individu terhadap hukum. Penelitian menunjukkan bahwa terdapat pergeseran nilai-nilai budaya yang mengakibatkan penurunan kepatuhan masyarakat terhadap hukum, yang pada gilirannya menyebabkan disfungsi hukum.[33]

Sebagian besar masyarakat pesisir Kepulauan Riau adalah Masyarakat Melayu yang percaya bahwa semua yang mereka butuhkan ada di depan mata. Hal ini terutama berlaku bagi mereka yang tinggal di pesisir pantai dan bekerja sebagai nelayan. Mereka berpikir bahwa akan selalu ada banyak ikan di laut dan mereka dapat menangkapnya kapan pun mereka mau. Budaya yang telah mengakar dimasyarakat tidak akan mudah untuk diubah.[34]

Anggapan bahwa apa yang ada didepan mereka adalah anugerah yang dapat mereka manfaatkan semaksimal mungkin merupakan salah satu penyebab mereka beranggapan bahwa laut yang berada didepan pelataran mereka adalah hak mereka. Bahkan mereka terbiasa membangun keramba, bagan, bahkan alat tangkap setnet (Perangkap) tanpa didahului izin dari pemerintah. Pembangunan ini tentu tidak memperhitungkan keselamatan pelayaran maupun estetika apalagi zonasi.

Berdasarkan dokumen laporan yang diterima Polsus PWP-3-K dan interview yang dilakukan peneliti ketika bertugas menemukan bahwa masyarakat Kepulauan Riau berpendapat bahwa laut atau pesisir yang berada didepan lahan darat yang dimilikinya adalah satu kesatuan. Hal ini seperti peraturan tidak tertulis yang telah berjalan turun temurun bahwa lahan laut atau pesisir merupakan propertinya jika berada didepan lahan darat miliknya.

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[33] Muhammad Ikhsan Maula, “Analisis Ketaatan Hukum Masyarakat Mewujudkan Konsep Negara Hukum,” *De Cive : Jurnal Penelitian Pendidikan Pancasila Dan Kewarganegaraan* 2, no. 8 (2022): 290–99, https://doi.org/10.56393/decive.v2i8.1593.

[34] Yendo Afgani Eusoff, “Budaya Masyarakat Desa Pesisir Sebagai Cabaran Dalam Pemerkasaan Masyarakat Desa Di Kepulauan Riau” 1, no. 1 (2019): 21–33, https://journal.stisipolrajahaji.ac.id/index.php/jisipol/article/view/3/7.

Budaya ini menyulitkan pemerintah dalam memberikan penyadar tahuan bahwa laut tidak dapat dimiliki namun dapat dimanfaatkan dengan proses perizinan. Keadaan ini membuat peneliti berkesimpulan bahwa Faktor kebudayaaan menghambat efektivitas pelaksanaan peraturan pemanfaatan ruang laut, selanjutnya dapat dikatakan faktor ini belum berjalan efektif.

B. Solusi Mengatasi Kendala Penerapan Sanksi Administratif Pemanfaatan Ruang Laut

Menghadapi kendala yang menyebabkan belum efektifnya penerapan sanksi adminitrasi pemanfaatan ruang laut tentu diperlukan jalan keluar agar faktor-faktor penghambat tersebut dapat diminimalisir bahkan dieliminasi. Berikut beberapa solusi yang ditawarkan peneliti terhadap kendala dimaksud.

1. Faktor Penegak Hukum

Permasalahan kurangnya jumlah personil Polsus PWP-3-K merupakan permasalahan yang dihadapi hampir disemua instansi. Untuk menyelesaikan ini dibutuhkan penambahan anggaran. Penambahan personil berarti penambahan anggaran. Namun sebenarnya hal ini dapat diselesaikan dengan penataan kelembagaan dan kerja sama antar instansi.

Berdasarkan Data Direktorat Pengawasan Sumberdaya Kelautan Ditjen PSDKP KKP, tercatat 19 Personil Polsus PWP-3-K yang merupakan personil Pemerintah daerah baik di Provinsi maupun di Kota/Kabupaten. Jika mengacu kepada Pasal 214 Peraturan Pemerintah Pemerintah nomor 5 tahun 2021 tentang Penyelenggaraan Perizinan Berusaha Berbasis Resiko menyatakan pengawasan dilakukan berdasarkan penerbit izin. Dimana pada Pasal 98 ayat (3) Peraturan Pemerintah Pemerintah nomor 21 tahun 2021 Penyelenggaraan Penataan Ruang menyebutkan bahwa Perizinan Pemanfaatn Ruang laut diterbitkan oleh Menteri Kelautan dan Perikanan. Jadi yang berhak melakukan pengawasan maupun pengenaan sanksi pemanfaatan ruang laut adalah Polsus PWP-3-K yang berada di Kementerian Kelautan dan Perikanan.

Jika mengacu kepada Teori hukum Hukum Integratif Romli atmasasmita[35], peneliti berpendapat permasalahan diatas dapat diatasi dengan melakukan rekayasa birokrasi yaitu perbaikan sistem norma dengan membuat Perjanjian Kerjasama antara KKP dengan Pemda setempat. Dalam perjanjian tersebut dapat disebutkan bahwa KKP dapat memberikan tugas pengawasan kepada Polsus PWP-3-K Pemda untuk melaksanakan Pengawasan Pemanfaatan Ruang Laut. Selain itu, KKP dapat terus melakukan permohonan izin penambahan personil ke Kementerian Pendayagunaan Aparatur Sipil Negara untuk menambah personil Polsus PWP-3-K.

2. Faktor Sarana dan Prasarana

Jumlah armada yang masih jauh dari ideal dapat diselesaikan dengan rekayasa birokarasi yaitu perbaikan perilaku pengawasan. Perbaikan perilaku dimaksud disini adalah dengan melakukan rekayasa optimalisasi penempatan Kapal pengawas pada titik-titik rawan.

Sebenarnya untuk mengatasi jumlah armada pengawasan yang belum optimal pernah diteliti oleh Hozairi dan tim pada tahun 2019. Dalam penelitiannya mereka menyebutkan kekurangan armada dapat diselesaikan dengan melakukan penempatan kapal pada titik rawan dengan menggunakan metode Algoritma Genetika[36]. Penelitian ini menghasilkan kombinasi kapal pengawas perikanan dan kelautan yang optimal untuk ditugaskan ke luas jangkauan. Walaupun penelitian ini fokus pada WPP-716 namun dengan cara yang sama dapat diterapkan juga pada perairan Kepulauan Riau yang berada di WPP-711.

Strategi ini dapat dilakukan oleh Dirjen PSDKP dalam menempatkan armadanya. Selain itu metode ‘gergaji laut’ atau menugaskan kapal pengawas secara random dapat dihindari. bahkan dalam penelitian Hozairi, metode ini juga dapat menghemat anggaran hingga ratusan juta.

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35 Atmasasmita, “Memahami Teori Hukum Integratif.”

36 Hozairi Za Hozairi, “Optimasi Penentuan Jumlah Kapal Pengawas Perikanan Di Wilayah Pengelolaan Perikanan – 716 Menggunakan Algoritma Genetika,” *NJCA (Nusantara Journal of Computers and Its Applications)* 4, no. 1 (2019): 35–43, https://doi.org/10.36564/njca.v4i1.130.

3. Faktor Masyarakat

Faktor masyarakat yang menghambat berjalannya efektivitas penegak hukum adalah ketidaktahuan terkait aturan, kesulitan penyusunan dokumen, serta ketidak pasti lama pengurusan izin. Menurut Romli,[37] Fungsi dan peranan hukum sebagai sarana pemersatu dan memperkuat solidaritas masyarakat dan birokrasi dalam menghadapi perkembangan dan dinamika kehidupan. Jadi ketiga permasalahan tersebut harusnya dapat diselesaikan dengan rekayasa birokrasi yang berkaitan dengan sistem norma dan sistem perilaku serta rekayasa masyarakat yang berkaitan dengan sistem nilai seperti yang disampaikan romli dalam teori hukum integratif.

Menurut peneliti, pengetahuan masyarakat yang kurang perlu diubah dan ditambah baik dari sistem norma, sistem perilaku dan sistem nilai. Artinya solusi terbaik dalam teori ini mengoptimalkan rekayasa birokrasi dan rekayasa masyarakat. Wujud rekayasa masyarakat dapat dilakukan dengan rapat bersama mungkin dalam bentuk *coffee morning* antara pemerintah pusat dengan mengundang Camat se Kepulauan Riau, dan Dinas Daerah yang membidangi perikanan dan kelautan serta pembangunan. Didalam forum tersebut dapat disosialisasikan terkait kewajiban KKPRL, harapannya Pemerintahan Daerah dapat menyampaikan kepada masyarakat akan pentingnya Perizinan Ruang laut baik kegiatan berusaha maupun non berusaha. Dengan demikian sosialisasi tidak hanya dilakukan oleh kementerian namun juga dilakukan oleh pemda setempat, cara ini diharapkan informasi dapat menyentuh semua lapisan masyarakat. Cara sosialisasi seperti ini juga pernah dilakukan oleh Badan kependudukan dan Keluarga Berencana (BKKBN). Instansi ini melakukan sosialisasi berbasis komunitas menggunakan pendekatan tokoh masyarakat maupun tokoh agama untuk menyampaikan pesan "2 anak cukup".

Kesulitan penyusunan dokumen sebenarnya telah disediakan gerai perizinan setiap kali dilakukan sosialisasi, dan Kantor Pelayanan Perizinan BPSPL Padang di Batam selalu membuka pintu untuk konsultasi perizinan. Bahkan pernah dilakukan Bimbingan Teknis cara penyuusnan permohonan PKKPRL oleh Ditjen PKRL KKP

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[37] Romli Atmasasmita, *Teori Hukum Integratif*, 1st ed. (Bandung: Mandar Maju, 2019).

bekerja sama dengan Perusahaan Galangan Kapal bekerja sama dengan Batam Shipyard Offshore Association (BSOA) dan Ikatan Perusahaan Industri Galangan Kapal dan Lepas Pantai Indonesia (IPERINDO) ditahun 2023. Hal serupa bisa saja dilakukan terhadap perusahaan atau perorangan lainnya dengan menggandeng atau difasilitasi pemerintah daerah. Atau dapat dimulai dengan melibatkan Kelompok Pengawas Masyarakat (Pokwasmas) dan mereka akan menularkan ilmu kepada masyarakat lainnnya.

Menindak lanjuti ketidak pastian lamanya pengurusan izin sebenarnya telah diatur didalam Pasal 124 ayat (14) Peraturan Menteri Kelautan dan Perikanan Nomor 28 tahun 2021 tentang penyelenggaraan penataan ruang laut bahwa Proses penilaian dokumen dilakukan paling lama empat belas hari untuk Persetujuan dan delapan hari untuk Konfirmasi. Perhitungan hari berlaku sejak dokumen permohonan dinyatakan lengkap. Namun tidak ada norma waktu sejak pendaftaran hingga penilaian dokumen. Merujuk pada pasal 122 pada peraturan ini, tahapan pemberian KKPRL meliputi Pendaftaran Penilaian dokumen, dan Penerbitan. Ketidakpastian ini membuat masyarakat lupa melihat kembali pengajuan dokumen yang telah mereka daftarkan melalui Online Single Submission (OSS). Apakah dokumen permohonan mereka telah lengkap atau perlu ada perbaikan. Ketika ada notifikasi di OSS bahwa dokumen perlu perbaikan, sering kali pemohon tidak melihat hingga berbulan-bulan, hal inilah yang menyebabkan lamanya perizinan KKPRL.

Solusi terhadap kendala ini perlu dilakukan Rekayasa Birokrasi yang merujuk pada inovasi dan reformasi prosedur agar hukum dan penegakannya lebih efektif, responsif, dan inklusif terhadap masyarakat. Hal-hal yang dapat dilakukan adalah dengan memberikan transparansi pada proses perizinan dengan menetapkan *Self Service Agreement* (SLA). Maksudnya, perlu diberikan batas waktu terkait jadwal penyelesaian izin sejak penerimaan berkas, verifikasi, dan batas perbaikan berkas. Bahkan harapannya dapat dimunculkan nomor urutan proses pengajuan izin agar dapat diakses oleh masyarakat luas, sehingga masyarakat juga dapat menilai kinerja perizinan dan pemohon izin juga dapat memperoleh penjelasan terkait keterlambatan permohonannya.

Lamanya antrian perizinan juga disebabkan oleh seluruh perizinan dilakukan verifikasi di Pusat dan UPT BPSPL. Masalah ini mungkin dapat diselesaikan dengan reformasi birokrasi berupa desentralisasi kewenangan dengan memberikan sebagian proses pengurusan izin dapat dilakukan di Provinsi, misal PKKPRL dengan luasan tertentu yang tidak dilakukan reklamasi dapat diserahkan perizinannya ke Provinsi.

4. Faktor Kebudayaan

Rasa memiliki sumberdaya alam merupakan milik bersama karena masyarakat berpandangan bahwa semua adalah pemberian Tuhan yang dapat dimanfaatkan merupakan kendala yang perlu dihadapi dengan hati-hati. Romli Atmasasmita dalam teori hukum integratif menekankan pentingnya mengintegrasikan berbagai elemen hukum dan budaya ke dalam proses penegakan hukum. Berdasarkan teori ini, penyelesaian masalah di Kepulauan Riau yang telah saya sebutkan dapat melibatkan beberapa langkah strategis yang menggabungkan pemahaman budaya setempat dengan penegakan hukum yang efektif.

Pertama, penting untuk menerapkan pendekatan partisipatif dalam penyuluhan hukum dengan melibatkan masyarakat dalam dialog budaya dan partisipasi dalam proses pembuatan kebijakan.[38] hal ini dapat dilakukan dengan membentuk kelompok khusus yang terdiri dari para masyarakat pesisir, tokoh adat, dan pemerintah. Kelompok ini dapat berbagi ide dan pendapat mereka untuk membantu untuk memberikan jalan keluar dan pemahaman terhadap peraturan yang berlaku. Hal ini ssesuai dengan rekayasa masyarakat yang disaampaikan oleh romli dalam teori hukum integratif.

Selanjutnya dalam Penegakan hukum harus dilakukan dengan pendekatan restoratif dan humanis, yang mempertimbangkan konteks budaya dan berfokus pada pemulihan hubungan antara pelanggar dan komunitas.[39] Kita dapat membantu menyelesaikan masalah antara masyarakat yang melanggar aturan dan orang-orang yang terdampak, seperti masyarakat atau pemimpin setempat. Misalnya, jika beberapa nelayan mendirikan keramba ikan tanpa bertanya terlebih dahulu atau

[38] Adnan Lira, "Penyuluhan Hukum Perdata Dan Pidana Bagi Aparat Kelurahan," *JOURNAL OF TRAINING AND COMMUNITY SERVICE ADPERTISI (JTCSA)* 3, no. 3 (2023): 33–38, https://doi.org/10.62728/jtcsa.v3i3.504.

[39] Lira.

tidak berizin, kita dapat duduk bersama untuk membicarakan cara memperbaikinya. Dengan cara ini, kita dapat menyepakati apa yang harus dilakukan masayrakat yang melanggar untuk membantu memperbaiki situasi dan mengajarkan mereka aturan yang harus mereka patuhi.

Selain itu, pengembangan kerangka hukum yang fleksibel, seperti sistem zonasi inklusif dan proses perizinan yang mudah diakses, dapat membantu mengakomodasi praktek lokal sambil memastikan kepatuhan terhadap peraturan.[40] Hal ini dapat dilakukan dengan mempermudah masyarakat untuk mendapatkan izin dengan mendirikan pusat bantuan di daerah setempat, seperti desa. Pusat bantuan ini dapat membantu masyarakat memahami peraturan dan memberi mereka dukungan yang mereka butuhkan untuk mengisi aplikasi.

Dengan menerapkan pendekatan ini, diharapkan akan tercipta harmoni antara hukum dan budaya, serta meningkatkan efektivitas penegakan hukum di daerah pesisir Kepulauan Riau. Ini juga akan membantu Polsus PWP-3-K melakukan pekerjaan mereka dengan lebih baik.

PENUTUP

KESIMPULAN

Sanksi administratif berfungsi sebagai *primum remedium* untuk mencegah pelanggaran pemanfaatan ruang laut sebelum beralih ke sanksi pidana, dengan tujuan meningkatkan kepatuhan dan menjaga ekosistem laut. Berdasarkan teori efektivitas hukum Soerjono Soekanto dan teori hukum integratif Romli Atmasasmita, penelitian ini mengidentifikasi lima faktor yang mempengaruhi efektivitas penegakan hukum, yaitu: 1) Faktor hukum yang sudah cukup lengkap, sehingga sanksi administratif dapat dikatakan efektif; 2) Faktor penegak hukum yaitu kurangnya jumlah personil, menghambat pengawasan yang optimal; 3) Faktor sarana dan prasarana yang terbatas, meskipun teknologi pengawasan sudah tersedia; 4) Faktor masyarakat yang kurang patuh meskipun sudah ada sosialisasi; dan 5) Faktor budaya yang menganggap laut sebagai hak milik pribadi tanpa izin

[40] Yusuf Tojiri, "No Title," *Sharing Masyaratakat Desa Wisata: Peningkatan Personaliti Berbasis Kearifan Lokal* 2, no. 1 (2024): 65–71, https://ejurnalunsam.id/index.php/mardika/article/view/9945.

pemerintah. Untuk mengatasi kendala-kendala tersebut, solusi yang ditawarkan meliputi optimalisasi kerjasama antarinstansi, penempatan armada pengawasan secara strategis, peningkatan sosialisasi dan bimbingan teknis, serta pendekatan budaya dengan penegakan hukum yang humanis. Sinergi antara hukum dan nilai-nilai lokal menjadi kunci untuk meningkatkan efektivitas penegakan hukum dalam pengelolaan ruang laut di Kepulauan Riau.

SARAN

Sebagai penutup, penelitian ini menawarkan beberapa saran yang dapat meningkatkan efektivitas penerapan sanksi administratif dalam pemanfaatan ruang laut:

1. **Perkuat Sinergi dan Penambahan Personel**: Tingkatkan kerja sama antara pemerintah pusat, daerah, dan KKP dengan menambah personel Polsus PWP-3-K serta mempererat kolaborasi dengan pemerintah daerah untuk pengawasan kelautan.
2. **Pemanfaatan Teknologi**: Maksimalkan penggunaan drone, sistem pengawasan terintegrasi, dan optimalkan penempatan kapal pengawas untuk pengawasan yang lebih efisien.
3. **Penyederhanaan Proses Perizinan**: Permudah proses perizinan dan tingkatkan transparansi dengan pemberitahuan otomatis tentang status permohonan.
4. **Edukasi dan Partisipasi Masyarakat**: Tingkatkan sosialisasi hukum dan libatkan tokoh masyarakat serta Pokwasmas untuk meningkatkan pemahaman masyarakat tentang pentingnya izin dan keberlanjutan sumber daya laut.
5. **Pendekatan Budaya dalam Penegakan Hukum**: Terapkan pendekatan kultural dengan dialog terbuka antara pemerintah dan masyarakat untuk menciptakan kepatuhan yang lebih tinggi tanpa konflik

DAFTAR PUSTAKA

Buku:

Kementerian Hukum dan Hak Asasi Manusia. “Naskah Akademik Rancangan Undang-Undang Tentang Cipta Kerja,” 2020, 1–1982.

Manafi, Muh Rasman. *Menata Ruang Laut Indonesia*. 1st ed. Jakarta: Kementerian Koordinator Bidang Kemaritiman dan Investasi, 2021.

Rifa'i, imam jalaludin dkk. *Metode Penelitian Hukum*. Banten: Sada Kurnia Pustaka, 2023.

———. *Teori Hukum Integratif*. 1st ed. Bandung: Mandar Maju, 2019.

Jurnal:

Akbar, Muhammad Fatahillah. "Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia." *Masalah-Masalah Hukum* 51, no. 2 (2022): 199–208. https://doi.org/10.14710/mmh.51.2.2022.199-208.

Anggrainy, Rae, Aziza Aziz Rahmaningsih, Balai Besar, Budidaya Laut, and Hukum Lingkungan. "Penerapan Sanksi Hukum Terhadap Pencemaran Lingkungan." *Siyasah Jurnal Hukum Tata Negara* 3, no. 1 (2023): 101–13. https://doi.org/https://doi.org/10.32332/siyasah.v4i2.

Anwar, Mashuril. "Holistic Paradigm Contradiction of the Ultimate Principle of Remedium Against the Principle of Legality in Environmental Criminal Law Enforcement." *Administrative and Environmental Law Review* 1, no. 1 (September 29, 2020): 43–52. https://doi.org/10.25041/aelr.v1i1.2083.

Armanda, Bagus. "Parkir Liar Dalam Perspektif Teori Efektifitas Hukum." *Jurnal Pelita Nusantara* 1, no. 4 (2024): 477–81. https://doi.org/10.59996/jurnalpelitanusantara.v1i4.351.

Atmasasmita, Romli. "Memahami Teori Hukum Integratif." *Legalitas Edisi Desember* III, no. 2 (2012): 1–17.

Basri, Hasan. "Pengelolaan, Pengawasan Kawasan Pesisir Dan Laut Di Indonesia." *REUSAM: Jurnal Ilmu Hukum* 8, no. 2 (2021): 1. https://doi.org/10.29103/reusam.v8i2.3713.

Edi Wibowo, Suyanto. "Memahami Makna Pasal 33 Undang-Undang Dasar Negara Republik Inodonesia." *Jurnal Legislasi Indonesia* 12, no. 4 (2015): 1689–99. https://doi.org/10.54629/jli.v12i4.424.

Eusoff, Yendo Afgani. "Budaya Masyarakat Desa Pesisir Sebagai Cabaran Dalam Pemerkasaan Masyarakat Desa Di Kepulauan Riau" 1, no. 1 (2019): 21–33. https://journal.stisipolrajahaji.ac.id/index.php/jisipol/article/view/3/7.

Fauzan, Dzaky, Taufiqur Rachman, and Muhammad Fadly. "Evaluasi Aspek Teknis Persetujuan Kesesuaian Kegiatan Pemanfaatan Ruang Laut (Pkkprl) Sesuai Undang-Undang No. 6 Tahun 2023." *Riset Sains Dan Teknologi Kelautan* 6, no. 2 (2023): 287–95. https://doi.org/10.62012/sensistek.v6i2.32541.

Hozairi, Hozairi Za. "Optimasi Penentuan Jumlah Kapal Pengawas Perikanan Di Wilayah Pengelolaan Perikanan – 716 Menggunakan Algoritma Genetika." *NJCA (Nusantara Journal of Computers and Its Applications)* 4, no. 1 (2019): 35–43. https://doi.org/10.36564/njca.v4i1.130.

Kristiyanto, Eko Noer. "Kedudukan Kearifan Lokal Dan Peranan Masyarakat Dalam Penataan Ruang Di Daerah." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 2 (August 31, 2017): 151. https://doi.org/10.33331/rechtsvinding.v6i2.172.

Lira, Adnan. "Penyuluhan Hukum Perdata Dan Pidana Bagi Aparat Kelurahan." *JOURNAL OF TRAINING AND COMMUNITY SERVICE ADPERTISI (JTCSA)* 3, no. 3 (2023): 33–38. https://doi.org/10.62728/jtcsa.v3i3.504.

Maula, Muhammad Ikhsan. "Analisis Ketaatan Hukum Masyarakat Mewujudkan Konsep Negara Hukum." *De Cive : Jurnal Penelitian Pendidikan Pancasila Dan Kewarganegaraan* 2, no. 8 (2022): 290–99. https://doi.org/10.56393/decive.v2i8.1593.

Muhammad Huda Nuryanto, Fatma Ulfatun Najicha. "Analisis Ketentuan Perancangan Tata Ruang Wilayah Yang Baik Berdasarkan Undang-Undang Nomor 26 Tahun 2007." *Jurnal Hukum Positum* 8, no. 1 (2023): 96–110. https://doi.org/10.35706/positum.v8i1.9508.

Panji Sasongko, Purwanto, Wiend Sakti Myharto, Sofiana, Sofiana, and Muhammad Rafi Razan Darmawan. "Kajian Hukum Pemeriksaan Selaput Dara Dari Perspektif Ham Dan Ditinjau Dari Sistem Hukum Negara." *Jurnal Syntax Admiration* 4, no. 10 (2023): 1822–32. https://doi.org/10.46799/jsa.v4i10.762.

Pratiwi, Kania Tamara, Siti Kotijah, and Rini Apriyani. "Penerapan Asas Primum Remedium Tindak Pidana Lingkungan Hidup." *SASI* 27, no. 3 (October 7, 2021): 363. https://doi.org/10.47268/sasi.v27i3.471.

Raharja, Ivan Fauzani. "Penegakan Hukum Sanksi Administrasi Terhadap Pelanggaran Perizinan." *Inovatif Jurnal Ilmu Hukum* VII, no. II (2014): 117–38. https://mail.online-journal.unja.ac.id/jimih/article/view/2064.

Rifki, Mohamad. "Reformulasi Sanksi Administrasi Bersifat Primum Remedium Dalam Pengelolaan Perikanan (Sebuah Upaya Memberi Efek Jera Bagi Korporasi Pelanggar Ketentuan Di Bidang Perikanan)." *Esensi Hukum* 1, no. 1 (2019): 51–69. https://journal.upnvj.ac.id/index.php/esensihukum/index%0AReformulasi.

Rizal, Said, Bobby Chayadi, Lineus Fredorico, and Tania Novebriani Lase. "Tinjauan Yuridis Atas Sengketa Kepemilikan Tanah Di Desa Pematang Johar, Kecamatan Labuan Deli Kabupaten Deli Serdang (Studi Kasus Putusan Pn No.112/Pdt.G/2017/Pn.Lbp)." *UNES Law Review* 4, no. 3 (2022): 407–16.

https://doi.org/10.31933/unesrev.v4i3.263.

Saniah, Muhammad Rafli, and Isrina Siregar. "Dinamika Kebijakan Poros Maritim Indonesia Pada Masa Pemerintahan Joko Widodo Periode Tahun 2014-Sekarang." *JEJAK : Jurnal Pendidikan Sejarah & Sejarah* 1, no. 2 (2021): 64–72. https://doi.org/10.22437/jejak.v1i2.16408.

Sugiarto, Agus. "Implementasi Pengendalian Pemanfaatan Ruang Dan Sanksi Administratif Dalam Rencana Tata Ruang Wilayah Kabupaten Sidoarjo." *JKMP (Jurnal Kebijakan Dan Manajemen Publik)* 5, no. 1 (2017): 41–60. https://doi.org/10.21070/jkmp.v5i1.812.

Sumarna, Dadang, and Ayyub Kadriah. "Penelitian Kualitatif Terhadap Hukum Empiris." *Jurnal Penelitian Serambi Hukum* 16, no. 02 (2023): 101–13. https://doi.org/10.59582/sh.v16i02.730.

Tojiri, Yusuf. "No Title." *Sharing Masyaratakat Desa Wisata: Peningkatan Personaliti Berbasis Kearifan Lokal* 2, no. 1 (2024): 65–71. https://ejurnalunsam.id/index.php/mardika/article/view/9945.

Website:

Bantolo. "Awasi Sumber Daya Laut Dan Pesisir, KKP Siapkan Kapal Pengawas Orca 05." agrofarm, 2023. https://www.agrofarm.co.id/2023/07/awasi-sumber-daya-laut-dan-pesisir-kkp-siapkan-kapal-pengawas-orca-05/.

DJPSDKP, KKP WEB. "KKP Pastikan Armada Dan Personil Pengawasan Siap Kawal Program Ekonomi Biru," 2024. https://kkp.go.id/djpsdkp/kkp-pastikan-armada-dan-personil-pengawasan-siap-kawal-program-ekonomi-biru65c3055c81949/detail.html.

Kasanah, Khusnul Nur. "RZWP-3-K Kepastian Hukum Bagi Pesisir Dan Pulau-Pulau Kecil." Sekretaris Kabinet Repiblik Indonesia, 2016. https://setkab.go.id/rzwp-3-k-kepastian-hukum-bagi-pesisir-dan-pulau-pulau-kecil/.

Nursyamsi, Muhammad. "KKP Bakal Evaluasi Izin Pemanfaatan Ruang Laut _ Republika Online." republika.co.id, 2024. https://ekonomi.republika.co.id/berita/saahpv490/kkp-bakal-evaluasi-izin-pemanfaatan-ruang-laut.

Provinsi, Pemerintah, and Kepulauan Riau. "Menteri Kelautan Dan Perikanan Didampingi Gubernur Kepri Luncurkan 2 Kapal Pengawas Berkecepatan Tinggi," 2023. https://kepriprov.go.id/berita/gubernur/menteri-kelautan-dan-perikanan-didampingi-gubernur-kepri-luncurkan-2-kapal-pengawas-berkecepatan-tinggi.

Riau, Badan Perencanaan Penelitian dan Pengembangan Provinsi Kepulauan. "Potensi Kepri." Barenlitbang.kepriprov.go.id, n.d.

https://barenlitbang.kepriprov.go.id/potensi-kepri/#:~:text=Provinsi Kepri memiliki luas wilayah 251%2C810.71 km2%2C terdiri dari lautan,terutama potensi marikultur dan pariwisata.

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The Sovereign Immunity Entitlement of Sunken Foreign Military Wreck Within Indonesian Territorial Water

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Abstract

The 2014 retrieval of two Dutch warship wrecks from Indonesian waters, remnants of World War II's Battle of Java, sparked legal debate regarding sovereign immunity for sunken warships. The wrecks' disappearance, revealed during a 75th-anniversary commemoration, questions the continued applicability of such immunity in foreign waters. This study examines the wrecks' legal status, particularly their exclusion from the 2001 UNESCO Convention due to their age. Employing juridical-normative research, the study analyses international legal instruments, court decisions, literature, and state practices. Findings suggest that while sovereign immunity persists, its scope is limited. A non-operational wreck serves no military purpose but maintain its identity. The absence of a comprehensive international framework underscores the importance of the Indonesia-Netherlands bilateral agreement in protecting remaining wrecks. The study concludes that increased international cooperation is crucial for addressing legal uncertainties surrounding sovereign wrecks and ensuring their preservation.

Abstrak

Pengangkatan dua bangkai kapal perang Belanda dari perairan Indonesia pada tahun 2014, peninggalan Pertempuran Laut Jawa di Perang Dunia II, memicu perdebatan hukum mengenai kekebalan kedaulatan kapal perang yang tenggelam. Hilangnya bangkai kapal ini, terungkap saat peringatan 75 tahun oleh Karel Doorman Foundation, menimbulkan pertanyaan akan keberlanjutan penerapan kekebalan tersebut di perairan asing. Penelitian ini mengkaji status hukum bangkai kapal, khususnya karena tidak termasuk dalam Konvensi UNESCO 2001 akibat usia mereka. Menggunakan metode penelitian yuridis-normatif, studi ini menganalisis instrumen hukum internasional, putusan pengadilan, literatur, dan praktik negara. Temuan menunjukkan bahwa meskipun kekebalan kedaulatan masih berlaku, ruang lingkupnya terbatas. Status non-operasional bangkai kapal perang tidak menghilangkan identitasnya, meskipun tidak lagi memiliki fungsi militer. Ketiadaan kerangka hukum internasional yang komprehensif menekankan pentingnya perjanjian bilateral Indonesia-Belanda dalam melindungi bangkai kapal yang tersisa. Penelitian ini menyimpulkan bahwa peningkatan kerja sama internasional sangat penting untuk mengatasi ketidakpastian hukum seputar bangkai kapal berdaulat dan memastikan pelestariannya.

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INTRODUCTION

Sovereign immunity has long been considered a legal mechanism to safeguard the sovereignty and dignity of states,[1] ensuring equality among nations, as states are key subjects in international law.[2] This doctrine reflects the principle of *par in parem non habet imperium*, which holds that one sovereign cannot assert jurisdiction over another.[3]

Historically, sovereign immunity protected rulers from the jurisdiction of their own courts and extended to protection from foreign courts.[4] Vattel emphasized that a traveling prince should be free from foreign jurisdiction, as his dignity demands respect.[5] Over time, the application of sovereign immunity evolved, leading to two perspectives: absolute immunity, where states are fully protected, and a restrictive approach, where immunity is limited in certain circumstances.[6] Article 32 of UNCLOS recognizes sovereign immunity for state-owned military vessels, though exceptions exist, such as in warfare, where captured enemy vessels lose this immunity.[7]

The practice of war has also resulted in significant numbers of the sunken battleship, dozens of these wrecks are among others located in Indonesia.[8] Approximately there are at least 110 Dutch flagships sunk across the Indonesian water.[9] Most of these wrecks regarded as war graves for the flag states and their very existence represent historic ties symbolising nationalism from their fallen

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[1] M. R. Garcia, "The Doctrine of Sovereign Immunity of Foreign States and Its Recent Modifications," *Virginia Law Review* 42, no. 3 (1956): 335.

[2] Ian Brownlie, *Principles of Public International Law*, 5th ed (Oxford : New York: Clarendon Press ; Oxford University Press, 1998).

[3] L. Oppenheim, R. Y. Jennings, and Arthur Watts, *Oppenheim's International Law. Vol. 1, Peace*, 9th ed (London: Longman, 1996).

[4] Garcia, "The Doctrine of Sovereign Immunity of Foreign States and Its Recent Modifications."

[5] Garcia.

[6] Garcia.

[7] "United Nations Convention on the Law of the Sea (UNCLOS)" (UNTS, 1994).

[8] Dozens of WWII warship wrecks from the UK, Australia, the Netherlands, and Japan lie in Indonesia's territorial sea, holding thousands of servicemen. Oliver Holmes, Monica Ulmanu, and Simon Roberts, "The World's Biggest Grave Robbery: Asia's Disappearing WWII Shipwrecks," *The Guardian* (blog), November 3, 2017, https://www.theguardian.com/world/ng-interactive/2017/nov/03/worlds-biggest-grave-robbery-asias-disappearing-ww2-shipwrecks.

[9] J Pieters, "Netherlands, Indonesia Team up to Protect Naval Ship Wrecks," *NL Times* (blog), July 4, 2018, https://nltimes.nl/2018/07/04/netherlands-indonesia-team-protect-naval-ship-wrecks.

soldiers such as the Dutch wrecks of *Hr.Ms. De Ruyter,*[10]*Hr.Ms. Java,*[11] and *Hr.Ms. Kortenaer.*[12]

The advancing technology increases the chances of discovering and exploiting sunken warships. The 2001 UNESCO Convention protects underwater cultural heritage, including wrecks over 100 years old.[13] Most WWII wrecks, including those in Indonesian waters, do not yet meet this requirement. This raises debates on whether sovereign immunity still applies to sunken warships, as some argue they have lost their original identity and function.[14] Other authors argue that sunken naval ships remain the flag State's property unless explicitly abandoned under international law norms.[15] Sovereign immunity is based on international comity, where states respect each other's independence by avoiding jurisdiction over foreign state property used for public purposes. Clarifying its application to sunken naval ships is essential for international compliance.

Article 32 of UNCLOS governs the sovereign immunity of state-owned military vessels. This paper tries to examine whether the sunken foreign warships in Indonesia's territorial water falls within the scope of warships under UNCLOS Article 29 and as consequence, retain their sovereign immunity. Further, it explores the argument that immunity is lost upon sinking due to loss of functionality, supported by the 1944 *Baltimore, Crisfield & Onancock Line, Inc. v. United States*

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[10] Hr.Ms. De Ruyter a Dutch flag warship class cruiser, launched May 11, 1935. Sunk in the Battle of Java Sea, February 27/28 1942. "De Ruyter," *Netherlands Navy* (blog), accessed September 24, 2024, https://www.netherlandsnavy.nl/Photo_ruyter.htm.

[11] Hr. Ms. Java a Dutch flag warship class cruiser, launched August 6, 1921. Sunk in the Battle of Java Sea, February 27, 1942. "Java-Class Cruisers," *Netherlands Navy* (blog), accessed September 22, 2024, https://www.netherlandsnavy.nl/Javacl.htm.

[12] "Report of the Joint Expert Meeting on the Appreciation (Track II) of the Dutch Shipwrecks in the Java Sea" (The Hague Netherlands: Ministerie Van Defensie, January 1, 2017).

[13] UNESCO, "Convention on the Protection of the Underwater Cultural Heritage" (2001).

[14] David J. Bederman, "Rethinking the Legal Status of Sunken Warships," *Ocean Development & International Law* 31, no. 1–2 (January 2000): 97–125, https://doi.org/10.1080/009083200276085.

[15] Jason R. Harris, "The Protection Of Sunken Warships As Gravesites At Sea," *Ocean and Coastal Law Journal* 7 (2001), http://digitalcommons.mainelaw.maine.edu/oclj/vol7/iss1/11; Rean Monfils, Trevor Gilbert, and Sefanaia Nawadra, "Sunken WWII Shipwrecks of the Pacific and East Asia: The Need for Regional Collaboration to Address the Potential Marine Pollution Threat," *Ocean & Coastal Management* 49, no. 9–10 (January 2006): 779–88, https://doi.org/10.1016/j.ocecoaman.2006.06.011; Chen R, "Bilateral or Multilateral Agreements between States for the Settlement of Dispute over Ownership of Underwater Cultural Heritage: Background, Ownership Clauses, and Implications for China," *China Oceans Law Review*, 2022, 111.

case. In contrast, the 1955 *Prins Frederick case* asserts that salvage laws apply only to commercial vessels, as warships are crucial to national security. Consequently, states may prevent the salvage of sunken warships to protect their heritage and dignity.

The debate on coastal states' duty to protect sunken warships while respecting their sovereign immunity remains crucial. These ships retain some immunity after sinking, complicating issues like illegal salvage and looting. This discussion examines whether coastal states bear responsibility for damage due to inaction, focusing on states with shared interests as coastal or flag states, especially for wrecks under 100 years old.[16]

This writing seeks a peaceful solution to protect sunken warships in Indonesian waters while maintaining diplomatic ties with flag states. Balancing sovereign protection of WWII wrecks with coastal state jurisdiction is complex. Though wrecks like De Ruyter and Java are not yet 100 years old under the 2001 UNESCO Convention, its spirit underscores the historical and philosophical basis for flag states' protection efforts.

RESEARCH METHODS

This research utilizes a juridical-normative method, reviewing international law and rules concerning the protection of sunken warships and salvage activities, particularly in relation to breaches of sovereign immunity. It also examines Indonesian law and policies on the immunity of warships and underwater cultural heritage protection. The Statute Approach is employed to explore formal legal matters through case analysis and other relevant issues, using both international and domestic legal materials.

Section 1 focuses on the commercial salvage of the *De Ruyter* and *Java* wrecks, examining their sinking, discovery by Australian divers, and alleged looting in 2014-2016. Section 2 discusses whether warships retain sovereign

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[16] Salvage of HMS Repulse and HMS Prince of Wales, sunk off Malaysia in December 1941, and commercial salvaging of HMAS Perth, a former Australian naval ship.

immunity after sinking and analyzes relevant international legal frameworks, including the 2001 UNESCO Convention and the 2015 resolution by *the Institut de Droit International*. Section 3 addresses exemptions from salvage under international law and Indonesia's stance, considering cultural heritage protection and the possible end of immunity through abandonment for commercial salvage.

RESULT AND DISCUSSION

A. The Looting of Hr. Ms. De Ruyter and Hr. Ms. Java

During the Battle of Java in WWII, the remaining Allied ships, including Dutch cruisers *De Ruyter* and *Java*, gathered in Surabaya.[17] On February 27, they engaged two Japanese heavy cruisers[18], Haguro and Nachi, 90 miles north.[19] Nachi torpedoed Java, sinking it in 15 minutes and killing 512 crew at 06.00 S, 112.05 E. [20] Haguro then struck De Ruyter, sinking it with RADM Karel Doorman and 345 crew at the same location. [21]

The wrecks of Hr.M. Ships *De Ruyter* and *Java* remained undiscovered until December 2002,[22] when MV Empress scuba divers located them near Bawean Island in the sea of Java.[23] Despite being explored by divers in 2008, there was no official recognition by either the Netherlands or Indonesia at the time. The wrecks were subjected to technical or tourist dive trips and commemoration visits on the sea surface years after.[24] Following the next visit in 2008, the visiting of the two cruisers was recorded on film showing the wrecks were lying well-preserved on the seabed.[25]

[17] "Expedition: Battle of the Java Sea Revisited" (Karel Doorman Foundation, 2016).
[18] "Expedition: Battle of the Java Sea Revisited."
[19] "Expedition: Battle of the Java Sea Revisited."
[20] "'Java' (Netherlands Navy)," *Netherlands Navy* (blog), accessed September 24, 2024, http://www.netherlandsnavy.nl/Java_his.htm.
[21] "Expedition: Battle of the Java Sea Revisited"; "Hr. Ms. De Ruyter," *Pacific Wrecks* (blog), September 20, 2023, https://pacificwrecks.com/ship/hrms/de_ruyter.html.
[22] "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer" (Ministry of Foreign Affair of the Repubic of Indonesia, 2017).
[23] "De Ruyter-Class Cruiser," *Netherlands Navy* (blog), accessed September 22, 2024, https://www.netherlandsnavy.nl/DeRuyter1.htm.
[24] "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."
[25] "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."

The wrecks were discovered through diving explorations in the late 1990s. During the search of MV Empress, the bells of De Ruyter and Java were retrieved,[26] De Ruyter's now displayed in The Hague and Java's stored in Surabaya. [27] Though the 2002 discovery was not formally reported, Dutch naval ties are acknowledged. [28] The bells' display symbolizes Dutch ownership, reinforced by a planned plaque at the site. In 2017, a ceremony led by the Dutch ambassador in Surabaya honored the wrecks, affirming Dutch ownership through mutual recognition by both States.[29]

A 2002 joint verification identified De Ruyter by its unique bridge and gun turrets, [30] while Java was recognized by its funnel features and shell casings. [31] Historical records from Indonesia and the Netherlands confirm these wrecks as warships lost in the Battle of Java, supported by discovery coordinates from 2002.[32] These warships, having never been under enemy control or used for non-commercial purposes, retain their sovereign immunity under Article 32 of UNCLOS, which prevents their seizure or detention by legal processes, nor to any proceedings *in rem.*[33]

a. The alleged looting of the sites during 2014 -2016

Allegedly between 2014 and 2016, two of Dutch Military Wrecks was being the object of illegal salvage activity carried out by Jatim Perkasa Salvage, a Private Corporation registered under Indonesian law.[34] This looting became apparent in 2016 when the Dutch foundation Karel Doorman (KDF) attempted to assert control

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[26] "Expedition: Battle of the Java Sea Revisited."

[27] "Expedition: Battle of the Java Sea Revisited."

[28] "Karel Doorman Fund," *Militaire Fondsen NL* (blog), accessed September 24, 2024, https://militairefondsen.nl/karel_doorman_fonds/index.php.

[29] "Herdenking Slag in de Javazee in Surabaya," *Oorlogs Graven Stitchting* (blog), March 1, 2017, https://oorlogsgraven.net/nieuws/artikel/82/herdenking-slag-in-de-javazee-in-surabaya.

[30] "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."

[31] "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."

[32] "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."

[33] "International Convention for the Unification of Certain Rules Relating to the Immunity of State-Owned Vessels (Brusel Convention)" (UNTC, 1926).

[34] Aqwam Fiazmi Hanifan, Arbi Sumandoyo, and Mawa Kresna, "Kerugian Negara Dari Pencurian Kapal Bersejarah," *Tirto* (blog), January 25, 2018, https://tirto.id/kerugian-negara-dari-pencurian-kapal-bersejarah-cDND.

over the wrecks in the Java Sea, coinciding with the 75th anniversary of *the Battle of the Java Sea.*[35]

In late 2016, KDF assigned Exploration Company to lead *The 2016 Expedition*,[36] assembling a multinational team of divers skilled in photography and shipwreck exploration.[37] After obtaining permits from the Indonesian Ministry of Culture, they met with the Netherlands War Grave Commission in October to hand over a plaque for De Ruyter's site. However, during their November expedition aboard MV Empress, they failed to locate the wreck.[38] Using Multibeam Sonar, they found a trench with claw-like gouges, indicating the wreck had been completely removed, though some small debris resembling De Ruyter remained.[39]

Later that day, a scan of *Java* revealed a 130-meter ship-shaped trench and a smaller one nearby, matching its known position.[40] Academics and salvage workers confirm that undersea looting targets valuable metals worth hundreds of thousands of dollars.[41] Indonesian companies profit from this with minimal oversight, requiring only a salvage permit from the Directorate General of Sea Transportation.

b. Responses of Indonesia and the Netherlands government

The 2016 expedition confirmed that Hr. M. Cruisers De Ruyter and Java were completely removed. KDF alerted the Dutch government, prompting the formation of a verification team in early 2017, comprising Indonesian and Dutch experts. They found no official reports on the wrecks, with all prior information coming from third parties.[42] Both nations agreed to review data to verify the wrecks' identities and investigate salvage activities.[43]

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[35] Ivan Watson and Kathy Quiano, "Wrecks of Sunken Warships Disappear From Ocean Floor," December 9, 2016, https://edition.cnn.com/2016/12/08/asia/world-war-two-ships-battle-of-java-sea/index.html.

[36] "Expedition: Battle of the Java Sea Revisited."

[37] "Manual of the Laws of Naval War" (Oxford: Institut de droit international, 1913).

[38] "Manual of the Laws of Naval War."

[39] "Expedition: Battle of the Java Sea Revisited."

[40] "Expedition: Battle of the Java Sea Revisited."

[41] Watson and Quiano, "Wrecks of Sunken Warships Disappear From Ocean Floor."

[42] "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."

[43] "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."

The joint verification team confirmed the wrecks as those lost in the Battle of the Java Sea (Feb 27, 1942) using Multibeam data, photos, and videos.[44] Experts concluded high-tech equipment was likely used for salvaging, though Indonesia issued no salvage permits in 2015-2016, with local reports showing no irregularities.[45] The team focused on verifying the wrecks and assessing Indonesia's role in preventing looting. Rather than assigning blame, both governments collaborated to protect Dutch wrecks as war graves, aligning with UNCLOS, which grants Indonesia full jurisdiction over its waters. In July 2017, a Notice to Mariner was issued at the Dutch government's request, supported by Indonesia's Ministry of Foreign Affairs. The Indonesian Navy marked the sites for navigation safety, while both governments plan to enhance their protection as cultural heritage and a place of remembrance.

The looting of De Ruyter and Java is not Indonesia's first case of naval wreck salvage; HMAS Perth also suffered a similar fate. Lying 35 meters deep in the Sunda Strait, the wreck lost many intact parts from its sinking during the Battle of Java.[46] Located in Indonesia's territorial waters, these wrecks pose jurisdictional challenges, as UNCLOS grants coastal states sovereignty,[47] while allowing foreign vessels innocent passage.[48] This creates a conflict between Indonesia's authority over its waters and the sovereign rights of nations claiming ownership of the wrecks.

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[44] "Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer."

[45] "Pengangkatan Kerangka Kapal/Pembersihan Alur Pelayaran Tahun 2016" (Kementerian Perhubungan Republik Indonesia, 2016).

[46] Linton Besser, Dan Oakes, and Norman Hermant, "HMAS Perth: WWII Warship Grave Stripped by Salvagers," *ABC Network* (blog), December 13, 2013, https://www.abc.net.au/news/2013-12-13/outrage-as-warship-grave-stripped-by-salvagers/5156320.

[47] Senada Meskin, "Legal Status of Warship Wrecks From World War II In Indonesian Territorial Waters (Incident Of H.M.A.S. Perth Commercial Salvaging)," *Brawijaya Law Journal* 2, no. 2 (October 1, 2015): 103–19, https://doi.org/10.21776/ub.blj.2015.002.02.06.

[48] An incidental sovereignty which require no establishment in order to exercise the Coastal State's jurisdiction. Anthony Aust, *Handbook of International Law*, 1st ed. (Cambridge University Press, 2005), https://doi.org/10.1017/CBO9780511494123.

B. Sovereign Immunity as Against Other Nations

The development of the concept of jurisdiction is closely tied to the principles of state sovereignty, equality, and non-interference.[49] Jurisdiction and immunity are interrelated especially because immunity derogates from territorial jurisdiction, and are crucial for recognizing the sovereign equality of all states.[50] An absolute and constrained immunity framework has resulted from state practice, the development of doctrines, and social movements. Of particular influence, discussion would be interesting regarding the immunity status of warships, whether they are fully operational or shifting into wrecks.

International treaties have established codified norms pertaining to the immunity of warships as State-owned property. However further discussion is necessary when warships are sunken in foreign waters or on the territory of other sovereign states, or when they are no longer serving their intended purpose. The rules that apply to both fully functioning and non-performing warships, as well as wrecks, are covered in the discussion set forth.

a. The absolute sovereign immunity of warships and its entitlement

Warship is a state-owned naval force bearing particular markings and forms to distinguish itself based on the flag State identity. It is commanded by an official officer appointed by the flag nationality's government and is manned by a crew that adheres to regular armed forces discipline.[51] Due to the status as military vessel representing the state for non-commercial purposes, warships enjoy extension of its flag State's protection.[52] The Brussels Salvage Convention of 1910 marks the codification of warship immunity,[53] excluding warship to be bound of salvage and remuneration rights. However, those authorities do not account for the context of non-functional ships.

A sunken warship is argued to lose its immunity because it is no longer commanded by a responsible officer, nor is it manned by a disciplined crew, or

[49] Malcolm N. Shaw, *International Law*, 6th ed (Cambridge, UK: Cambridge University Press, 2008).

[50] Shaw.

[51] "United Nations Convention on the Law of the Sea" (1982), art. 29.

[52] United Nations Convention on the Law of the Sea, art. 32.

[53] Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

even being abandoned. Given that a warship may only be recognized as active while it is manned, the non-functioning warship can no longer be regarded as state organs.[54]

The *Schooner Exchange v. McFaddon* illustrates an international limitation on the exercise of sovereignty. The most convincing case for this is the analogy comparing an ambassador and a warship, where immunity that an envoy enjoys stems from the implied consent considered the natural law of nations.[55] The Court granted immunity in rejecting McFaddon's claim, citing the impact of warships on the flag state's "power and dignity."[56] The case established that warships entering another state's port are not subject to that state's jurisdiction.[57]

An English court ruled in the *Prins Frederick* case that salvage is limited to commercial vessels. The flag state of a sunken warship would have to take necessary action to stop the salvage since it would jeopardize the integrity of the country, assuming the exception of coastal state sovereignty were not recognized.[58] The court also drew the same connection to the diplomatic envoy, adding that a comparable privilege innocent passage right, that the defense and independence of sovereign states depend on the mutual safeguarding of rights.[59]

The *Mercedez* case sets a significant precedent to address the issue.[60] A wide interpretation that allowing warship to engage in significant commercial activities while yet maintaining sovereign immunity and protection was criticized

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[54] L. Oppenheim, R. Y. Jennings, and Arthur Watts, *Oppenheim's International Law. Vol. 1, Peace*, 9th ed (London: Longman, 1996) in Harris, "The Protection Of Sunken Warships As Gravesites At Sea"; Institute De Droit International, "The Legal Regime of Wrecks of Warships and Other State-Owned Ships in International Law" (2015).

[55] Theodor Meron, *Henry's Wars and Shakespeare's LawsPerspectives on the Law of War in the Later Middle Ages* (Oxford University Press, 1993), https://doi.org/10.1093/acprof:oso/9780198258117.001.0001 in Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

[56] Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

[57] Harris.

[58] Harris.

[59] Harris, 114–15.

[60] David Curfman, "Thar Be Treasure Here: Rights to Ancient Shipwrecks in International Waters—A New Policy Regime," *Washington University Law Review* 86, no. 1 (January 2008): 181; Jie Huang, Law of the Sea Reports (American Society of International Law, 2012) in Yves Winter and Joshua Chambers-Letson, "Shipwrecked Sovereignty: Neoliberalism and a Disputed Sunken Treasure," *Political Theory* 43, no. 3 (June 2015): 287–311, https://doi.org/10.1177/0090591714555577.

by seven members of the US Congress.[61] The court formula of sovereignty read as an attempt to assuage the anxieties of afflicted sovereigns. According to this viewpoint, sovereignty is something that is both performed and manifested in the court's rulings, in addition to being a specific category in the legal case.[62] The court's decisions are part of a long-standing practice that uses ritual and theater to project, stage, and animate governmental power.

b. The rights of Captor State on the wrecks of warship in armed conflict

Sovereign immunity may be lost in three cases: (1) when a warship is captured during armed conflict before sinking,[63] (2) through an international agreement,[64] or (3) by clear abandonment, gift, or sale.[65] To preserve a warship's sovereign immunity, it must be confirmed that its final voyage was sovereign in nature, operated under its flag State's mandate, served a non-commercial purpose, and was overpowered by enemy forces.

During the Battle of Java, there was no sign of an attempt to seize these ships. As soon as the Japanese forces struck the enemy fleet, they immediately withdrew from the combat zone. Transfer of title occur by the seizure of a battleship during the ongoing fight before it sinks.[66] The original flag State still owns these wrecks because Japanese force did not seize control of the ship. The establishment of KDF strongly opposed the possibility of endorsing implied abandonment by the Netherlands government as this foundation specially established to maintain the historical value of these naval ships.

Following the end of hostilities, the sunken ships and remains of the crew are entitled to particular respect as war graves and should not be disturbed;

[61] "Brief Amicus Curiae of Members of Congress on the Proper Construction of the Sunken Military Craft Act, No. 10-10269J United States Court of Appeals for the 11th Circuit," 2010.

[62] Winter and Chambers-Letson, "Shipwrecked Sovereignty."

[63] Harris, "The Protection Of Sunken Warships As Gravesites At Sea," 116.

[64] See "Treaty of Peace U.S. - Japan" (1951); "Compact of Free Association," U.S.-Marshall Islands, T.I.A.S. No. 11661 § (1986) granting title to U.S. vessels sunk during Atomic Bomb testing at Bikini and Kwajalein Atoll.

[65] Harris, "The Protection Of Sunken Warships As Gravesites At Sea." For example, in the War of 1812, the United States relinquished title to the Hamilton and the Scourge.

[66] Rob Regan, "When Lost Liners Become Found: An Examination of the Effectiveness of Present Maritime Legal and Statutory Regimes for Protecting Historic Wrecks in International Waters with Some Proposals for Change," *Tulane Maritime Law Journal*, Regimes for Protecting Historic Wrecks, 29 (2005): 118.

regardless of the right of captor in the time of hostilities.[67] Indonesian government has no jurisdiction over these wrecks unless their very presence poses a risk of injury or devastation to the environment, pollution, radioactive radiation, or other potential hazards, proven by thorough analysis of the careful study and reasoning

c. The restrictive sovereign immunity status of wrecks of warship

Walker clarifies that neither the CHS nor UNCLOS address sunken public vessels. Once a ship sinks and loses its identity, it is no longer considered a vessel.[68] However, state practice and international agreements have strengthened wreck immunity. *The Institut de Droit International* affirmed in its 2015 Resolutions that sunken State ships remain state property,[69] and are exempt from non-flag state jurisdiction.[70] Coastal states retain control over wrecks in their archipelagic waters.[71] Salvaging these ships must comply with international law, the 2015 provisions on ownership and immunity, and recognized archaeological methods.[72]

State-owned vessels including sunken warships are entitled to sovereign immunity, unless the owner decides differently.[73] The wreck is also covered by sovereign immunity from the time these warships were in service. The 2001 UNESCO Convention retaining standpoint that sovereign immunity still applicable by safeguarding state ships as cultural heritage.[74] Thus, before taking any action against sovereign wreck, the rightful owner must give their expressed consent.

Warships are state property symbolizing sovereignty, history, and independence. As wrecks, they retain value, holding artifacts and heroic

[67] Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

[68] Tucker v. Alexandroff, No. 183 U.S. 424 (U.S. Supreme Court January 6, 1902) in Jerry E. Walker, "A Contemporary Standard for Determining Title to Sunken Warships: A Tale of Two Vessels and Two Nations," *University of San Fransisco School of Law Maritime Law Journal* 12 (Spring 2000).

[69] Institute De Droit International, The Legal Regime of Wrecks of Warships and Other State-owned Ships in International Law, art. 4.

[70] Institute De Droit International, art. 3.

[71] Institute De Droit International, art. 7.

[72] Institute De Droit International, The Legal Regime of Wrecks of Warships and Other State-owned Ships in International Law.

[73] IMO, "International Convention On Salvage" (1989), art. 4 (1) & (2), https://law.justia.com/cases/federal/appellate-courts/F2/140/230/1567148/.

[74] UNESCO, Convention on the Protection of the Underwater Cultural Heritage, art. 1 (8).

significance as servicemen's final resting places. Odyssey cited the *Mercedes case*, where the U.S. Supreme Court upheld 19th-century sovereignty concepts despite modern inconsistencies,[75] reinforcing sovereign immunity for sunken warships.[76] Japan supports this by recognizing state vessels and their artifacts as sovereign.[77] The reasoning from *Schooner Exchange v. McFaddon* similarly applies to imperiled or sunken warships.

A Norwegian court ruling reaffirms that a state's ownership of its submerged warships does not expire over time. Under customary international law, naval warships, state vessels used for non-commercial purposes, aircraft, and related artifacts remain protected by sovereign immunity,[78] regardless of their location. The UK holds that any activity involving these sites requires flag state permission.[79]

Different stands were taken in the 1944 *Baltimore, Crisfield & Onancock Line, Inc. v. United States* case, which seems to support the loss of sovereign immunity,[80] due to the fact that sunken warships are not legally considered to be vessels since they are not able to navigate.[81] This has prompted some authors to contend that a warship's immunity may be revoked.[82] Meanwhile, other authors have posited that the United States has maintained a non-abandonment policy with regard to its sinking battleships in international practice, supporting the deep-rooted, universal justifications for safeguarding sunken vessels because of the potential for human remains to be found there.[83]

In *Mercedes*, the right to sovereign immunity is based on the idea of

[75] Winter and Chambers-Letson, "Shipwrecked Sovereignty."

[76] Natalino Ronzitti, "'Le Régime Juridique Des Épaves Des Navires de Guerre et Des Navires d'Etat En Droit International,'" Annuaire de l'Institut de Droit International Volume 76 (Institut de Droit international, 2015).

[77] Harris, "The Protection Of Sunken Warships As Gravesites At Sea," 121.

[78] "Protection and Management of Historic Military Wrecks Outside UK Territorial Waters, Guidance on How Existing Policies and Legislation Apply to Historic Military Wreck Sites" (Department for Culture Media & Sport and Ministry of Defence United Kingdom, April 2014), 7–8.

[79] "Protection and Management of Historic Military Wrecks Outside UK Territorial Waters, Guidance on How Existing Policies and Legislation Apply to Historic Military Wreck Sites."

[80] Baltimore, Crisfield & Onancock Line v. United States, No. 140 F.2d 230 (4th Cir. 1944) (n.d.).

[81] Baltimore, Crisfield & Onancock Line v. United States.

[82] Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

[83] Harris.

sovereign equality, which acknowledges that all sovereigns have the same formalities. According to the Court, this is an example of the territorial sovereign's implied permission to release the foreign sovereign from its absolute and exclusive jurisdiction.[84] Therefore, US courts have no authority to bind other sovereigns' laws and decisions in a way that would violate their equality and independence in order to protect their interests in comity and dignity.

The Indonesian government lacks authority over the alleged unlawful salvage activities since the looted objects belong to the Netherlands. Indonesia can only rule on the matter with Dutch approval; otherwise, the court risks acting *supra vires* under the *Mercedes* ruling.[85] This approach reflects concerns over threats to state interests, as commercial salvage operations impact historical preservation, national dignity, and cultural assets.

Scholars criticize the broad application of absolute immunity to sunken warships,[86] arguing that once a warship sinks, it loses its function as a state organ.[87] Vierucci suggests immunity should apply only if the wreck contains military documents or instruments.[88] These critiques question whether functional obligation should be a requirement for sovereign immunity. While immunity remains, it now takes a limited form, as a non-operational wreck serves an archaeological, rather than military, purpose.

Article 2(1) of UNCLOS grants coastal states jurisdiction over vessel wrecks within their territory. Tanaka highlights that a coastal state's territorial sovereignty determines the legal status of its territorial sea.[89] Meanwhile, Article 221 of UNCLOS allows coastal states to prevent pollution from shipwrecks but does not authorize the removal of wrecks threatening international navigation.

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[84] National City Bank of New York v. Republic of China, No. 348 U.S. 356 (1955) (U.S. Supreme Court March 7, 1955) cited in Winter and Chambers-Letson, "Shipwrecked Sovereignty."

[85] Winter and Chambers-Letson, "Shipwrecked Sovereignty," 296.

[86] Luisa Vierucci, "Le Statut Juridique Des Navires de Guerre Ayant Coulé Dans Des Eaux Étrangères : Le Cas Des Frégates Espagnoles Juno et La Gala Retrouvées Au Large Des Côtes Des Etats-Unis," *Revue Générale de Droit International Public* 105 (2001): 705–25; Valentina Vadi, "International Law and the Uncertain Fate of Military Sunken Vessels," *Italian Yearbook of International Law 2009* XIX (2010): 253–57.

[87] Lassa Oppenheim, *International Law: A Treatise*, ed. Lauterpacht (London, 1995); Vadi, "International Law and the Uncertain Fate of Military Sunken Vessels," 10.

[88] Vadi, "International Law and the Uncertain Fate of Military Sunken Vessels."

[89] Yoshifumi Tanaka, *The International Law of the Sea*, 2nd ed (Cambridge, United Kingdom: Cambridge University Press, 2015).

This gap is addressed by the 2007 Nairobi International Convention,[90] which imposes strict liability on wreck owners,[91] to remove hazardous wrecks from territorial seas or the EEZ.[92] The sunken Java and De Ruyter, along with their weapons, pose no immediate threat unless triggered.

If Indonesia seeks to claim affected State status, it must consider the hazards posed by these wrecks.[93] The Convention excludes warships and State-owned non-commercial vessels unless the State decides otherwise, regardless of their removal feasibility.[94] This makes full acceptance of the Convention challenging, but alternatives exist. In certain cases, a coastal State's EEZ allows it to enact strict liability laws for wreck removal,[95] if the wreck poses environmental risks.[96] Both Indonesia and the Netherlands, as UNCLOS 1982 signatories, must cooperate in protecting historical objects at sea.[97] However, this duty does not limit the Coastal State's exclusive jurisdiction,[98] as seen in the Netherlands-Australia agreement on Old Dutch shipwrecks off Western Australia.[99]

All aforementioned gaps suggesting a notion that UNCLOS fails to address the treatment of sunken warship directly. International law community held view that UNCLOS's warship-related clauses may provide an address on the matter.[100]

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[90] Malgosia Fitzmaurice, David M. Ong, and Panos Merkouris, eds., *Research Handbook on International Environmental Law* (Cheltenham, UK: Edward Elgar Publishing Limited, 2010).

[91] "The Nairobi International Convention on the Removal of Wrecks" (2007), arts. 2 & 6.

[92] "The Nairobi International Convention on the Removal of Wrecks" (2007). The Netherlands is Signatory party while Indonesia is not a member.

[93] The Nairobi International Convention on the Removal of Wrecks, art. 6.

[94] The Nairobi International Convention on the Removal of Wrecks, art. 4.

[95] Article 58 extends many high seas freedoms from Article 87 to the EEZ, including navigation, overflight, and submarine cable laying. Article 59 mandates resolving EEZ conflicts based on equity, prioritizing flag State interests over coastal State claims. This supports the permissibility of sunken warship recovery under UNCLOS. However, debate arises as these vessels rest on the ocean floor, raising questions about their classification under the EEZ or the Continental Shelf.

[96] Tanaka, *The International Law of the Sea*, 123–24.

[97] United Nations Convention on the Law of the Sea, art. 303 (1).

[98] "Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Italy Regarding the Salvage of H.M.S 'Spartan'" (1952); "Agreement between the Government of the French Republic and the Government of the United States of America Concerning the Wreck of the CSS Alabama" (1989); J Ashley Roach, "Sunken Warships and Military Aircraft," *Marine Policy* 20, no. 4 (July 1996): 351–54, https://doi.org/10.1016/0308-597X(96)00016-4.

[99] "Agreement between Australia and the Netherlands Concerning Old Dutch Shipwrecks, and Arrangement," ATS No 18 § (1972).

[100] Bernard H. Oxman Oxman, "The Regime of Warships Under the United Nations Convention on the Law of the Sea," *Virginia Journal of International Law* 24, no. 4 (1984).

Article 87 does not specifically discuss the retrieval of sinking warships. Thus, salvage operations and other actions that might disturb a soldier's last resting place aboard a warship are permitted under the general rule of freedom on the high seas. However, as the alleged looting occurred within Indonesian territorial waters, the high sea regime will not be covered in this writing's discussion.

C. The Sovereign Immunity Wrecks of Warship as Opposed to Salvage and Find Rules

a. The international rules of salvage activity

The law of finds and the law of salvage are two alternative methods for treating salvors that are provided by admiralty law. The law of salvage views treasure hunters as first responders providing vital assistance to vessels in maritime peril; while the law of finds is seen as part of customary international law regulating abandoned a shipwreck's loss of title for which a legal property can be claimed against a ship's original owners.

The 1910 Brussels Salvage Convention excludes warship out of salvage and remuneration rights. The Convention on the International Unification of Certain Rules Relating to the Immunity of State-owned Vessels establishes guidelines for customary salvage rules. It prevents warships, patrol boats, fleet auxiliaries, and other state-owned vessels operated for non-commercial purposes from being subject to a legal process's seizure, arrest, or detention, as well as any *in rem* procedures. The Brussels Convention of 1910's traditional salvage principles were embraced by the newly adopted Convention in London[101] and additional measures were added based on the actual evolution. The 1978 *Amoco Cadiz accident*, which resulted in the spillage of 10 million gallons of crude oil in an open sea, exposed the shortcomings of the previous salvage regulations that omits provisions pertaining to the marine environment.[102]

The majority of state practices have established that sovereign immunity extends to warship wrecks. Hence, unauthorised salvage is prohibited and can only

[101] IMO, International Convention On Salvage.

[102] L Rosenthal and C Raper, "Amoco Cadiz and Limitation of Limitation of Liability for Oil Spill Pollution: Domestic and International Solutions," *Virginia Journal of Natural Resources Law* 5, no. 1 (1985).

occur with the flag state's approval, even if the wrecks are situated in territorial waters of other State. The location of these wrecks does not take away the flag state's ownership, mutual permission to respect the sovereignty of the coastal states.[103] In contrast to admiralty law, common law of finds grants the claimant an ownership interest in the vessel. Evaluating explicit or implicit abandonment is a challenging chore from a factual and application perspective.

b. The stands of the Indonesian government

Indonesia did not ratify the Brussels Convention until recently. However, the Netherlands' ratification during colonization led to its indirect adoption through the Netherlands Act (S.Ne 1924-573), later enacted as S.1933-47 jo.38-2. After independence in 1945, a constitutional provision maintained the binding authority of existing laws unless modified by the Indonesian government.

The 1989 Salvage Convention aimed to replace the Brussels Convention, with the Netherlands adopting it in 1990. Although Indonesia is not a party, the global acceptance of these regulations signals growing uniformity. Indonesia has opted to use the Lloyd Open Form for salvage services,[104] regardless of the Convention's consent. Indonesian salvage law is found in the Kitab Undang-Undang Hukum Dagang (Indonesian Commercial Code), specifically Book II, Chapter VII, Articles 545–568k. Provisions from this code were included in Law No. 21 of 1992 on navigation, later replaced by Law No. 17 of 2008 due to evolving maritime law. However, Indonesia has not fully adopted all provisions from the Convention, such as the requirement for the wreck owner's permission for salvage operations.

Underwater works involve activities related to ships, installations, and constructions below the sea surface. Salvage is defined as rescuing ships and cargo in danger in navigable waters,[105] and does not address battleship wrecks or related activities.[106] The new law requires commercial salvors to obtain approval from the Minister of Sea Transportation before conducting salvage or other underwater

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[103] Institute De Droit International, The Legal Regime of Wrecks of Warships and Other State-owned Ships in International Law.

[104] Meskin, "Legal Status Of Warship Wrecks From World War Ii In Indonesian Territorial Waters (Incident Of H.M.A.S. Perth Commercial Salvaging)."

[105] "Law No. 17 of 2008 on Shipping" (2008), art. 1 (51).

[106] "Law No. 21 of 1992 on Shipping" (1992), art. 1 (8).

works.[107] Shipwrecks are defined as abandoned, sinking, or grounded vessels, but the law does not address state-owned or commercial vessels. The authority to approve salvage operations is unclear in Law No. 17 of 2008, leading to reliance on Brussels Conventions standards. The law also lacks provisions on requiring the owner's consent for salvage. In 2009, a Presidential Decree established the National Committee to manage surveys, removal, and use of valuable cargo from sunken ships. Government Regulation No. 10 of 1993 authorizes the Ministry of Culture to grant licenses for salvaging or using cultural heritage objects, making the licensing process complex. A salvage license requires the object to be preserved as cultural heritage, and a register has been created for formal government acknowledgment and protection of these objects.[108]

The 2001 UNESCO Convention and Indonesia's cultural heritage definition include sites, buildings, artifacts, human remains, and their contexts, covering vessels, aircraft, and their contents.[109] Thus, warship wrecks qualify as cultural heritage. Prior to the 2017 agreement between Indonesia and the Netherlands, there was no violation in protecting Dutch warship wrecks. Law Number 17 of 2008 does not specify whether salvage operations apply only to commercial vessels or also to State-owned vessels, nor does it set a time frame for salvage, leaving room for World War II wrecks to be recovered despite their potential value.

Shipwrecks, as defined by Ministry of Transportation rule PM 71 of 2013, refer to sunken, abandoned ships that are stranded or washed ashore. Salvage permits are required from the Ministry's General Director and granted to licensed businesses.[110] While the regulation doesn't address the fate of abandoned wrecks, the sovereign status of warships under Law Number 34 of 2004 affirms that the Navy's duty includes conducting naval diplomacy.[111] This regulation reflects diplomatic immunity and sovereignty,[112] meaning warship wrecks are protected

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[107] Law No. 17 of 2008 on Shipping, art. 204.
[108] "Law No.11 of 2010 on Cultural Heritage" (2010).
[109] Law No.11 of 2010 on Cultural Heritage, art. 1 (1).
[110] "Minister of Transportation Regulation PM 71 of 2013 Regarding Salvage and/or Underwater Works" (2013), art. 6 (1).
[111] "Law No.34 of 2004 on Indonesian National Army" (2004), art. 9 (c).
[112] Law No.34 of 2004 on Indonesian National Army.

by sovereign immunity and are not considered abandoned.

The complexity of salvage licensing, due to multiple authorities overseeing the matter, enables underwater looting by simply applying for permission from the Directorate General of Sea Transportation.[113] The government's lack of oversight allows looters to access abandoned wrecks. The plundering of the De Ruyter and Java wrecks between 2014 and 2016 suggests the Indonesian government may be at fault for its inaction. If properly supervised, warship wrecks would be better protected.

In December 2016, Indonesia and the Netherlands signed a letter of intent on the Joint Appreciation of several wrecks, leading to a meeting in February to confirm the identities and locations of *De Ruyter* and *Java*. By August, the wrecks were confirmed as Dutch, and both governments began discussing preservation efforts. A framework for protecting undersea cultural heritage was signed,[114] and in July 2017, Indonesia issued a Notice to Mariners, banning diving, fishing, and anchoring near the wreck sites.[115]

c. The nexus between international protection of underwater cultural heritage and wrecks of warship's sovereign immunity

Warship wrecks receive stronger protection under international cultural heritage laws, reinforcing sovereign immunity and allowing flag states to safeguard their legacy through archaeology. This approach shifts focus from ownership to historical value, helping states maintain their historical legitimacy. The 1998 draft Convention on the Protection of Underwater Cultural Heritage set a 100-year cutoff, excluding provisions for unilateral inclusion of newer wrecks.

Every state has jurisdiction over UCH within its borders based on its chosen law, typically maintaining ownership unless abandoned. Consistency among states relies on international customary law. Warships are protected due to historical, archaeological, environmental, and cultural significance. Hugo Grotius argued that

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[113] Directory authority as part of the Ministry of Transportation of Indonesia

[114] Dwi Arum Wandasari, "Analisis KerjasamaIndonesia-Belanda Dalam Kasus Hilangnya Kapal De Ruyter, Java, Dan Kortenaerdi Perairan Indonesia," *Journal of International Relations* 4 (2018): 115–21; Ministerie van Buitenlandse and Ministerie van Onderwijs, Cultuur en Wetenschap, "First Results of Dutch-Indonesian Investigation in the Java Sea Released," 2017.

[115] Ministry of Foreign Affairs of Republic of Indonesia

attacks on artistic or sacred sites, including memorial structures, are prohibited.[116] The U.S. NOAA emphasizes respectful handling of human remains and preserving sovereign immunity for non-abandoned ships or aircraft, recognizing sunken warships and graves as national symbols.[117]

UNCLOS links UCH to warship wreck conservation, requiring states to protect historical and archaeological artifacts at sea.[118] However, it does not override salvage or admiralty laws,[119] allowing States Parties to apply both rules in their national interest. Article 303 uses both "archaeological objects" and "objects of historical origin" without clear time limits, creating uncertainty over its scope. Some argue it covers only centuries-old artifacts, while others contend it includes recent finds. When read with Article 33, it implies antiquities cannot be removed from the contiguous zone without coastal state consent, effectively creating an "archaeological zone."[120] Ultimately, Article 303's broad yet vague protections, combined with admiralty law references, create ambiguity and paradox. Article 149 of UNCLOS grants preference to States of origin for archaeological and historical artifacts found in their territory. However, the regime's vagueness makes it ineffective.[121] The 2001 UNCLOS Convention on underwater cultural heritage addressed this gap. Before looting was discovered, none of the wrecks were officially reported, and Indonesia had no clear policy on their preservation,[122] making proper protection difficult without formal

[116] Jesse S. Reeves, "Grotius, de Jure Belli Ac Pacis: A Bibliographical Accounts," *American Journal of International Law* 19, no. 2 (April 1925): 251–62, https://doi.org/10.2307/2189252 translated in James Brown Scott, ed., *Classics of International Law*, vol. 1, 3 (Washington: Carnegie Institution, 1913); Sidney D. Bailey, *Prohibitions and Restraints in War* (London: Oxford University Press, 1972) in Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

[117] National Oceanic and Atmospheric Administration (NOAA) and Office of Public and Constituent Affairs, "Turning to the Sea : America's Ocean Future," 1999.

[118] United Nations Convention on the Law of the Sea, art. 303 (1).

[119] United Nations Convention on the Law of the Sea, art. 303 (1).

[120] Lucius Caflisch, "Submarine Antiquities and the International Law of the Sea," *Netherlands Yearbook of International Law* 13 (December 1982): 3–32, https://doi.org/10.1017/S0167676800002993.

[121] Caflisch.

[122] Wandasari, "Analisis KerjasamaIndonesia-Belanda Dalam Kasus Hilangnya Kapal De Ruyter, Java, Dan Kortenaerdi Perairan Indonesia."

documentation.[123]

d. The substantial impact of sunken military ship regarded as war gravesites

States are required by the 1949 Geneva Conventions for the protection of war victims and the 1977 Additional Protocols to treat the deceased with dignity,[124] register them appropriately,[125] and, if feasible, perform medical examinations.[126] The UNCLOS does not address the protection of sinking warships containing the bodies of fallen soldiers, thus salvage operations and other actions may seemed to be permitted under the general rule of freedom on the high seas. However, as the alleged looting occurred within Indonesian territorial waters, the high sea regime will not be covered in this writing's discussion.

State identity, nationalism, and historical legacy are assets a nation upholds. Recovering every fallen soldier from war, especially those lost at sea, is often impossible. To honor them, states use symbols related to the conflict, location, or vessels. The Mercedes case highlights the importance of preserving war graves as a tribute to fallen sailors.[127] Recognizing sunken warships as final resting places, the U.S., France, Germany, Japan, Russia, and the U.K. issued a 1995 declaration affirming that such sites deserve respect, and the flag state may take legal action to prevent disturbance or salvage.[128]

International law mandates governments to conserve maritime historical artifacts, ensuring submerged statecraft recovery follows expert scientific guidelines and respects human remains. States may use military force to protect and salvage sunken state-owned vessels in any waters. This principle was upheld in *Sea Hunt, Inc. v. The Unidentified Shipwrecked Vessel*, where the court ruled that Spain

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[123] Ministry of Foreign Affairs of the Republic of Indonesia, "Laporan Kinerja 2017 Direktorat Jenderal Amerika Dan Eropa" (Ministry of Foreign Affairs of the Republic of Indonesia, 2018).

[124] "Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea" (1949), art. 18.

[125] Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, art. 19.

[126] Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, art. 20.

[127] Winter and Chambers-Letson, "Shipwrecked Sovereignty."

[128] Robert S. Neyland, "Preserving and Interpreting the Archaeology of the United States Navy," in *International Handbook of Underwater Archaeology*, ed. Carol V. Ruppé and Janet F. Barstad (Boston, MA: Springer US, 2002), 765–81, https://doi.org/10.1007/978-1-4615-0535-8_46.

retained ownership of *La Galga* and *Juno*, which sank in U.S. waters in 1750 and 1802.[129] In U.S. practice, salvors may occasionally plunder military gravesites under implied abandonment. However, the Sea Hunt, Inc. case and Bill Clinton's remarks highlight the need for stronger justification to preserve warships unless explicitly abandoned. The UK, through the 1986 Protection of Military Remains Act,[130] prohibits excavation, diving, and salvage to honor soldiers lost at sea, enforcing accountability,[131] even in international waters.[132] While Australia and Indonesia lack specific regulations on warship wrecks as war graves, both have laws recognizing and commemorating fallen warriors.[133]

Since De Ruyter and Java sank with their crews, their wrecks are war graves protected under international conventions. The KDF event and monument marking their 75th anniversary reflect the Netherlands' commitment to honoring them. While coastal states and rightful owners have national measures to respect fallen soldiers, international practices uphold war graves' sanctity. Following the *sic utere tuo ut alienum non principle*,[134] Indonesia should ban salvaging foreign warship wrecks in its waters, preserving war graves and demonstrating goodwill.[135]

e. The significant effect of the State's expression of abandonment

All sovereign states must respect each other's independence, dignity, and public property while adhering to international comity.[136] Abandonment leads to

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[129] La Galga sank in 1750 near the Maryland/Virginia coast after a hurricane, while Juno sank in 1802 en route to Spain due to a severe storm. Both wrecks remained lost until Sea Hunt, Inc. discovered them. Although Virginia initially issued a salvage permit, the U.S. Court of Appeals for the Fourth Circuit ruled that, since Spain had not abandoned the ships, they were not subject to salvage., *see* M. Morgan, "United States Court of Appeals for the Fourth Circuit: United States v. Jackson, 327 F.3d 273 (4th Cir. 2003)," *Capital Defense Journal*, 2003; Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

[130] "Protection of Military Remains Act 1986" (1986), sec. 2 (2).

[131] Protection of Military Remains Act 1986, sec. 3 (1) (a) & (b).

[132] Protection of Military Remains Act 1986.

[133] "War Cabinet Decision of 10 March 1922" (1992); "Indonesian Government Regulation Number 1 of 2010 Regarding the Board of Title, Mark of Services, and Mark of Honor (Peraturan Pemerintah Republik Indonesia Nomor 1 Tahun 2010 Tentang Dewan Gelar, Tanda Jasa, Dan Tanda Kehormatan)" (2010); Meskin, "Legal Status Of Warship Wrecks From World War Ii In Indonesian Territorial Waters (Incident Of H.M.A.S. Perth Commercial Salvaging)."

[134] The expression that the rightful use of one's own property cannot be a legal wrong to another; and, if damage happens, it is damnum absque injuria, has long been recognize. *See* I GA., "'Sic Utere Tuo Ut Alienum Non Laedas,'" *The Michigan Law Review Association* 5 (1990).

[135] "UNGA Res 2625 (XXV)," UN Doc A/RES/2625(XXV) § (1970).

[136] Vadi, "International Law and the Uncertain Fate of Military Sunken Vessels."

the loss of sovereign immunity. If looted wrecks are brought to court, the Indonesian government has jurisdiction. However, if recognized as sovereign vessels, they remain protected by sovereign immunity, ending Indonesia's jurisdiction. Any unresolved state responsibility issues should be settled peacefully, or, if necessary, through an international tribunal.

There are two interpretations of abandonment: one asserts that a state explicitly relinquishes ownership, while the other assumes abandonment through inaction and time.[137] The latter, rejected by most states, argues that sovereign authority over vessel wrecks remains intact despite inaction.[138] The U.S. view of property is not time-bound but extends indefinitely,[139] aligning with the stance that all sunken warships and government aircraft remain the property of their flag state under international law.[140]

When a warship's wreck is abandoned by its flag state, the law of finds grants ownership to the finder. If not abandoned, admiralty salvage laws apply, giving the salvor a lien but not ownership. The U.S. relinquishes title to sunken battleships only through intentional action, not merely by time or claims of rights.[141] The necessity of sovereign immunity for military shipwrecks remains debated. In United States v. Steinmetz, the Third Circuit ruled that warships and their remains have sovereign immunity and a presumption against abandonment.[142] Spain has filed claims over military wrecks, and under international law, a sunken warship

[137] Craig Forrest, "A New International Regime for the Protection of Underwater Cultural Heritage," *International and Comparative Law Quarterly* 51, no. 3 (July 2002): 511–54, https://doi.org/10.1093/iclq/51.3.511.

[138] Communication from the UK Foreign and Commonwealth Office, July 4, 2003; Communication from the French Foreign Ministry, November 28, 2003;Communication from the German Foreign Ministry, October 30, 2003; Communication from the Government of Japan, September 13, 2003; Communication from the Government of the Russian Federation, October 3, 2003; Embassy of Spain, Washington, DC, Note No. 128, December 19, 2002. US Department of State (public Notice 4614), Office of Ocean Affairs. See Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

[139] Office of Ocean Affairs and US Department of State, "Protection of Sunken Warships, Military Aircraft and Other Sunken Government Property," n.d.

[140] See Communication from the Government of the Russian Federation to the US State Department.

[141] "1988 U.S.C.C.A.N. 365," n.d.; "H.R. REP. No. 100-514(l), at 3-4 (1988)," n.d. in Harris, "The Protection Of Sunken Warships As Gravesites At Sea."

[142] United States v. Steinmetz 763 F.Supp. 1293, 1299, D.N.J. 1991 (1991).

retains its protected status. The U.S., Spain, and other nations recognize that disturbing such wrecks requires the sovereign owner's consent.[143]

State precedent serves as the primary reference in this case, with Australia viewing 300 years of inaction as implied abandonment, while the Netherlands disagreed. The dispute was resolved through the 1972 ANCODS Agreement, which lacks a fixed method for proving abandonment. Due to its flexibility, Dutch artifacts were returned to Australia, recognized as the legal cultural "owner." Despite being the legal heir, the Dutch government granted Australia ownership of four wrecked vessels off Western Australia's coast.

It was suggested in the ILA and early UNESCO drafts that the Convention should only cover UCH that had been abandoned.[144] This was an attempt to sidestep ownership questions, since doubts about what constitutes abandonment had the unintended consequence of extending the scope of the negotiation to cover these topics, especially in relation to state-owned vessels.[145] The ownership and abandonment of UCH, especially wrecks, are contentious issues, but they shouldn't have any bearing on the wreck's archeological significance, and the removal of the abandonment requirements was warmly received.

CONCLUSION

While contemporary international law lacks specific regulations on the sovereign status of shipwrecks, customary law suggests these wrecks retain sovereign immunity unless abandoned by their flag state or seized by enemy forces.[146] However, the exercise of sovereign immunity may be affected by the coastal state's sovereignty over the wreck site, requiring authorization for activities in accordance with the coastal state regulation. To accommodate this gap, UNCLOS

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[143] Claimant Kingdom of Spain's Motion to Dismiss or for Summary Judgement (n.d.); Odyssey Marine Exploration, Inc. v. The Unidentified Shipwrecked Vessel (September 22, 2008).

[144] The ILA draft convention, stated that : "This Convention applies to underwater cultural heritage which has been lost or abandoned and is submerged underwater for at least 100 years."; Forrest, "A New International Regime for the Protection of Underwater Cultural Heritage."

[145] Sea Hunt, Inc v Commonwealth of Virginia, No. 221 F 3d 634 (4th Cir 2000) (Court of Appeals for the Forth Circuit 2000).

[146] HMAS Perth's wreck is located in Indonesian territorial sea, provides Indonesia control over access to the wrecks while Australia remains as the rightful owner.

1982[147] advocates for cooperation between sovereign states to address these issues. If a sunken foreign warship is within another state's waters, salvage and preservation are governed through the coastal State. Considerable number of bilateral agreements such as the Australia and the Netherlands Concerning Old Dutch Shipwrecks; United States and French regarding the wreck of *La Belle*; Agreement between the United Kingdom and Northern Ireland and Italy regarding the salvage of H.M.S. Spartan; as well as Indonesia and the Netherlands as expresses through the LoI on Joint Appreciation of *Hr. Ms. De Ruyter, Hr. Ms. Java* and *Hr. Ms. Kortenaer* is the practice of States on how bilateral and multilateral agreement becomes the answer to answer the issue of ownership and protection over the wrecks of State-owned vessels or warship.The 2001 UNESCO Convention supports this by granting coastal states exclusive rights to regulate activities involving underwater cultural heritage (UCH), and a resolution from the Institute of International Law in Talin supports a unified approach.[148] In February 2017, Minister Bussemaker visited Indonesia's Ministry of Education and Culture, resulting in a Memorandum of Understanding (MoU) to enhance cultural cooperation and protect maritime heritage. The three wreck sites *De Ruyter, Java*, and *Hr. Ms. Kortenae*r have been designated as 'historic shipwrecks' and marked on Indonesian nautical maps since July 2017. Consequently, activities such as diving and fishing around these sites are restricted to preserve this legacy. Both governments are working towards recognizing these shipwrecks as Cultural Heritage and monumental sites.

BIBLIOGRAPHY

Books:

Bailey, Sidney D. *Prohibitions and Restraints in War*. London: Oxford University Press, 1972.

Baltimore, Crisfield & Onancock Line v. United States, No. 140 F.2d 230 (4th Cir. 1944) (n.d.).

Brownlie, Ian. *Principles of Public International Law*. 5th ed. Oxford : New York: Clarendon Press ; Oxford University Press, 1998.

[147] Article 303 "United Nations Convention on the Law of the Sea (UNCLOS)."
[148] UNESCO, Convention on the Protection of the Underwater Cultural Heritage.

Fitzmaurice, Malgosia, David M. Ong, and Panos Merkouris, eds. *Research Handbook on International Environmental Law*. Cheltenham, UK: Edward Elgar Publishing Limited, 2010.

"Manual of the Laws of Naval War." Oxford: Institut de droit international, 1913.

Scott, James Brown, ed. *Classics of International Law*. Vol. 1. 3. Washington: Carnegie Institution, 1913.

Shaw, Malcolm N. *International Law*. 6th ed. Cambridge, UK: Cambridge University Press, 2008.

Tanaka, Yoshifumi. *The International Law of the Sea*. 2nd ed. Cambridge, United Kingdom: Cambridge University Press, 2015.

Journals and Scientific Papers:

Ashley Roach, J. "Sunken Warships and Military Aircraft." *Marine Policy* 20, no. 4 (July 1996): 351–54. https://doi.org/10.1016/0308-597X(96)00016-4.

Aust, Anthony. *Handbook of International Law*. 1st ed. Cambridge University Press, 2005. https://doi.org/10.1017/CBO9780511494123.

Bederman, David J. "Rethinking the Legal Status of Sunken Warships." *Ocean Development & International Law* 31, no. 1–2 (January 2000): 97–125. https://doi.org/10.1080/009083200276085.

Caflisch, Lucius. "Submarine Antiquities and the International Law of the Sea." *Netherlands Yearbook of International Law* 13 (December 1982): 3–32. https://doi.org/10.1017/S0167676800002993.

Curfman, David. "Thar Be Treasure Here: Rights to Ancient Shipwrecks in International Waters—A New Policy Regime." *Washington University Law Review* 86, no. 1 (January 2008): 181.

Forrest, Craig. "A New International Regime for the Protection of Underwater Cultural Heritage." *International and Comparative Law Quarterly* 51, no. 3 (July 2002): 511–54. https://doi.org/10.1093/iclq/51.3.511.

GA., I. "'Sic Utere Tuo Ut Alienum Non Laedas.'" *The Michigan Law Review Association* 5 (1990).

Garcia, M. R. "The Doctrine of Sovereign Immunity of Foreign States and Its Recent Modifications." *Virginia Law Review* 42, no. 3 (1956): 335.

Harris, Jason R. "The Protection Of Sunken Warships As Gravesites At Sea." *Ocean and Coastal Law Journal* 7 (2001). http://digitalcommons.mainelaw.maine.edu/oclj/vol7/iss1/11.

Meron, Theodor. *Henry's Wars and Shakespeare's LawsPerspectives on the Law of War in the Later Middle Ages*. Oxford University Press, 1993. https://doi.org/10.1093/acprof:oso/9780198258117.001.0001.

Meskin, Senada. "Legal Status of Warship Wrecks From World War Ii In Indonesian Territorial Waters (Incident Of H.M.A.S. Perth Commercial Salvaging)." *Brawijaya Law Journal* 2, no. 2 (October 1, 2015): 103–19. https://doi.org/10.21776/ub.blj.2015.002.02.06.

Monfils, Rean, Trevor Gilbert, and Sefanaia Nawadra. "Sunken WWII Shipwrecks of the Pacific and East Asia: The Need for Regional Collaboration to Address the Potential Marine Pollution Threat." *Ocean & Coastal Management* 49, no. 9–10 (January 2006): 779–88. https://doi.org/10.1016/j.ocecoaman.2006.06.011.

Morgan, M. "United States Court of Appeals for the Fourth Circuit: United States v. Jackson, 327 F.3d 273 (4th Cir. 2003)." *Capital Defense Journal*, 2003.

Neyland, Robert S. "Preserving and Interpreting the Archaeology of the United States Navy." In *International Handbook of Underwater Archaeology*, edited by Carol V. Ruppé and Janet F. Barstad, 765–81. Boston, MA: Springer US, 2002. https://doi.org/10.1007/978-1-4615-0535-8_46.

Oppenheim, L., R. Y. Jennings, and Arthur Watts. *Oppenheim's International Law. Vol. 1, Peace*. 9th ed. London: Longman, 1996.

Oppenheim, Lassa. *International Law: A Treatise*. Edited by Lauterpacht. London, 1995.

Oxman, Bernard H. Oxman. "The Regime of Warships Under the United Nations Convention on the Law of the Sea." *Virginia Journal of International Law* 24, no. 4 (1984).

R, Chen. "Bilateral or Multilateral Agreements between States for the Settlement of Dispute over Ownership of Underwater Cultural Heritage: Background, Ownership Clauses, and Implications for China." *China Oceans Law Review*, 2022, 111.

Reeves, Jesse S. "Grotius, de Jure Belli Ac Pacis: A Bibliographical Accounts." *American Journal of International Law* 19, no. 2 (April 1925): 251–62. https://doi.org/10.2307/2189252.

Regan, Rob. "When Lost Liners Become Found: An Examination of the Effectiveness of Present Maritime Legal and Statutory Regimes for Protecting Historic Wrecks in International Waters with Some Proposals for Change." *Tulane Maritime Law Journal*, Regimes for Protecting Historic Wrecks, 29 (2005): 118.

Ronzitti, Natalino. "'Le Régime Juridique Des Épaves Des Navires de Guerre et Des Navires d'Etat En Droit International.'" Annuaire de l'Institut de Droit International Volume 76. Institut de Droit international, 2015.

Rosenthal, L, and C Raper. "Amoco Cadiz and Limitation of Limitation of Liability for Oil Spill Pollution: Domestic and International Solutions." *Virginia Journal of Natural Resources Law* 5, no. 1 (1985).

Vierucci, Luisa. "Le Statut Juridique Des Navires de Guerre Ayant Coulé Dans Des Eaux Étrangères : Le Cas Des Frégates Espagnoles Juno et La Gala Retrouvées Au Large Des Côtes Des Etats-Unis." *Revue Générale de Droit International Public* 105 (2001): 705–25.

Walker, Jerry E. "A Contemporary Standard for Determining Title to Sunken Warships: A Tale of Two Vessels and Two Nations." *University of San Fransisco School of Law Maritime Law Journal* 12 (Spring 2000).

Winter, Yves, and Joshua Chambers-Letson. "Shipwrecked Sovereignty: Neoliberalism and a Disputed Sunken Treasure." *Political Theory* 43, no. 3 (June 2015): 287–311. https://doi.org/10.1177/0090591714555577.

Wandasari, Dwi Arum. "Analisis KerjasamaIndonesia-Belanda Dalam Kasus Hilangnya Kapal De Ruyter, Java, Dan Kortenaerdi Perairan Indonesia." *Journal of International Relations* 4 (2018): 115–21.

Website:

Besser, Linton, Dan Oakes, and Norman Hermant. "HMAS Perth: WWII Warship Grave Stripped by Salvagers." *ABC Network* (blog), December 13, 2013. https://www.abc.net.au/news/2013-12-13/outrage-as-warship-grave-stripped-by-salvagers/5156320.

Hanifan, Aqwam Fiazmi, Arbi Sumandoyo, and Mawa Kresna. "Kerugian Negara Dari Pencurian Kapal Bersejarah." *Tirto* (blog), January 25, 2018. https://tirto.id/kerugian-negara-dari-pencurian-kapal-bersejarah-cDND.

Holmes, Oliver, Monica Ulmanu, and Simon Roberts. "The World's Biggest Grave Robbery: Asia's Disappearing WWII Shipwrecks." *The Guardian* (blog), November 3, 2017. https://www.theguardian.com/world/ng-interactive/2017/nov/03/worlds-biggest-grave-robbery-asias-disappearing-ww2-shipwrecks.

IMO. International Convention On Salvage (1989). https://law.justia.com/cases/federal/appellate-courts/F2/140/230/1567148/.

Militaire Fondsen NL. "Karel Doorman Fund." Accessed September 24, 2024. https://militairefondsen.nl/karel_doorman_fonds/index.php.

Netherlands Navy. "De Ruyter." Accessed September 24, 2024.

https://www.netherlandsnavy.nl/Photo_ruyter.htm.

Netherlands Navy. "De Ruyter-Class Cruiser." Accessed September 22, 2024. https://www.netherlandsnavy.nl/DeRuyter1.htm.

Netherlands Navy. "'Java' (Netherlands Navy)." Accessed September 24, 2024. http://www.netherlandsnavy.nl/Java_his.htm.

Netherlands Navy. "Java-Class Cruisers." Accessed September 22, 2024. https://www.netherlandsnavy.nl/Javacl.htm.

Oorlogs Graven Stitchting. "Herdenking Slag in de Javazee in Surabaya," March 1, 2017. https://oorlogsgraven.net/nieuws/artikel/82/herdenking-slag-in-de-javazee-in-surabaya.

Pacific Wrecks. "Hr. Ms. De Ruyter," September 20, 2023. https://pacificwrecks.com/ship/hrms/de_ruyter.html.

Pieters, J. "Netherlands, Indonesia Team up to Protect Naval Ship Wrecks." *NL Times* (blog), July 4, 2018. https://nltimes.nl/2018/07/04/netherlands-indonesia-team-protect-naval-ship-wrecks.

Watson, Ivan, and Kathy Quiano. "Wrecks of Sunken Warships Disappear From Ocean Floor," December 9, 2016. https://edition.cnn.com/2016/12/08/asia/world-war-two-ships-battle-of-java-sea/index.html.

Regulation Legislation and Other Sources of Law:

"1988 U.S.C.C.A.N. 365," n.d.

Agreement between Australia and the Netherlands concerning Old Dutch Shipwrecks, and Arrangement, ATS No 18 § (1972).

Agreement between the Government of the French Republic and the Government of the United States of America concerning the Wreck of the CSS Alabama (1989).

"Brief Amicus Curiae of Members of Congress on the Proper Construction of the Sunken Military Craft Act, No. 10-10269J United States Court of Appeals for the 11th Circuit," 2010.

Claimant Kingdom of Spain's Motion to Dismiss or for Summary Judgement (n.d.).

Compact of Free Association, U.S.-Marshall Islands, T.I.A.S. No. 11661 § (1986).

Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Italy regarding the salvage of H.M.S "Spartan" (1952).

"Expedition: Battle of the Java Sea Revisited." Karel Doorman Foundation, 2016.

Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (1949).

"H.R. REP. No. 100-514(l), at 3-4 (1988)," n.d.

Huang, Jie. Law of the Sea Reports. American Society of International Law, 2012.

Indonesian Government Regulation Number 1 of 2010 Regarding the Board of Title, Mark of Services, and Mark of Honor (Peraturan Pemerintah Republik Indonesia Nomor 1 Tahun 2010 Tentang Dewan Gelar, Tanda Jasa, Dan Tanda Kehormatan) (2010).

Institute De Droit International. The Legal Regime of Wrecks of Warships and Other State-owned Ships in International Law (2015).

"International Convention for the Unification of Certain Rules Relating to the Immunity of State-Owned Vessels (Brusel Convention)." UNTC, 1926.

"Joint Verification of the Location and Condition of Hr.Ms. De Ruyter, Java and Kortenaer." Ministry of Foreign Affair of the Repubic of Indonesia, 2017.

Minister of Transportation Regulation PM 71 of 2013 regarding Salvage and/or Underwater Works (2013).

Ministerie van Buitenlandse, and Ministerie van Onderwijs, Cultuur en Wetenschap. "First Results of Dutch-Indonesian Investigation in the Java Sea Released," 2017.

Ministry of Foreign Affairs of the Republic of Indonesia. "Laporan Kinerja 2017 Direktorat Jenderal Amerika Dan Eropa." Ministry of Foreign Affairs of the Republic of Indonesia, 2018.

National City Bank of New York v. Republic of China, No. 348 U.S. 356 (1955) (U.S. Supreme Court March 7, 1955).

National Oceanic and Atmospheric Administration (NOAA), and Office of Public and Constituent Affairs. "Turning to the Sea : America's Ocean Future," 1999.

Odyssey Marine Exploration, Inc. v. The Unidentified Shipwrecked Vessel (September 22, 2008).

Office of Ocean Affairs, and US Department of State. "Protection of Sunken Warships, Military Aircraft and Other Sunken Government Property," n.d.

"Pengangkatan Kerangka Kapal/Pembersihan Alur Pelayaran Tahun 2016."

Kementerian Perhubungan Republik Indonesia, 2016.

"Protection and Management of Historic Military Wrecks Outside UK Territorial Waters, Guidance on How Existing Policies and Legislation Apply to Historic Military Wreck Sites." Department for Culture Media & Sport and Ministry of Defence United Kingdom, April 2014.

Protection of Military Remains Act 1986 (1986).

"Report of the Joint Expert Meeting on the Appreciation (Track II) of the Dutch Shipwrecks in the Java Sea." The Hague Netherlands: Ministerie Van Defensie, January 1, 2017.

Law No. 17 of 2008 on Shipping (2008).

Law No. 21 of 1992 on Shipping (1992).

Law No.11 of 2010 on Cultural Heritage (2010).

Law No.34 of 2004 on Indonesian National Army (2004).

Sea Hunt, Inc v Commonwealth of Virginia, No. 221 F 3d 634 (4th Cir 2000) (Court of Appeals for the Forth Circuit 2000).

The Nairobi International Convention on the Removal of Wrecks (2007).
Treaty of Peace U.S. - Japan (1951).

Tucker v. Alexandroff, No. 183 U.S. 424 (U.S. Supreme Court January 6, 1902).

UNESCO. Convention on the Protection of the Underwater Cultural Heritage (2001).

UNGA Res 2625 (XXV), UN Doc A/RES/2625(XXV) § (1970).

United Nations Convention on the Law of the Sea (1982).

"United Nations Convention on the Law of the Sea (UNCLOS)." UNTS, 1994.

United States v. Steinmetz 763 F.Supp. 1293, 1299, D.N.J. 1991 (1991).

Vadi, Valentina. "International Law and the Uncertain Fate of Military Sunken Vessels." *Italian Yearbook of International Law 2009* XIX (2010): 253–57.

War Cabinet decision of 10 March 1922 (1992).

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Comparative Analyzation of Criminal Law for Sexual Harassment Based on Awig-Awig and Law 12 of 2022

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Abstract

Indonesia has two legal systems, customary law and national law, which often clash in sexual harassment cases. Bali's Awig-Awig promotes restorative justice, while Law No. 12 of 2022 emphasizes strict criminal sanctions. This difference can trigger conflict, especially regarding the rights of female victims. Therefore, this study will discuss how the mechanism between the two laws compares and which law is more effective in applying in sexual harassment cases in Bali. This research compares the effectiveness of the two legal systems using a socio-legal method and comparative approach. The results show that the integration of customary deliberation with formal legal protection can bridge such differences, ensuring culturally sensitive and comprehensive justice.

Abstrak

Indonesia memiliki dua sistem hukum, yaitu hukum adat dan hukum nasional, yang sering berbenturan dalam kasus pelecehan seksual. Awig-Awig Bali mengedepankan keadilan restoratif, sementara Undang-Undang No. 12 Tahun 2022 menekankan sanksi pidana tegas. Perbedaan ini dapat memicu konflik, terutama terkait hak korban perempuan. Maka dari itu, dalam penelitian ini akan dibahas bagaimana perbandingan mekanisme antara dua hukum tersebut dan hukum apa yang lebih efektif di terapkan dalam kasus pelecehan seksual di Bali. Penelitian ini membandingkan efektivitas kedua sistem hukum dengan metode sosio-legal dan comparative approach. Hasilnya menunjukkan bahwa integrasi musyawarah adat dengan perlindungan hukum formal dapat menjembatani perbedaan tersebut, memastikan keadilan yang peka budaya dan komprehensif.

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INTRODUCTION

Parents who pay little attention to their children's development and let them to mature on their own are more likely to raise youngsters with unregulated morality.[1] Juvenile delinquency emerges in society and is closely related to the situation faced by children in the modern era. One form of deviant behavior in children is sexual violence committed against fellow children, which is largely influenced by easy access to pornographic films. Therefore, children's deviant or unlawful behavior is actually not entirely their fault, but rather a result of the influence of the environment that shapes such behavior.[2]

In everyday life, it is not uncommon to hear cases of sexual harassment that occur around us. The Law on the Crime of Sexual Violence (UUTPKS) states that the Crime of Sexual Violence is an act that fulfills the elements of a criminal offense as stipulated in the Law. According to Mannika (2018), sexual harassment is an act of coercion to force sexual contact without the consent of the party concerned. The Sexual Violence Law states that these acts do not only include verbal or physical threats, but also actual actions that can result in physical damage, material loss, or even lead to someone's death.[3] Sexual harassment itself knows no age limit, where both children and adults can potentially become victims or even perpetrators in this case. What is even more disheartening is the fact that despite the existence of laws related to sexual harassment, cases of this kind still continue to occur unabated to this day.

Indonesian society is diverse, with people from various cultures existing around this country.[4] This situation leads to a multiplicity of institutions in society. Societies have cultural values and systems that impact their lives.[5] Therefore,

[1] Sumardiana, B. (2018). Penggunaan internet cerdas sebagai upaya Penanggulangan tindak pidana Hate speech Pada Remaja (didasarkan Surat Edaran Kapolri No. Se/6/X/2015 tentang Penanganan ujaran kebencian. *Jurnal Pengabdian Hukum Indonesia*, 1(1), 41–52.

[2] Utari, I. S., Sumardiana, B., & Ramada, D. P. (2019). Trends of Children Deliquency and Disfunctions of Social Control. *South East Asia Journal of Contemporary Business, Economics and Law*, 18(4), 76–81.

[3] Mannika, G. (2018). Studi Deskriptif Potensi Terjadinya Kekerasa Seksual pda Remaja Perempuan. *Calyptra: Jurnal Ilmiah Mahasiswa Universitas Surabaya*, 7(1), 2540–2553.

[4] Bernard L. Tanya. (2018). *Pancasila Bingkai Hukum Indonesia*. Genta Press.

[5] Lawrence M. Friefman. (1989). *The Legal System: A Social Science Perspective*. Russel Sage Foundation.

society is a "vessel" that already "contains" the living global system.[6] Society's belief framework establishes a set of principles that all members embrace together.[7] Nonetheless, there is sometimes an overlap between the application of the prevailing law in the community or what is known as the living law and the national law that applies in Indonesia. Living law, which is local in nature and based more on local customs or habits, often interacts or even contradicts the provisions of state law, leading to difficulties in effective law enforcement, especially in cases involving indigenous communities or regions with strong customary law systems.

Being a country with various ethnicities and cultures, Indonesia is one of the causes of diversity in social life, including in terms of the application of law. This diversity often causes problems related to the uniformity of laws that apply throughout Indonesia. Each ethnic group has customs and habits that have been passed down from generation to generation by their ancestors, including in terms of solving legal problems. In this context, each tribe has a different customary law system, which includes specific ways to deal with problems that occur in their society. According to Soekanto (2017), customary law (common law) is a tradition that is basically unwritten, does not follow a rule, and does not need to be sanctioned (this law) to have legal consequences.[8] But unlike other customary laws, customary law in Bali is different. Within Balinese Traditional Villages, there is a customary law that has grown and developed since the past and has history, wisdom, and autonomy rights to govern its own community. Balinese indigenous people have their own written laws called *Awig-Awig*. In the Regional Regulation of Bali Province No. 3 of 2001 about *Pakraman* Village states that *Awig-Awig* of Indigenous Village is a rule that applies to Balinese Indigenous people where the rules are made by *Krama Pakraman* Village and used as a guide for Balinese

[6] Jürgen Habermas, and J. M. (1989). Work and Weltanschauung: The Heidegger controversy from a German perspective. In *Critical Inquiry* (Vol. 15, Issue 2).

[7] Utari, I. S., & Sumardiana, B. (2022). Prevention of Violence Againts Children During the Covid-19 Pandemic Perspective of Criminology. *Journal of Law and Legal Reform*, 3(1), 85–110. https://doi.org/10.15294/jllr.v3i1.54836

[8] Soekanto. (2017). *Meninjau Hukum Adat Indonesia, Hukum Adat di Indonesia: Suatu Pengantar untuk mempelajari Hukum Adat.* Rajawali Press.

Indigenous people in the implementation of *Tri Hita Karana* which is certainly in accordance with the Village *Mewacara Dharma Agama* in each *Pakraman* Village.[9]

The rules of *Awig-Awig* and/or *Pararem* of an Indigenous Village are compiled by the Village *Sabha*. In Sanskrit, *Sabha* is a community that is respected either in terms of expertise or wisdom of life.[10] The purpose of the formation of the Village *Sabha* is not only to compile *Awig-Awig*, but to plan village development, plan the Customary Village Budget (APBD), and implement programs related to the development and sustainability of the customary village. Therefore, the Village *Sabha* can be seen as a vital institution in the management of the Customary Village, working together with the Customary Village *Prajuru* in formulating policies, managing village resources, and implementing various social, economic and cultural goals aimed at maintaining the welfare and harmony of the customary community. Thus, the Village *Sabha* has a very important role in maintaining the survival of customs and culture and realizing sustainable development at the traditional village level.

In *Awig-Awig* there is the term *"Wicara"* which is a legal problem that must be resolved, either a legal problem in the form of a dispute or in the form of customary law or *Awig-Awig*.[11] Legal problems in Balinese customary society can classify as *Delik Adat*. *Delik Adat*, according to Hilman Hadikusuma (1992), is an act that disturbs the social balance. This disturbance causes a reaction from the community itself that makes the balance must be restored.[12] The act or event can be in the form of physical or non-physical acts or circumstances, and can be directed at humans or supernatural beings. If this causes unrest in the community, it must be resolved through the imposition of fines or the performance of traditional ceremonies. For example in the case of sexual harassment that often occurs in the community. In these cases, if examined using *Awig-Awig*, there are separate legal

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[9] Bali, P. (n.d.). *Peraturan Daerah Propinsi Bali Nomor 3 Tahun 2001 tentang Desa Pakraman*.

[10] Adat, M. D. (2021). *Pedoman Ngadegang Bandesa Adat/Kalian Desa atau Sebutan Lain dan Prajuru Desa Adat.* 3. https://jidhat.baliprov.go.id/storage/buku/1ZfQ79ggaE4vRjwb7RfKjgF4gPlV54sowO60Gcsp.pdf

[11] Widnyana, I. M. (2013). *Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana.* Penerbit PT. Fikahati Aneska.

[12] Hadikusuma, H. (1992). *Pengantar Ilmu Hukum Adat Indonesia*. Penerbit Mandar Maju.

rules, such as the imposition of fines for perpetrators of sexual harassment, then the implementation of traditional ceremonies as a means of cleansing sins, even in some villages requiring forced marriage, and many more.

However, the implementation of *Awig-Awig Adat* Village has caused significant conflict because some of the legal rules contained in *Awig-Awig* are considered to be in conflict with applicable national laws, such as Law No. 12 of 2022 on Criminal Acts of Sexual Violence. This is also influenced by the enforcement of the existing laws in Bali, where they still uphold their customs. One example of this discrepancy can be seen in Article 4 paragraph (1) of Law No. 12 of 2022, which explicitly states that forced marriage is included in the crime of sexual violence. This potentially conflicts with some customary rules in *Awig-Awig* that may not explicitly regulate forced marriage as a criminal offense. In some traditional villages in Bali, custom and tradition may emphasize social norms and family relationships in mediating marriage-related issues. Therefore, despite the conflicts involved, in the customary context, forced marriage is often seen as part of efforts to maintain social harmony within the customary community, rather than as a criminal offense that should be subject to criminal penalties. In fact, in Article 10 paragraph (1) of Law No. 12 of 2022, it is clearly explained that every person who unlawfully forces, places someone under his power, or abuses his power to perform or allow a marriage to be performed by force, will be subject to criminal sanctions, with a maximum imprisonment of 9 (nine) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). The contradiction between this provision and the understanding of customary law that prioritizes peaceful solutions based on deliberation poses a major challenge in ensuring appropriate protection for victims, especially in contexts where indigenous communities prefer customary approaches over formal law. Such conflicts demonstrate the need for synchronization between customary law and national law in order to create a legal system that can fulfill justice and protect human rights, especially for women and children who are vulnerable to forced marriage in indigenous communities.

In contrast to the punishment in *Awig-Awig*, Law No. 12 of 2022 on Sexual Violence, precisely in Article 5 and Article 6, regulates the punishment caused by sexual harassment, both physical and non-physical. In general, Indonesians often use national laws such as Law No. 12 of 2022 to resolve legal issues, including sexual harassment. The majority consider that the highest law in Indonesia is the Law, and almost all levels of society tend to abide by it as it has the force of law that is formally recognized throughout Indonesia. The law provides clearer protection for victims, stipulates strict criminal sanctions, and ensures victims' rights such as rehabilitation and compensation. However, the situation is different with the Balinese indigenous community who have a customary law system that is closely integrated with their culture. Balinese indigenous communities have a Chief of *Adat* or *Prajuru* Adat Village who leads and makes decisions based on customary rules listed in *Awig-Awig*. *Awig-Awig* is a local customary law norm, where each customary village has its own *Awig-Awig*, which is regulated by the Village *Sabha* and *Prajuru* of each customary village. In this context, Balinese indigenous people are more adherent to *Awig-Awig* and uphold their culture, which is considered a guideline for living in relationships between people and relationships with God and nature. The rules in *Awig-Awig* focus on restoring social harmony and provide sanctions that tend to be more based on restorative processes, such as deliberation and social sanctions, rather than formal criminal penalties. Therefore, although Law No. 12 of 2022 offers more systematic and comprehensive protection, Balinese indigenous communities tend to have more confidence in *Awig-Awig*-based remedies due to their familiarity with long-standing norms and traditions, which they feel better accommodate existing customary values.

Based on the explanation above, we can understand that Indonesia adheres to two legal systems that run simultaneously, namely customary law and national law. Each of these legal systems has different characteristics and rules, which reflect the values and traditions that develop in society. Customary law, known as *Awig-Awig*, applies at the level of certain customary communities, while national law is regulated by the state and has a broader scope, covering the entire territory of Indonesia. The coexistence of these two legal systems raises big questions about the certainty and effectiveness of their application. Can indigenous communities fully enforce their customary laws in handling certain cases, especially in cases of sexual harassment, or should the national laws that are more general and have stronger formal legal force be the main reference? Along with the dynamics of existing laws, this research aims to dig deeper into the comparison between *Awig-Awig* customary law and Law No. 12 of 2022 regarding the criminal offense of sexual violence. This research will highlight the mechanisms that apply in both legal systems, compare how they handle sexual harassment cases in Balinese society, and assess the effectiveness of each legal system in providing justice, protection to victims, and restoration of social relations in indigenous communities. Thus, it is hoped that this research can provide a clearer picture of whether the two legal systems can coexist harmoniously or instead create gaps in the provision of fair legal protection for victims.

RESEARCH METHODS

According to Dr. Nanda Dwi Rizkia, S.H., S.E., M.H., M.Kn., M.A. (2023) , research is an activity carried out individually or in groups to explore information with the aim of collecting data using certain structured and thorough methods, in order to gain knowledge and find solutions to problems.[13] Meanwhile, according to Dr. Wiwik Sri Widiarty, S.H., M.H. (2024), legal research methods are an organized and systematic approach to conducting research in the field of law.[14] According to the author, legal research is an activity carried out by analyzing legal events or problems in a structured and systematic manner. The purpose of this research is to collect data, find the truth, and find solutions to the problems that are the object of study, with reference to the applicable laws and regulations.

The approach method used in this research is socio-legal research method with a comparative approach. The socio-legal approach is a combination of methods from various social science disciplines, such as politics, economics, culture, history, anthropology, and communication, with methods commonly used in legal studies, including analysis of legal principles, doctrine, and hierarchy of

[13] Mezak, M. H. (2006). Jenis, Metode dan Pendekatan Dalam Penelitian Hukum. In Law Review: Fakultas Hukum Universitas Harapan. Lihat juga. Dr. Nanda Dwi Rizkia, S.H., S.E., M.H., M.Kn., M.A. dan Dr. Hardi Fardiansyah, S.E., S.H., M.A., M.H., M. E. D. (2023). Metode Penelitian Hukum (Normatif dan Empiris) (M. H. Dr. Elan Jaelani, S.H. (ed.)). Penerbit Widina Media Utama.

[14] Abdulkadir, M. (2004). Hukum dan Penelitian Hukum. PT. Citra Aditya Bakti. Lihat juga. Widiarty, W. S. (n.d.). Buku Ajar Metode Penelitian Hukum.

laws and regulations. This approach unites the two approaches into one integrated concept, so as to provide a more comprehensive view in understanding legal phenomena in a social context.[15]

RESULT AND DISCUSSION

A. Differences in Legal Mechanisms between Awig-Awig and Law No. 12 of 2022 that Occur in the Implementation of Criminal Sanctions for Sexual Harassment Cases

Customary offense or commonly called "Customary Crime" is a term used for an act that is continuous with customary law in a region. In the Bali Province Regional Regulation No. 4 of 2019 concerning Customary Villages, to be precise in Article 1 paragraph (8), it is stated that the Customary Village is a unit of customary law communities in Bali that has an area, position, original structure, traditional rights, its own assets, traditions, manners of community life for generations in the bonds of a sacred place *(kahyangan tiga or kahyangan desa)*, duties and authorities and the right to regulate and manage its own household.[16] In addition, in Regional Regulation No. 3 of 2001 concerning Pakraman Village precisely in Article 6 also states that *Pakraman* Village has the authority to resolve customary and religious issues in each region, then participate in determining every decision in the context of implementing regional development, especially related to *Tri Hita Karana*, and carry out legal actions within and outside the *Pakraman* Village.[17]

Awig-Awig is a rule made by the village that generally aims to maintain order and tranquility in village life.[18] In community life, sanctions can also be found for villagers who violate the *Awig-Awig* that has been determined. In the *Awig-Awig* of the village, it can be seen that what actions are prohibited along with the customary

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[15] Wiratraman, H. P. (2005). *Penelitian sosio-legal dan konsekuensi metodologisnya.* 1–12.
[16] Bali, G. (2019). *Peraturan Daerah Provinsi Bali No. 4 Tahun 2019 tentang Desa Adat.* 1–23. https://jidhat.baliprov.go.id/storage/produk_hukum/2LkjUz2uppItAdVn91LbaE5jMSLA1L2MVwDzPd6d.pdf
[17] *Ibid.*
[18] Widnyana, I Made, 2013, *Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana,* Penerbit PT. Fikahati Aneska, h. 14-15.

sanctions. These customary sanctions can be imposed on a person, family or the village community itself, but this depends on the form of action.

In the context of violations of decency or sexual harassment in Bali, there are several kinds of customary offenses, such as *Lokika Sanggraha, Drati Krama, Ketangehan, Mamitra Ngalang, and Gamia Gamana.*

1. *Lokika Sanggraha*

In the *Kitab Adhigama, Lokika Sanggraha* is defined as a sexual relationship that occurs between a man and a woman who have not entered into a legally recognized marital bond, either through traditional customary practices or formal state registration.[19] Engaging in sexual activity outside of marriage, commonly known as adultery, is a violation of established rules and should be subject to penalties.[20] This type of customary offense typically originates from a situation where a man makes a sincere promise to the woman, assuring her that he intends to marry her, leading her to trust his words fully. Consequently, this trust often results in the woman becoming pregnant by the man. However, in a cruel twist of events, the man abruptly decides to sever the relationship with the woman without providing any clear or justifiable reason for his actions, leaving her in a state of emotional, social, and sometimes legal vulnerability.

2. *Drati Krama*

Drati Krama is considered one of the most serious forms of behavior that significantly violates the deeply rooted norms upheld by traditional villages, not only from a religious perspective but also within the social and environmental frameworks of the traditional village community. This customary offense arises when a man and a woman engage in sexual intercourse outside the bonds of marriage, which is further compounded by the fact that both individuals are already bound by marital commitments to their respective spouses. Such actions are seen as a grave transgression, as they not only disrupt the moral fabric of the community

[19] Saputra, T., & Nugraha, Y. A. (2023). Criminal Polcy Lokika Sanggraha Dalam Perspektif Hukum Pidana Indonesia. *Iblam Law Review*, 3(2), 72–78. https://doi.org/10.52249/ilr.v3i2.132
[20] Utari, I. S., Sumardiana, B., Sastroadmodjo, S., & Ramada, D. P. (2019). *Social Controls and Trends Juvenile Delinquency: Criminology Study about Complexity Of Child Delinquency In Society*. *335*(ICESSHum), 858–863. https://doi.org/10.2991/icesshum-19.2019.134

but also threaten the harmony and sanctity of relationships within the traditional societal structure.[21]

3. *Ketangehan*

Ketangehan, commonly referred to as "caught red-handed," is a customary offense that arises when a man and a woman engage in sexual intercourse outside the bounds of marriage, and their actions are directly witnessed or discovered in the act by members of the customary community, leading to immediate social or legal repercussions within the framework of traditional norms and regulations.[22]

4. *Mamitra Ngalang*

The word *"Memitra"* refers to the act of adultery, signifying a breach of marital fidelity, while the word *"Galang"* carries the meaning of *"light,"* which in this context symbolizes a carefree or indifferent attitude, often referring to a person's behavior that disregards the well-being or moral expectations of their surrounding environment. Therefore, the term *"Mamitra Ngalang"* describes a situation in which a married man, despite already having a wife, engages in an extramarital sexual relationship with another woman who is not legally married to him. However, this relationship is further characterized by the man providing physical and emotional support to the woman, mimicking the responsibilities and obligations typically associated with a legally binding marital union, thereby creating a semblance of a legitimate relationship despite its illegitimacy.[23]

5. *Gamia Gamana*

Gamia Gamana is a customary offense that involves sexual relations between individuals who are closely related by blood, such as sons with their mothers or fathers with their daughters, which is considered a severe violation of social and

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[21] Trisna Dewi, K., & Riva Prathiwi, K. J. (2023). Penyelesaian Kasus Drati Krama Di Desa Pakraman Songan, Kecamatan Kintamani, Kabupaten Bangli. *Pariksa: Jurnal Hukum Agama Hindu*, 7(1), 11. https://doi.org/10.55115/pariksa.v7i1.4218
[22] Sutha I Gusti Ketut, 1987, *Bunga Rampai Beberapa Aspekta Hukum Adat*, Penerbit Liberty, Yogyakarta, h. 76.
[23] I Gusti Ngurah Sutarka, S. H. (2012). Memitra Ngalang Salah Satu Delik Adat Bali-Hindu. *Scribd*. https://www.scribd.com/document/103261584/Artikel-Memitra-Ngalang-I-Gusti-Ngurah-Sutarka

moral norms within the community. This type of customary offense is explicitly addressed in Balinese customary law and is specifically regulated within the *Awig-Awig*, precisely in Pawos 46 paragraph (1) letter g, which states: *"Sene kasinangeh kacutna sekadi ring sor: g. cuntaka untuk gamia gamana."* This provision can be translated as: "A state of impurity is caused by *gamia gamana*," referring to the act of sexual relations between family members resulting in conditions of defilement or spiritual pollution. Such offenses are seen as not only disrupting the harmony of familial relationships but also violating deeply rooted cultural and spiritual values within Balinese society, necessitating strict regulation and resolution through customary law mechanisms.[24]

The customary offenses above certainly have sanctions for every indigenous community that commits these acts. The purpose of this customary sanction is to restore the balance that occurs due to customary violations. The customary sanctions present in Bali are very strong, and comprehensive for the indigenous community. The entire customary law is based on the philosophy of customary law such as *Tri Kaya Parisuda* and *Tri Hita Karana*. The types of customary sanctions that exist in Balinese customary law are contained in a separate chapter *(sarggah)* entitled *"wicara lan pamidanda"* in each *Awig-Awig* and for the size of the sanctions are regulated by the pararem of each traditional village. In Balinese Traditional Villages, there are customary sanctions commonly referred to as Tri Danda or three customary sanctions.[25] The following are the sanctions imposed on perpetrators of sexual violence:

1. *Arta Danda*

Arta Danda refers to a legal action taken against individuals who commit acts violating societal decency, often in the form of punitive measures designed to restore balance and justice within the community. These actions may include the imposition of monetary fines, commonly known as *Danda Artha*, which require the offender to pay a specific amount as compensation or restitution for their actions.

[24] Arimatea, K. J., & Pura, M. H. (2022). Penerapan Sanksi Adat Dan Hukum Positif Terkait Kejahatan Kesusilaan (Studi Kasus Gamia Gamana Di Desa Pakraman Undisan, Kelod, Tembuku, Bangli). *Jurnal Justitia: Jurnal Ilmu Hukum Dan Humaniora,* 9(6), 2919–1924.
[25] Sukadana, I. K., Sudibya, D. G., & Karma, N. M. S. (2021). Sanksi Kasepekang Dalam Hukum Adat Bali. *Kertha Wicaksana,* 15(1), 72–79. https://doi.org/10.22225/kw.15.1.2819.72-79

Additionally, sanctions may extend to the confiscation of personal property, a penalty referred to as *Kerampag,* where certain belongings of the perpetrator are seized as part of the disciplinary process. Furthermore, another form of sanction involves mandatory visits to all members of the village, an act called *Ngigu Banjar*, which obligates the offender to personally acknowledge their wrongdoing and seek forgiveness or reconciliation from the community as a whole. These measures collectively serve to uphold social harmony, reinforce communal values, and deter future misconduct. According to Prof. Dr. I Made Suwitra, S.H., M.H., the existence of Arta Danda is beneficial for the management of each Traditional Village, precisely to be managed as additional funds in holding traditional ceremonies.[26]

2. *Jiwa Danda*

Jiwa Danda is a form of legal action specifically designed to inflict both physical and mental suffering on perpetrators who have committed acts deemed violations of decency, encompassing both physical and psychological punishment as a means of accountability. This type of customary punishment can take various forms, including expulsion from the customary village, known as *Katundung*, which serves to isolate the offender from the social fabric of the community; social ostracization by the customary community, referred to as *Kasepekang*, which denies the individual any form of interaction or acceptance within the local society; removal or dismissal of the offender's status as a member of the customary community, termed *Kawusang Mabanjar*, effectively severing their ties and privileges within the community; public shaming rituals, such as being paraded around the customary village, referred to as *Kaople*, as a method to instill regret and highlight the community's disapproval; and in some cases, an obligation to marry the village girl as a form of immaterial restitution, also known as *Gantirugi immateriil*. These punishments are deeply rooted in customary law and are meant not only to serve as a deterrent for similar offenses but also to restore harmony and balance within the affected community.

[26] Prof. Dr. I Made Suwitra, S.H., M. H. (2025). *Wawancara dengan Prof, I Made Suwitra, S.H., M.H. (Dosen Mata Kuliah Tatanan Masyarakat Adat & Penyuratan Awig-Awig Universitas Warmadewa Bali).*

3. *Sangaskara Danda*

Sangaskara Danda is a traditional sanction that involves the implementation of specific ceremonies rooted in the teachings of Hinduism and is designed to address various forms of transgressions within the community. These ceremonies, such as the *Prayascita* Ceremony, *Pemarisuda*, and other similar rituals, are performed with the primary purpose of purifying the sins or wrongdoings committed by individuals within the indigenous community. Additionally, these rituals aim to restore harmony, balance, and social order within the community by addressing the moral and spiritual disruptions caused by such actions, ensuring that both the individual and society can move forward in alignment with cultural and religious values.

Meanwhile, In the legal system of Indonesia, the 1945 Constitution serves as the fundamental source of legal order and acts as a reference for laws and regulations beneath it. The constitution regulates various essential matters, with Pancasila as the foundation of the state, serving as a guiding principle and basis for addressing all national issues, as it represents the nation's philosophy.[27] As for this issue, Law No. 12 of 2022 on the Crime of Sexual Violence regulates the sanctions for perpetrators who commit sexual violence both physically and non-physically. The sanctions are as follows:[28]

1. Article 5 of Law No. 12 Year 2022 on Non-physical Sexual Harassment
2. Article 6 of Law No. 12 of 2022 on Physical Sexual Harassment
3. Article 8 of Law No. 12 of 2022 on Forced Contraception
4. Article 9 of Law No. 12 of 2022 on Forced Sterilization
5. Article 10 of Law No. 12 of 2022 on Coercion of Marriage
6. Article 11 of Law No. 12 of 2022 on Sexual Torture
7. Article 12 of Law No. 12 of 2022 on Sexual Exploitation
8. Article 13 of Law No. 12 of 2022 on Sexual Slavery
9. Article 14 of Law No. 12 of 2022 on Electronic-based Sexual Violence

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[27] Sumardiana, B. (2016). Formulasi Kebijakan Penanganan Tindak Pidana Berbasis Isu Sara dalam Pemilihan Umum. *Pandecta, 11*(1), 81–95. http://journal.unnes.ac.id/nju/index.php/pandecta

[28] UU RI. (2022). Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual. *Kementerian Sekretariat Negara Republik Indonesia,* 1(69), 1–84.

10. Article 18 of Law No. 12 of 2022 Concerning Corporations that Commit Criminal Acts of Sexual Violence

In essence, the rules of customary law *(Awig-Awig)* and national law (Law No. 12 of 2022) are similar in terms of providing sanctions to perpetrators of sexual violence, namely in the form of fines imposed by legal leaders or local authorities. However, although they both regulate the form of sanctions, there are significant differences between them regarding the type and implementation of other sanctions. One example of this difference can be found in *Awig-Awig*, which in some traditional villages enforces a controversial policy of requiring perpetrators who commit sexual abuse and impregnate victims to perform forced marriages. This forced marriage is intended as a form of accountability for the perpetrator's actions, as well as to ease the social tension caused. However, on the other hand, Law No. 12 of 2022 on the Crime of Sexual Violence contains an article that explicitly prohibits the practice of forced marriage. Article 10 of Law No. 12 of 2022 clearly states that forced marriage is unacceptable in the country's legal system, as it contradicts human rights, especially a woman's right to choose her life partner freely without coercion. This distinction highlights the conflict between the prevailing values of customary law and the principles of national law that prioritize the protection of individual rights, particularly those of women, and ensure free consent in any marriage relationship. It also reflects the challenges faced in harmonizing customary law, which is rooted in tradition, with national law, which focuses on the protection of human rights in the modern context.

B. Effectiveness of Criminal Sanctions Between Awig-Awig and Law. No. 12 of 2022 Against Sexual Harassment Cases

When talking about the effectiveness of criminal sanctions between customary law *(Awig-Awig)* and national law (Law No. 12 of 2022), there are advantages and disadvantages of each in handling sexual harassment cases experienced by Balinese indigenous people. Balinese indigenous people have upheld the rules of *Awig-Awig* since time immemorial. *Awig-Awig* according to the Balinese indigenous village community is very closely related to the problems of the inner and outer aspects of the indigenous community. This is because *Awig-*

Awig regulates, both horizontally and vertically, the relationship between the Balinese indigenous people and God Almighty *(Sang Hyang Widhi Wasa)*.[29] Even so, Balinese people are still Indonesian citizens who must obey the applicable laws. However, in essence, the Indonesian state has recognized the existence of customary law as stated in the 1945 Constitution of the Republic of Indonesia, precisely in Article 18B paragraph (1) which states that the state recognizes and respects the unity of local governments that are special or special in nature which are regulated by law.[30] In addition, the article also explains the protection and welfare of indigenous peoples and their traditional rights.

The application of *Awig-Awig* for Balinese indigenous people is essentially relatively superior compared to the application of national law. This is indicated by the application of Awig-Awig in the *Tenganan Pegringsingan* Traditional Village of Bali. *Tenganan Pegringsingan* Traditional Village is one of the three original Balinese villages or commonly called *Bali Aga*. The village is known for its superior application of Awig-Awig as an aspect that regulates the lives of thats people. They still maintain their customs because it is a tradition passed down by their ancestors.[31] In *Awig-Awig*, the rules are interpreted as originating from *Krama Adat Banjar* which is used as a guideline in the implementation of *Tri Hita Karana*, namely the relationship between humans and God Almighty *(Prahyangan)*, relationships between humans *(Pawongan)*, and relationships between humans and the natural environment *(Palemahan)*.[32] The process of resolving cases using *Awig-Awig* is usually carried out by means of deliberations attended by the *Prajuru* of the Indigenous Village and the indigenous community which makes the settlement of the case take place quickly and can be directly accepted by the indigenous community. *Awig-Awig* also refers more to the restorative aspect which seeks to maintain and restore the relationship between the perpetrator and the

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[29] Artadi, I. K. (2003). *Hukum Adat Bali Dengan Aneka Masalahnya.* Denpasar: Pustaka Bali Post.
[30] RI, S. J. M. (1945). Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Dalam Satu Naskah. *Jdih.Bapeten.Go.Id*, 1–21. https://jdih.bapeten.go.id/en/dokumen/peraturan/undang-undang-dasar-negara-republik-indonesia-tahun-1945
[31] Kristiono, N. (2017). Pola Kehidupan Masyarakat Adat Desa Tenganan Pegringsingan Bali. *Integralistik*, 28(2), 158–175. https://doi.org/10.15294/integralistik.v28i2.13734
[32] Rika Rika, Dr. Maman Sudirman, S.H., SpN., MKn, Dr. Benny Djaja, S.H., M.N., M. K. (n.d.). *(NOMOR 73) Peran Desa Adat Dalam Pencegahan Tindak Pidana Pelecehan Seksual di Kabupaten Buleleng.pdf.*

victim, besides that *Awig-Awig* also functions as a forum to maintain community harmony.

Although *Awig-Awig* is an important guideline in resolving cases in Balinese customary society, it also creates a number of problems, one of which is the non-uniform application of sanctions from one customary village to another. This is due to the fact that each customary village has its own *Awig-Awig*, which is drafted independently by the Village *Sabha* and *Prajuru* of each customary village, so the rules that apply can vary from region to region. As a result, this inconsistency creates legal uncertainty that potentially makes it difficult to ensure justice for victims of sexual harassment cases. In addition, the process of resolving cases using *Awig-Awig* tends to be closed, which raises concerns regarding the protection of victims' rights, especially if the victims are women. Customary norms that are still thick with patriarchal culture can lead to injustice, where women's rights are often ignored. On the other hand, the application of *Awig-Awig* also opens up opportunities for discrimination against ethnic minorities, those who are not part of the Balinese indigenous community but live in the area. This is because decisions resulting from customary processes do not have the force of formal law recognized outside the customary village area, so access to justice for ethnic minorities (other than Balinese) or outsiders can be limited and unequal.

The legal process using Law No. 12 of 2022 tends to take longer than the settlement through *Awig-Awig*. This is due to the relatively long and detailed procedures of national law, as it must pass through many stages involving various institutions such as the local police and the authorized prosecutor's office. This condition is often a challenge for indigenous people, especially those who do not fully understand the proper national legal procedures. As a result, most Balinese indigenous people prefer to use the *Awig-Awig*-based settlement procedures that have become part of their traditions and customs rather than national laws that are considered to be frequently changing. However, when highlighting the aspect of legal protection for victims, national law has more significant advantages over *Awig-Awig*. This is evident in Law No. 12 of 2022 on the Crime of Sexual Violence, which explicitly includes articles on the protection of victims rights. For example, Article 1 paragraph (16) of the law explicitly states that victims' rights include the right to treatment, protection, and recovery that must be obtained, used, and enjoyed by victims. Thus, despite the longer process, national law provides clearer and more comprehensive guarantees of protection for victims than *Awig-Awig*-based settlements.

Harmonization between *Awig-Awig* and Law No. 12 of 2022 is a strategic approach in realizing a more inclusive and effective legal system for Balinese society. This integration allows local values contained in *Awig-Awig*, such as social harmony and restorative approaches, to go hand in hand with more universal formal legal protection for victims of sexual harassment. In practice, *Awig-Awig* serves as a quick and community-accepted early resolution mechanism through customary deliberation, which not only restores social relations, but also maintains balance within the community. However, the limitations of *Awig-Awig*, such as inconsistency between adat villages and potential discrimination against victims due to patriarchal adat norms, can be overcome with support from Law No. 12 of 2022. This national law ensures legal certainty through the protection of victims' rights, rehabilitation, compensation, and strict sanctions against perpetrators. However, national legal processes are often more complex and less familiar to indigenous communities. Therefore, synergy between the two is key to effectively resolving sexual harassment cases. By empowering indigenous communities to collaborate with law enforcement officials, *Awig-Awig* can serve as an initial resolution mechanism, while Law No. 12 of 2022 ensures the continuation of formal legal protection. This approach not only strengthens the effectiveness of law enforcement, but also creates a bridge between customary and national legal systems, so that justice can be served without ignoring the cultural identity of Balinese.

In addition, according to the opinion of Prof. Dr. I Made Suwitra, S.H., M.H., who is one of the Professors at Warmadewa University Bali, said that in dealing with sexual harassment cases in Bali, it can be effective if the implementation of the two laws is carried out side by side. Therefore, it is very important to adapt customary law into modern values while still fulfilling its main role to protect members of the indigenous community. This can be realized by having an official legal registration at the Indigenous Peoples Advancement Office which ensures that the validity of the Awig-Awig rules and regulations do not conflict with state law.[33]

CONCLUSION

The discussion highlights the legal complexities surrounding the application of *Awig-Awig* (customary law) and national law (Law No. 12 of 2022) in handling sexual harassment cases in Bali. *Awig-Awig* operates within the framework of local traditions, emphasizing social harmony through customary sanctions such as fines *(Arta Danda)*, social and physical punishment *(Jiwa Danda)*, and cleansing ceremonies *(Sangaskara Danda)*. However, its lack of uniformity and potential for patriarchal biases raises concerns about fairness, particularly for female victims. In contrast, national law offers a structured legal framework with clear provisions for victim protection, rehabilitation, and strict sanctions against perpetrators. While this ensures legal certainty and universal applicability, the formal legal process can be time-consuming and difficult for indigenous communities to navigate. A key issue in harmonizing these legal systems lies in their differing approaches to justice—*Awig-Awig* prioritizes restorative justice within the community, whereas national law enforces punitive measures with state intervention. The challenge remains in bridging these approaches to ensure that justice is both culturally sensitive and legally comprehensive. One potential solution is the integration of customary deliberation with formal legal protections, allowing indigenous communities to participate in legal processes while ensuring that victims' rights are upheld under national law.

SUGGESTIONS

Legal alignment and strengthening can be done by harmonizing Awig-Awig with national laws to reduce potential conflicts, such as officially registering Awig-Awig with the Office for the Promotion of Indigenous Peoples. In addition, training indigenous communities on national legal procedures is also important to improve

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[33] Prof. Dr. I Made Suwitra, S.H., M. H. (2025). *Wawancara dengan Prof, I Made Suwitra, S.H., M.H. (Dosen Mata Kuliah Tatanan Masyarakat Adat & Penyuratan Awig-Awig Universitas Warmadewa Bali).*

their understanding and access to justice. Collaboration between parties is also crucial to ensure fairness in the application of customary law. One step that can be taken is to involve formal law officials in customary deliberations to create a more balanced and equitable solution. In addition, the government also needs to increase its role in overseeing the application of Awig-Awig so that customary sanctions remain in line with the principles of national law. This can be done by legalizing the Awig-Awig rules that have been deliberated with the indigenous community into national law so that there are no more overlapping laws that occur in the implementation of criminal sanctions for sexual harassment cases.

BIBLIOGRAPHY

Books:

Abdulkadir, M. (2004). *Hukum dan Penelitian Hukum*. PT. Citra Aditya Bakti.

Artadi, I. K. (2003). *Hukum Adat Bali Dengan Aneka Masalahnya*. Pustaka Bali Post.

Bernard L. Tanya. (2018). *Pancasila Bingkai Hukum Indonesia*. Genta Press.

Dr. Nanda Dwi Rizkia, S.H., S.E., M.H., M.Kn., M.A. dan Dr. Hardi Fardiansyah, S.E., S.H., M.A., M.H., M. E. D. (2023). *Metode Penelitian Hukum (Normatif dan Empiris)* (M. H. Dr. Elan Jaelani, S.H. (ed.)). Penerbit Widina Media Utama.

Hadikusuma, H. (1992). *Pengantar Ilmu Hukum Adat Indonesia*. Penerbit Mandar Maju.

Ketut, S. I. G. (1987). *Bunga Rampai Beberapa Aspekta Hukum Adat*. Penerbit Liberty.

Ketut, W. W. P. & S. (2006). *Pengantar Hukum Adat Bali*. Dokumentasi dan Publikasi Fakultas Hukum Universitas Udayana.

Lawrence M. Friefman. (1989). *The Legal System: A Social Science Perspective*. Russel Sage Foundation.

Mezak, M. H. (2006). Jenis, Metode dan Pendekatan Dalam Penelitian Hukum. In *Law Review: Fakultas Hukum Universitas Harapan*.

Soekanto. (2017). *Meninjau Hukum Adat Indonesia, Hukum Adat di Indonesia: Suatu Pengantar untuk mempelajari Hukum Adat*. Rajawali Press.

Widiarty, W. S. (n.d.). *Buku Ajar Metode Penelitian Hukum*.

Widnyana, I. M. (2013). *Hukum Pidana Adat Dalam Pembaharuan Hukum Pidana*. Penerbit PT. Fikahati Aneska.

Wiratraman, H. P. (2005). *Penelitian sosio-legal dan konsekuensi metodologisnya*. 1–12.

Journals and Scientific Papers:

Arimatea, K. J., & Pura, M. H. (2022). Penerapan Sanksi Adat Dan Hukum Positif Terkait Kejahatan Kesusilaan (Studi Kasus Gamia Gamana Di Desa Pakraman Undisan, Kelod, Tembuku, Bangli). *Jurnal Justitia: Jurnal Ilmu Hukum Dan Humaniora*, *9*(6), 2919–1924.

Jürgen Habermas, and J. M. (1989). Work and Weltanschauung: The Heidegger controversy from a German perspective. In *Critical Inquiry* (Vol. 15, Issue 2).

Kristiono, N. (2017). Pola Kehidupan Masyarakat Adat Desa Tenganan Pegringsingan Bali. *Integralistik*, *28*(2), 158–175. https://doi.org/10.15294/integralistik.v28i2.13734

Mannika, G. (2018). Studi Deskriptif Potensi Terjadinya Kekerasa Seksual pda Remaja Perempuan. *Calyptra: Jurnal Ilmiah Mahasiswa Universitas Surabaya*, *7*(1), 2540–2553.

Prof. Dr. I Made Suwitra, S.H., M. H. (2025). *Wawancara dengan Prof, I Made Suwitra, S.H., M.H. (Dosen Mata Kuliah Tatanan Masyarakat Adat & Penyuratan Awig-Awig Universitas Warmadewa Bali)*.

Rika Rika, Dr. Maman Sudirman, S.H., SpN., MKn, Dr. Benny Djaja, S.H., M.N., M. K. (n.d.). *(NOMOR 73) Peran Desa Adat Dalam Pencegahan Tindak Pidana Pelecehan Seksual di Kabupaten Buleleng.pdf*.

Saputra, T., & Nugraha, Y. A. (2023). Criminal Polcy Lokika Sanggraha Dalam Perspektif Hukum Pidana Indonesia. *Iblam Law Review*, *3*(2), 72–78. https://doi.org/10.52249/ilr.v3i2.132

Sukadana, I. K., Sudibya, D. G., & Karma, N. M. S. (2021). Sanksi Kasepekang Dalam Hukum Adat Bali. *Kertha Wicaksana*, *15*(1), 72–79. https://doi.org/10.22225/kw.15.1.2819.72-79

Sumardiana, B. (2016). Formulasi Kebijakan Penanganan Tindak Pidana Berbasis Isu Sara dalam Pemilihan Umum. *Pandecta*, *11*(1), 81–95. http://journal.unnes.ac.id/nju/index.php/pandecta

Sumardiana, B. (2018). Penggunaan internet cerdas sebagai upaya Penanggulangan tindak pidana Hate speech Pada Remaja (didasarkan Surat Edaran Kapolri No. Se/6/X/2015 tentang Penanganan ujaran kebencian. *Jurnal Pengabdian Hukum Indonesia*, *1*(1), 41–52.

Trisna Dewi, K., & Riva Prathiwi, K. J. (2023). Penyelesaian Kasus Drati Krama Di Desa Pakraman Songan, Kecamatan Kintamani, Kabupaten Bangli. *Pariksa: Jurnal Hukum Agama Hindu*, *7*(1), 11. https://doi.org/10.55115/pariksa.v7i1.4218

Utari, I. S., & Sumardiana, B. (2022). Prevention of Violence Againts Children During the Covid-19 Pandemic Perspective of Criminology. *Journal of Law and Legal Reform*, *3*(1), 85–110. https://doi.org/10.15294/jllr.v3i1.54836

Utari, I. S., Sumardiana, B., & Ramada, D. P. (2019). Trends of Children Deliquency and Disfunctions of Social Control. *South East Asia Journal of Contemporary Business, Economics and Law*, *18*(4), 76–81.

Utari, I. S., Sumardiana, B., Sastroadmodjo, S., & Ramada, D. P. (2019). *Social Controls and Trends Juvenile Delinquency: Criminology Study about Complexity Of Child Delinquency In Society*. *335*(ICESSHum), 858–863. https://doi.org/10.2991/icesshum-19.2019.134

Website:

Adat, M. D. (2021). *Pedoman Ngadegang Bandesa Adat/Kalian Desa atau Sebutan Lain dan Prajuru Desa Adat*. 3. https://jidhat.baliprov.go.id/storage/buku/1ZfQ79ggaE4vRjwb7RfKjgF4gPlV54sowO60Gcsp.pdf

Bali, G. (2019). *Peraturan Daerah Provinsi Bali No. 4 Tahun 2019 tentang Desa Adat*. 1–23. https://jidhat.baliprov.go.id/storage/produk_hukum/2LkjUz2uppItAdVn91LbaE5jMSLA1L2MVwDzPd6d.pdf

I Gusti Ngurah Sutarka, S. H. (2012). Memitra Ngalang Salah Satu Delik Adat Bali-Hindu. *Scribd*. https://www.scribd.com/document/103261584/Artikel-Memitra-Ngalang-I-Gusti-Ngurah-Sutarka

Regulation Legislation and Other Sources of Law:

Bali, P. (n.d.). *Peraturan Daerah Propinsi Bali Nomor 3 Tahun 2001 tentang Desa Pakraman*.

RI, S. J. M. (1945). Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Dalam Satu Naskah. *Jdih.Bapeten.Go.Id*, 1–21. https://jdih.bapeten.go.id/en/dokumen/peraturan/undang-undang-dasar-negara-republik-indonesia-tahun-1945

UU RI. (2022). Undang-Undang Republik Indonesia Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual. *Kementerian Sekretariat Negara Republik Indonesia*, *1*(69), 1–84.

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The Effectiveness of Mutual Legal Assistance Cooperation at the Asean Level as an Effort to Overcome Terrorism Crime

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Abstract

Terrorism is included as one of the transnational crimes involving more than one country where there is a legal system and jurisdiction of its implementation, so that cooperation between countries is needed in overcoming this crime. At the ASEAN level, there has been a cooperation agreement, namely the ASEAN Mutual Legal Assistance Treaty. On the other hand, ASEAN member countries have also entered into bilateral agreements in the framework of cooperation in overcoming terrorism crimes.. The research method is normative research with a state approach and a case approach. This legal research aims to examine the extent of the urgency and effectiveness of cooperation in overcoming terrorism crimes at the ASEAN level. The results of this study indicate that although the ASEAN MLA has become an important legal framework in facilitating mutual legal assistance, challenges such as differences in legal systems, levels of trust between countries, and lack of regulatory harmonization are still major obstacles to its effective implementation. Therefore, it is necessary to strengthen the implementation mechanism, increase institutional capacity, and establish a permanent communication forum between law enforcement officers to maximize the role of the MLA in joint efforts to overcome terrorism crimes.

Abstrak

Terorisme termasuk sebagai salah satu kejahatan transnasional yang melibatkan lebih dari satu negara yang mana terdapat suatu sistem hukum dan yurisdiksi pelaksanaannya, sehingga diperlukan adanya kerja sama antar negara dalam menanggulangi kejahatan tersebut. Pada tingkat ASEAN, telah terdapat suatu perjanjian kerja sama yaitu ASEAN Mutual Legal Assistance Treaty. Di sisi lain, negara-negara anggota ASEAN juga telah mengadakan perjanjian bilateral dalam rangka kerja sama penanggulangan kejahatan terorisme. Metode penelitian merupakan penelitian normatif dengan pendekatan peraturan perundnag-undangan dan pendekatan kasus. Penelitian hukum ini bertujuan untuk mengkaji sejauh mana urgensi dan efektivitas kerja sama penanggulangan kejahatan terorisme pada tingkat ASEAN. Hasil penelitian ini menunjukkan bahwa meskipun MLA ASEAN telah menjadi kerangka hukum penting dalam fasilitasi bantuan hukum timbal balik, tantangan seperti perbedaan sistem hukum, tingkat kepercayaan antarnegara, serta kurangnya harmonisasi regulasi masih menjadi hambatan utama dalam implementasinya secara efektif. Oleh karena itu, diperlukan penguatan mekanisme implementasi, peningkatan kapasitas kelembagaan, dan pembentukan forum komunikasi tetap antar aparat penegak, hukum untuk memaksimalkan peran MLA dalam upaya bersama penanggulangan kejahatan terorisme.

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INTRODUCTION

The crime of terrorism is a crime that is feared in society, because in some cases terrorism is a deadly attack. Judging from the mode of activity, theoreticalism is planned attacks that have been structured with the aim of arousing people's feelings of fear and anxiety towards a group of people. Unlike war, terrorism is not subject to the ordinances of war. Acts of terrorism have no procedures but can be carried out suddenly targeting random people who are often civilians.[1]

Various acts of terror in the world show that no country is immune from terrorist attacks. Some of the world's acts of terrorism include the attacks by the Al-Qaeda group led by Osama Bin Laden on the twin towers, which are the business and political center of the United States, and the Pentagon in Washington, which became the center of the United States Military on September 11, 2001.[2] Also, Mumbai India bombings November 26, 2008, Bomb blast at Moscow Russia airport on January 24, 2011, Boston Bombing in the United States on April 15, 2013, Terrorist attack in Paris France November 13, 2015, Suicide bombing in Istanbul Turkey January 12, 2016 , Suicide Bombings in Afghanistan, March 27, 2016, and so on.

On a national scale, there have been several terrorist attacks recorded, namely, the first time Indonesia received a terrorist attack and caused a sense of fear and has not been forgotten by the public until now is what is known as the Bali Bombing Terror I which occurred on October 12, 2002 which resulted in 202 deaths. Then there was an explosion in front of the JW Marriot Hotel Jakarta on August 5, 2003 which killed 13 people and injured 74 people. The second Bali bombing terror act on 1 October 2005 which resulted in 22 deaths. The bombing in front of the Philippine Embassy, Jakarta on 1 August 2000 which resulted in two people being killed and 21 people injured. The bombing at the Santa Anna Church and the HKBP Church in East Jakarta on 22 July 2001 which resulted in 5 people being killed.

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[1]Marcus Priyo Gunarto, 2012, *Terorisme Dalam Perspektif Hukum Pidana dan Kriminologi*, Genta Press, Yogyakarta, p. 14.

[2] Costantinus Fatlolon, 2016, *Masalah Terorisme Global*,, Kanisius, Yogyakarta, p. 11-12.

Starting from the several cases above, it can be said that acts of terrorism contain political and legal elements,[3] and humanity, so that some experts include acts of terrorism as a form of crime against humanity.[4] The ease of communication facilities available today makes it easy for the spread of radical ideas which are the forerunners of terrorism. Even though various eradication efforts have been made, the crime of terrorism throughout the world has not decreased until now. This is caused by several possibilities, such as having a political background or interest, having an extensive, organized network that crosses national boundaries, and strong financial support.

With regard to terrorism, the ASEAN region is considered to be one of the vital areas. Apart from being used as a domicile and place of learning for terrorists, including Jemaah Islamiyah (JI), the Southeast Asia region also functions as a target for threats and targets of terrorism which are dominated by radical attacks in the form of bomb explosions, both on a high and low scale, on foreign vital installations. Attacks were also carried out sporadically against other religious communities which were considered to have sentiments as well as indicating opposite patterns. The countries in Southeast Asia which have become targets for terrorism are Indonesia, the Philippines, Singapore and Thailand. Cases of terrorism that have occurred in the ASEAN region tend to worry about regional security stability.[5] The causes are various factors but the ones that dominate are the poverty factor, inequality factor, fanaticism factor and injustice factor.[6]

[3]The decision to commit a terrorist crime, of course, is based on interests or considerations in accordance with the truth they believe in (political/policy and subjective aspects). Likewise, in many cases, decisions taken to commit terrorists do not heed the rules/laws in force

[4]As stated by Noam Chomsky, contained in Riza Budi, 2002, *Terorisme dan Konspirasi Anti Islam*, Al Kautsar Library, Jakarta, p.56

[5]With the Bali bombings I and II, Indonesia's security stability was disrupted, with the Abu Sayyaf group pirate case in the Philippines causing security stability in Philippine waters to be disrupted, while in Singapore several cases of terrorism also occurred, most recently in January 2021 where the Singapore Police managed to arrest a teenager who planned to carry out bomb attacks on 2 mosques on the anniversary of the shootings in New Zealand and disrupted security stability. https://dunia.tempo.co/read/1427194/remaja-singapura-ditangkap-karena-planning-terrorism-to-2-mosque/full&view=ok,accessed on 03 August 2021. Examples of terrorism cases in several countries show that cooperation is needed in serious handling to eradicate criminal acts of terrorism.

[6] P. Ansari, http://eprints.undip.ac.id/75584/3/BAB_II.pdf, accessed March 18, 2021.

The wide reach of terrorist networks has caused terrorism to cross national borders, both countries within certain areas and outside certain areas, involving countries, both the country of origin of the perpetrator and the country of the victim. Various regulations on international and national scale are still not able to deal with terrorism crimes as transnational crimes, therefore countries, even international organizations through legal instruments are trying to overcome and or handle terrorist crimes, both on a regional and international scale.

In relation to combating terrorism crimes, Indonesia has Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 No. 1 of 2002, which at that time came into effect on October 18, 2002, was made because of the Bali Bombing I. This was because in the Indonesian Territory at that time, crimes of terrorism were common, as exemplified above. Meanwhile, the Indonesian state at that time did not yet have specific laws or regulations in the context of eradicating terrorism crimes.

The Government Regulations in Lieu of Law, which in its development gave to Law no. 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism to Become Laws, this shows a strong commitment from Indonesia to try to carry out countermeasures and eradication terrorism crime, which is a form of cross-border crime. On the other hand, in relation to the handling of criminal cases that occurred in the territory of Indonesia, where the perpetrators fled or were in the territory of other countries, Indonesia has carried out various collaborations with other countries.[7] in the form of mutual assistance or what is often called Mutual Legal Assistance.[8] In fact, Indonesia itself already has Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters.[9] A regulation that relies on requests for assistance relating to

[7] Among others, with Switzerland, the Netherlands, Australia, PRC, and so on

[8] Reciprocal assistance agreements or Mutual Legal Assistance, of course, are different from extradition agreements. Extradition agreements are for the purpose of surrendering people (perpetrators of crimes), as stipulated in Law Number 1 of 1979 concerning Extradition, while MLA is for the purpose of assisting in the process of investigation, prosecution and examination at criminal justice hearings including investigation, confiscation and return of proceeds of crime, as regulated in Law No. 1 of 2006

[9] Law No. 1 of 2006 was adopted from the 2000 United Nations Convention Against Transnational Organized Crime which was ratified in Law Number 5 of 2009.

investigations, investigations, prosecutions, examinations before court hearings, etc., from the requested country to the requesting country.[10]

The law stipulates in detail regarding requests for mutual assistance in criminal matters from the Government of the Republic of Indonesia to the requested country, among others regarding submission of requests for assistance, requirements for requests, assistance to find or identify people, assistance to obtain evidence, from assistance to seek presence of people.[11] The principle of mutual assistance in criminal matters in this Law is based on the provisions of criminal procedure law, agreements made between countries, and conventions[12] and international customs.This law forms the basis for the Government of Indonesia in negotiating the formation of MLA agreements with other countries.[13] As a member of ASEAN, Indonesia has become a party to *ASEAN Mutual Legal Assistance* to handle criminal cases.

In relation to the effectiveness of MLA in combating terrorism crimes, there is previous research that has been written by several previous authors that has been published in various journals, including:

Article written by Muhammad Ikhya Apriansyah, Maria Maya Lestari, Evi Deliana, with the title Effectiveness of the ASEAN Treaty on Mutual Legal Assistance (Amlat) in Dealing with Transnational Crime in Indonesia, published in the Pro Justitia Journal, Vol.5, No.1, February 2024. This article discusses the existence of MLA as an alternative and complementary instrument to extradition which is increasingly relevant following the existence of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matter 2004 (MLAT 2004) which has been signed by all ASEAN member countries. Previously, Indonesia itself had signed

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[10] Siswanto Sunarso, 2009, *Ekstradisi Dan Bantuan Timbal Balik Dalam Masalah Pidana:Instrumen Penegakan Hukum Pidana Internasional*, Rineka Cipta, Jakarta, p. 133.

[11] https*://www.bphn.go.id/data/documents/bantuan_timbal_balik_dlm_hasil_pidana. pdf*, accessed on 15 October 2019

[12] The convention in question is the United Nation Convention Against Transnational Crime (UNTOC) and international agreements made between countries related to Mutual Legal Assistance (MLA).

[13] Firdaus, *Perjanjian Bantuan Timbal Balik Dalam Masalah Pidana Antara Republik Indonesia Dan Republik Islam Iran (Reciprocal Judiciary Assistance Agreement in The Criminal Matters Between The Republic of Indonesia and The Islamic Republic of Iran)*, De Jure Journal of Legal Research, Vol. 17, No. 4, December 2017, p. 352.

bilateral extradition agreements with Malaysia, the Philippines and Thailand, so that the existence of MLAT 2004 actually further strengthens legal cooperation with other ASEAN member countries.[14]

An article written by Itok Dwi Kurniawan and Vincentius Setyawan, entitled Opportunities to Implement Mutual Legal Assistance in Criminal Law Enforcement in Indonesia, published in the Fundamental Journal: Scientific Journal of Law, Vol. 11, No. 1, 2022. This article discusses the right of foreign citizens to refuse to give their statements before an Indonesian court, and there are no legal consequences whatsoever. This causes a lack of evidence that is very important in the examination of criminal cases, namely witness statements.[15]

Terrorism crimes that are cross-border (transnational) in practice cannot be eradicated and handled by the Indonesian state itself, even though there is already a terrorism law. Competence and capacity of officers who catch theorists is not sufficient. Besides that, forms of terrorism crimes that cross national borders, the scope includes the jurisdictions of several countries. Based on the description above, the focus of the study on the writing of this law is the extent of the urgency and effectiveness of cooperation in combating terrorism crimes at the ASEAN level.

RESEARCH METHODS

The type of research in this legal writing is normative research. The approach used is the state approach and the case approach, this legal research is carried out by analyzing laws and regulations or international conventions related to regional cooperation issues of ASEAN countries including Mutual Legal Assistance, or other forms of cooperation both in national legal instruments and international law, such as laws, conventions related to the problems in writing this law. The case

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[14] Muhammad Ikhya Apriansyah, Maria Maya Lestari, Evi Deliana**,** *Efektivitas Asean Treaty On Mutual Legal Assistance (Amlat) Dalam Menghadapi Kejahatan Transnasional Di Negara Indonesia*, Jurnal Jurnal Pro Justitia, Vol.5, No.1, Februari 2024

[15] Itok Dwi Kurniawan dan Vincentius Setyawan, dengan judul *Opportunities to Implement Mutual Legal Assistance in Criminal Law Enforcement in Indonesia*, yang diterbitkan di Jurnal Fundamental : Jurnal Ilmiah Hukum, Vol. 11, No.1, 2022

approach by analyzing cases of terrorism crimes that occur in the world and in Indonesia, from examples of these cases are then applied in resolving their laws using primary legal materials consisting of laws and regulations or related international conventions, as well as secondary legal materials consisting of related reference books, and tertiary legal materials in the form of the internet.

RESULT AND DISCUSSION

A. Terrorism as a Transnational Crime

In Indonesia, terrorism is defined as an act that uses violence or threats of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties, and or cause damage or destruction to strategic vital objects, the environment, public facilities, or international facilities with ideological, political or security disturbance motives.[16] Terrorism internationally does not yet have a definite and universally accepted definition even since the founding of the League of Nations about 70 years ago.[17] Schmid recorded over 250[18] definitions of terrorism from experts so that there is no one definition that can be universally accepted.

Terrorism is said to be a transnational crime, which in transnational criminal law describes the category of domestic crime established through treaty obligations in multilateral conventions such as the 1988 Vienna Convention,[19] what is called

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[16] Article 1 point 2 Law of the Republic of Indonesia number 5 of 2018 concerning amendments to Law number 15 of 2003 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism to become Law

[17] Schmid, Alex P., The Routledge Handbook of Terrorism Research, Routledge, London, New York, 2011, p. 39. Schmid further explained that the perpetrators of terrorism emphasize various attributes of terrorism such as its often symbolic nature, its nature which is often indiscriminate, its typical focus on targets of civilian and non-combatants violence, sometimes the aim is provocative and sometimes it is retributive, distraction public order and public safety hazard placement, creation of a climate of fear to influence a wider audience than the direct victim, its disregard for the rules of war and the rules of punishment, and its asymmetrical character (armed versus unarmed; weak versus strong).

[18] Ibid., p. 99-191.

[19] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 20 December 1988, 1582 UNTS 95; in force 11 November 1990.

the agreement on crimes (treaty of crimes)[20] or crimes of international concern.[21] States enforce their own criminal laws, thereby demonstrating their sovereignty; however because of sovereignty, states must depend on the sovereignty of other states if they are to enforce their laws against transnational criminals operating extraterritorially. Countries can enforce their national law in the territory of other countries by becoming a state party to an international convention.

The term Transnational Crime was first used in the Fifth UN Congress on Crime Prevention and the Treatment of Offenders in 1975 by the UN Crime Prevention Criminal Justice Branch, to identify certain criminal phenomena that cross international boundaries, violate the laws of several countries or have an impact on other countries'. [22] The Fourth UN Survey of Crime Trends and Operations of Criminal Justice Systems formed in 1976 defines that Transnational Crime as 'offences whose inception, perpetration and/or direct or indirect effects involved more than one country.[23]

In 1995, the United Nations defined transnational crime as "offenses whose inception, proportion and/or direct or indirect effects involve more than one country".[24] It identifies a laundry list of 18 categories of transnational crimes whose origins, acts, and attempts directly or indirectly involve more than one country. This category includes money laundering, terrorist activity, theft of artistic and cultural objects, intellectual property theft, illicit arms trade, aircraft hijacking, maritime hijacking, insurance fraud, computer crime, environmental crime, human trafficking, trade in human body parts, illegal drug trade, bankruptcy fraud, legal business infiltration, and corruption and bribery of public officials or state apparatus.

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[20] N. Boister, 'Transnational Criminal Law?', European Journal of International Law, 2003, vol. 14, p. 953. See also: N. Boister, An Introduction to Transnational Criminal Law, Oxford: Oxford University Press, 2012, p. 13–23.

[21]The word is used by Cheriff Bassiouni, 1999, in: 'The Sources and Content of International Criminal Law: A Theoretical Framework', MC Bassiouni (ed.), 1 International Criminal Law: Crimes, Ardsley on Hudson: Transnational, 2nd edn, p. 13.

[22]GOW Mueller, 2001, 'Transnational Crime: Definitions and Concepts', in: P Williams and D Vlassis (eds), Combating Transnational Crime: Concepts, Activities, Responses, Frank Cass, Portland, USA, p. 13.

[23]United Nations, Fourth UN Survey of Crime Trends and Operations of Criminal Justice Systems UN Doc A/ CONF.169/15/Add.1 (1995).

[24](UN Office on Drugs and Crime [UNODC], 2002, p. 4).

Gerhard Mueller, a prominent criminologist and head of the United Nations Crime Prevention and Criminal Justice Branch from 1974-1982 suggests that:[25] It refers to criminological terms, without any claim to provide a juridical concept, and consists only of listing five activities :

1) crime as a business, organized crime, white-collar crime, and corruption;

2) criminal acts involving works of art and other cultural properties;

3) criminality related to alcoholism and drug abuse;

4) transnational violence and comparative international significance; And

5) criminality related to migration and flight from natural disasters and hostilities.

Philip Reichel and Jay Albanese define transnational crime as "those activities involving the crossing of national borders and violations of at least one country's criminal laws."[26] Furthermore, they suggest that most examples of this form of crime were "economically motivated and involved some form of smuggling".[27]

As the opinion of Neil Boister divides the character of transnational crimes into six, namely:[28]

a) *private crime*in the sense: crimes committed usually by groups or individuals who are not from the government,
b) *economiccrime*in the sense: Most transnational crime activities are driven by the desire for personal economic gain. Transnational criminals take advantage of cheap goods and services in one state and move them across the border to another where demand is strong and goods or services can be sold or rented at high profits. The main difference with legitimate economic activity is that goods or services are prohibited in one or the other or both countries,

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[25]Reuter, P., & Petrie, C. (Eds.). Transnational organized crime: Summary of a workshop. Washington, DC: National Academies Press, National Research Council, 1999.

[26] Roth, Mitchel P., *Historical Overview of Transnational Crime, in: Handbook of Transnational Crime and Justic*e, Second Edition, Reichel, Philip and Albanese, Jay, edt, SAGE Publications, Inc., California, 2014, p.6.

[27] Andreas, P., & Nadelmann, E., *Policing the globe: Criminalization and Crime Control inIinternational Relations*, New York, NY: Oxford. University Press, 2006, p. 255.

[28] Neil Boister, *An Introduction to Transnational Criminal Law*, Oxford University Press, Oxford, USA, 2012, p. 4-7.

c) *Political crime*in a sense: Not all transnational criminals are after economic gain. Some transnational criminals seek political gain through violence or the threat of violence. Transnational terrorists, for example, can hatch a plot in one country and execute it in another. Surprising though it may be, violence is a feature of their activity, since the main goal is to influence public opinion or the public to achieve their own political goals,

d) *Organized crime*in a sense: Although organization is not a necessary condition for transnational crime smuggling across borders by one person is sufficient transnational crime is closely related to organized crime. The concept of organized crime however, is not settled. The difficulty is what is meant by 'organised': it may mean anything from a hierarchical organization to a wide network,

e) *Globalized crime*in a sense: The economic crime model suggests that it is rational for criminals to go where they can do business and spread into unregulated areas. In ancient times, when formal boundaries were weak, it was relatively easy for criminal activities to cross borders,

f) *Localized crime*in the sense that all processes of transnational activity have domestic roots. Transnational criminals are both global and local, capable of operating across borders but still on a local basis.

Emphasis on transnational crime is heavily based on activities related to transnational organized crime (transnational organized crime).[29] This became very clear in 2000 when the United Nations in its Convention Against Transnational Organized Crime 2000 defined: organized crime as a structured group consisting of three or more persons existing for a certain period of time and acting together with the aim of committing one or more more crimes or serious offenses under this Convention in order to obtain, directly or indirectly, a financial or material advantage.[30]

Organized crime is considered transnational when:

a) conducted in more than one country;

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[29] Reichel, Philip and Albanese, Jay, 2014, *Handbook of Transnational Crime and Justice*, Second Edition, SAGE Publications, Inc., California, p.6.

[30] UNODC, 2000, Article 2a.

b) carried out in one country but part of the preparation, planning, directing or supervision is carried out in another country;
c) committed in one country but involving an organized crime group that is involved in criminal activity in more than one country; or
d) carried out in one country but have a substantial impact in another.[31]

FG Madsen argues that another way of looking at transnational crime is crime which in one of several ways involves the jurisdictions of two or more sovereign states.[32]It is quite simple for Madsen to see the types of national or transnational crimes or crimes.

In enforcing the law regarding transnational crime, Indonesia has ratified the United Nations Convention on Transnational Organized Crime (UNTOC) with Law Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized Crime. The convention mentions a number of crimes that fall under the category of organized transnational crime, namely money laundering, corruption, illicit trade in protected wild plants and animals, crimes against cultural property, human trafficking, migrant smuggling and the production and illicit trade of weapons. fire. The Convention also recognizes the close link between organized transnational crime and terrorism crimes, even though their characteristics are very different.[33]

Today many crimes involve cross-jurisdictional states. One reason is the easy means of transportation and communication. This the crimes committed in country A are capable of impacting country B, so that international cooperation is absolute necessary. One example of a crime that requires international cooperation is combating acts of terrorism.

Terrorism crimes that are cross-border (transnational) in practice cannot be eradicated and handled by the Indonesian state itself, even though there is already a terrorism law. The competence and capacity of officers who catch the theoretical perpetrators is not sufficient. Besides that, forms of terrorism crimes that cross

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[31] UNODC, 2000, Article 3.2.

[32] Madsen, FG, 2009, *Transnational Organized Crime*, London, England: Routledge, p.8.

[33] Indonesia has bound itself to international conventions related to drug and drug trafficking, namely: a) United Nations Single Convention on Narcotic Drugs; b) United Nations Convention on Psychotropic Substances; and C) United Nations Convention Against Illicit Traffic on Narcotic Drugs and Psychotropic Substances.

national borders, the scope includes the jurisdictions of several countries. Based on the description above, a model or pattern of cooperation between countries is needed in eradicating terrorism crimes which are included in transnational crimes.

B. ASEAN Mutual Legal Assistance Treaty (AMLAT) as an Effort to Combat Terrorism Crimes

1. AMLAT Commitment to ASEAN Countries

ASEAN was formed based on the will and agreement of the countries in the Southeast Asian region tocooperate in each particular field in order to achieve common goals. The relationship that occurs between the sovereignty of ASEAN member countries and ASEAN is to convert the sovereignty of ASEAN member countries by forming and agreeing on an international agreement, in which the relevant parties regulate these ties as a conversion of their binding power into an organization which in this case binds itself in ASEAN Charter.[34]

The signing of the ASEAN Mutual Legal Assistance Agreement (AMLAT) in Kuala Lumpur, Malaysia in 2004 initiated the opening of cooperation between ASEAN countries in mutual legal assistance. The formation of AMLAT was also agreed upon at the 5th ASEAN Ministerial Meeting on Transnational Crime (AMMTC) in Hanoi, Vietnam. The importance of AMLAT is illustrated by the agreement signed on 19 January 2006 by ten ASEAN member countries (Indonesia, Malaysia, Singapore, Vietnam, the Philippines, Laos, Cambodia, Myanmar, Thailand and Brunei Darussalam). After the formation of AMLAT,*Senior Official Meeting on Mutual Legal Assistance Treaty* (SOMLAT) is formed and held every five years to discuss the implementation of AMLAT in ASEAN member countries. One of the topics discussed in this SOMLAT is the improvement of AMLAT as an ASEAN instrument. Even though AMLAT has been signed and ratified, it is actually not part of the ASEAN instruments. This provision is reflected in the difference in secretariat offices: the AMLAT secretariat office is in Kuala Lumpur,

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[34] Indira Devitasari, 2015, *Kekuatan Mengikat ASEAN Mutual Legal Assistance Treaty (AMLAT) Bagi Negara Anggota ASEAN Dalam Rangka Penegakan Hukum Kejahatan Transnasional,* Belli Ac Pacis, Vol. 1, No. 1, June 2015, p.25

Malaysia, while the ASEAN secretariat office is in Jakarta, Indonesia.Mechanistically sothe AMLAT arrangement is separate from the ASEAN mechanism system (The 4th Meeting of Senior Official on the Treaty on Mutual Legal Assistance in Criminal Mattersn. Some ASEAN member countries assume that the nature of the ASEAN Mutual Legal Assistance Treaty will be closed for non-ASEAN member countries to accede to the provisions AMLAT if it has become part of the ASEAN Instrument.[35]

So far, AMLAT has been in practice in several participating countries, for example, Indonesia has Law No. 1 of 2006 concerning Mutual Assistance in Criminal Matters as a follow-up to its ratification of AMLAT. Likewise with the Philippines, although it does not yet have specific laws and regulations governing Mutual Legal Assistance (MLA), MLA cooperation is based on the existing mechanism in AMLAT.[36]

The basis for binding AMLAT for ASEAN member countries is based on the awareness of ASEAN member countries to comply with the provisions contained in AMLAT because of the needs of each participating country which considers AMLAT provisions to reflect justice and also have a good impact on ASEAN member countries. In this case, the provisions of AMLAT are considered to be an effective solution to overcome transnational crimes that occur in the Southeast Asian region. However, the meaning of "justice" can experience a shift along with the times and AMLAT may be considered as no longer providing good for the country. For example, the provisions in article 3 AMLAT regarding limitations in providing MLA assistance regarding the principle of double criminality, Singapore as one of the countries that adheres to this principle, so that in several cases requests for MLA assistance were often rejected. For Indonesia, the principle of double criminality tends to provide many disadvantages. Therefore, an awareness or desire to implement a legal provision is not sufficient but must be balanced with a form of concrete agreement.[37]

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[35] SOMLAT 4th, 2009, Results of the 4th Senior Official Meeting Mutual Legal Assistance Treaty, p.2.

[36] SOMLAT 4th, 2009, Results of the 4th Senior Official Meeting Mutual Legal Assistance Treaty, p. 4-5.

[37]Indira Devitasari, *op.cit.*, p.25

AMLAT is an international agreement[38] in the Southeast Asian region formed by ASEAN countries. AMLAT has complied with the elements regulated in the 1969 Vienna Convention on International Treaty Law, as explained in the provisions of Article 6 of the 1969 Vienna Convention that "every country has the ability to enter into international agreements". The meaning of the state in this article is intended to mean the state as an individual or as a subject of international law[39]. In this case, ASEAN can be said to be a subject of international law so that all legal actions can be recognized as a provision of international law.

An important requirement of an international agreement is that the agreement is subject to the international legal regime. The parties in this case the AMLAT participants consisting of Indonesia, Singapore, Malaysia, Vietnam, Cambodia, Laos, the Philippines, Brunei Darussalam, Thailand and Myanmar who are members of ASEAN membership have agreed to sign and ratify the AMLAT agreement. The AMLAT provisions serve as guidelines for ASEAN member countries to practice them in the national laws of their respective countries.

The obligations of the parties to the AMLAT participating countries carry out international agreements in "good faith", in which the participating countries have several obligations that have been regulated in the AMLAT agreement, including:

1) The provisions in article 1 which require participating countries to adopt the provisions contained in the AMLAT agreement into national law in each participating country. Currently, several participating countries have adopted this agreement into the national law of their respective countries, including; Indonesia, Malaysia, Myanmar, Singapore, Vietnam, Laos, Brunei Darussalam, Cambodia and Thailand, while the Philippines still bases requests for MLA assistance on AMLAT.[40]

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[38] International agreementis an agreement between two or more parties subject to international law regarding a certain object that is formulated in writing and is subject to or governed by international law. Several elements or qualifications that must be met in an international agreement, among others: agreement, legal subjects, written form, certain objects and subject to or regulated by international law.

[39]According to International Law, what is said to be a legal subject iscountry,holy throne, liberation groups, international organizations.

[40]Indira Devitasari, *op.cit.*, p. 25

2) Participating countries are required to be able to cooperate with other participating countries. Some of the limitations of assistance that can be provided are regulated in article 1:
    a) Taking evidence and statements voluntarily from someone,
    b) make provisions in terms of taking evidence from a person when providing assistance in matters of criminal matters,
    c) carry out a search in the event of the arrest of a person requested,
    d) examine several suspected items and assets,
    e) provide originals or copies of a document, or records of evidence,
    f) carry out investigations of assets originating from criminal acts,
    g) detain assets or freeze assets on assets suspected of originating from a criminal act,
    h) to confiscate property originating from a crime,
    i) conducting searches and identifying witnesses and suspects,
    j) provide other assistance that has been agreed upon with the requesting country beforehand and does not conflict with this agreement.
3) With regard to the investigation and identification process, the Requested Party in accordance with its national laws, makes every effort to ascertain the location or identity of a person mentioned in the request and who is reasonably certain within its territory as stipulated in article 20 AMLAT.
4) State parties are required to be under the provisions of article 22 AMLAT, in accordance with their national law, to try to find, track, detain, freeze, confiscate, or seize assets originating from criminal acts. Property confiscated or confiscated under this article may be handed over to the Requesting Party unless otherwise agreed in each particular case.

Obligation to dothe appointment of the central authority as stipulated in article 4 AMLAT is to apply for and receive MLA assistance as stipulated in this agreement. The appointment of the central authority for the 10 (ten) AMLAT participating countries includes; Indonesia in this case appoints the Directorate General of Public Law Administration, Ministry of Law and Human Rights as the Central Authority, Malaysia, Singapore and Brunei Darussalam through the

Attorney General's Chambers as the Central Authority, Laos appoints the Ministry of Justice as the Central Authority, Myanmar through the Attorney General's Office appointed as Central Authority, Philippines appointed the Office of the Chief State Counsel as the Central Authority of the country, Vietnam through the Ministry of Public Security as Central Authority, Cambodia documents, records or various matters related to criminal acts requested by the requesting state party, which must be carried out in the process of observation before proceeding to the custody process until the document is sent. The requested country party must as soon as possible report the results of the investigation, confiscation and also safeguarding these results afterward based on what is regulated in article 18 AMLAT.

In practice, the use of the jurisdiction of the requested country and the differences in the criminal law system applied between ASEAN countries are the inhibiting factors for the implementation of AMLAT. For example, there are those who adhere to a continental legal system, such as Indonesia, and there are also countries that apply the Anglo-Saxon system, such as Malaysia and Singapore. The main difference is that the justice system adheres to the due process model (DPM) which focuses more on protecting human rights for suspects. Likewise, there are those who apply the crime control model (CCM) system, which emphasizes the efficiency and effectiveness of criminal justice based on the principle of the presumption of innocence and focuses more on processes that are more practical.[41]

Often each country wants to use its own legal system absolutely in handling crime, the same thing happens in other countries, so that the handling of crime becomes slow and convoluted. For example, Singapore has its own guidelines for requirements for countries wishing to submit requests for assistance, so that many countries experience obstacles in submitting assistance to Singapore due to the technicalities of submitting assistance which are too complicated. In Singapore, implementing a checking system for requests for assistance from the requesting country is divided into two stages. The first stage is through the authorized prosecutor's office and the second stage is through the authorized minister.[42]Brunei

[41] National Legal Development Agency Ministry of Law and Human Rights of the Republic of Indonesia, 2012, Central Authority and Coordinating Mechanism in the Implementation of Mutual Assistance in Criminal Matters
p.38

[42] Indira Devitasari, *op.cit.*, p.26

Darussalam itself, within the national legal arrangements regarding MLA, has developed regulations regarding the use of electronic media such as television as a means of providing assistance regarding the notification of the requested evidence.

2. The Effectiveness of Mutual Legal Assistance Cooperation in Combating Terrorism Crime

The terrorist network in Southeast Asia is a terrorist network that developed from radical Islamic groups. This can be seen from the development of radical Islamic groups in the Southeast Asian region which have developed into terrorist networks that cross national boundaries, namely international scale terrorist networks. The development of this radical Islamic group into a terrorist network that crosses national boundaries cannot be separated from the events of September 11, 2001. The US is searching for Osama bin Laden, the leader of the Al-Qaeda Network who is responsible for the tragedy of the collapse of the WTC building, in the process of searching and hunting. Osama bin Laden said the US realized that radical Islamic groups in Southeast Asia had connections and were partners in the Al-Qaeda Network.

MLA is basically a form of mutual agreement in criminal matters.[43] Initially, MLA originated from cooperation between countries in a process of mutual assistance in investigating criminal matters that began with cooperation between the police and "letters rogatory".[44], which is a system of requesting assistance based on mutual respect in order to obtain evidence, which then develops into a form of agreement and various other forms of assistance. Reciprocal criminal legal assistance MLA is a form of legal cooperation in the context of enforcing criminal law, especially for crimes that have a transnational element.

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43 Basically, MLA, like extradition, can be carried out both formally through agreements and informally based on the principle of reciprocity.

44 *Letters rogatory* is a letter issued by the court of a country to obtain assistance from the court of another country. The existence of Letters rogatory is because based on the principle of sovereignty, the courts of a country are prohibited from exercising power outside their jurisdiction, including also to obtain evidence available abroad for the benefit of the trial, so that a country must submit a request in advance to the requested country if it wants to obtain evidence. the. Cyrer, Robert, Friman, Hakan, et all, 2010, *An Introduction to International Criminal Law and Procedure*, Cambridge University Press, page 102

Article 18 UNTOC expressly states to encourage forms of mutual assistance cooperation in overcoming criminal acts which are the scope of the TOC. In fact, Article 18 paragraph 3 UNTOC emphasizes that MLA includes obtaining evidence and statements, providing assistance with legal documents, carrying out searches and seizures, carrying out inspections of objects and locations. , providing information, evidence, expert judgment, documents and archives, identifying or tracing criminal processes, property, or equipment used for evidentiary purposes and confiscation for confiscation purposes, facilitating the presence of witnesses and various other forms of assistance that not prohibited by national law.[45]Even so, the assistance provided by a country does not have to be limited to those mentioned above, other assistance can also be provided as long as it does not conflict with the national law of a country.

In relation to transnational crimes, especially terrorism crimes, since 2002 ASEAN has concentrated on establishing a regional legal framework to align national anti-terrorism laws as a basis for cooperation between countries. For example, in May 2002, the governments of Indonesia, the Philippines and Malaysia signed the Agreement on Exchange and Establishment of Communication Procedures. The agreement contains a commitment to share flight passenger lists, blacklists, computerized fingerprint databases, followed by joint exercises between countries and strengthening border control by designing a standardized entry and exit point system. In 2003, Thailand, Cambodia and Brunei joined the mechanism. The leaders of ASEAN countries also support holding Ad Hoc Experts Group Meetings and special sessions from SOMTC and AMMTC which focus on discussing terrorism and calling for the initial signing or ratification or accession to anti-terrorism conventions, strengthening and exchanging information and intelligence and improving coordination and cooperation between AMMTC and other ASEAN entities in fighting terrorism both at regional and global levels. The threat of regional terrorism is considered a threat that requires a collective response from ASEAN to overcome it together. Malaysia hosted the ASEAN Ministrial Meeting on Terrorism in May 2002. The joint communique that was produced at

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[45] Article 18 (3)*United Nations Convention Against Transnational Organized Crimes*or UNTOC 2000

that time emphasized cohesive unity among ASEAN member countries so that they can effectively fight terrorism in the Southeast Asian region. ARF[46]held an annual meeting of the Intersessional Meeting on Counter Terrorism and Transnational Crime (ISM CT-TC) in Malaysia. The discussion was about specific methods to improve border control and standardization of travel documents and the use of biometric passports. Countries such as the European Union, the US, Japan, China, Australia and Russia are ASEAN dialogue partner countries in the context of overcoming transnational crimes, especially terrorism crimes.

In relation to the implementation of MLA, it does not have to be based entirely on a special MLA agreement that is carried out bilaterally, regionally or subregionally, Article 18 paragraphs 9-29 UNTOC provides an opportunity that when a country does not have an MLA agreement, MLA can still be carried out if the country is countries are parties to UNTOC, so that the existence of Article 18 Paragraphs 9-29 UNTOC can be interpreted as an MLA agreement on a small scale.[47]

Likewise, the implication is that law enforcement cooperation through MLA cannot always run well, this request for assistance is likely to be rejected by the requested country. This refusal is based on several things, including:

(i) if the requested country is deemed that the request for assistance is directed against a crime that is considered a political crime according to the requested country.

(ii) The requesting country applies the death penalty.

(iii) The case used as the basis for requesting MLA was deemed insufficient.

Regional mutual legal assistance cooperation among ASEAN countries is also articulated in the ASEAN Mutual Legal Assistance Treaty (AMLAT).[48], which

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[46] ARF as a forum established by ASEAN as a vehicle for dialogue and consultation on matters related to regional politics and security as well as to discuss and equalize views between ARF participating countries to minimize threats to regional stability and security

[47] See further Article 18 paragraph 9-29 UNTOC

[48]This agreement, first enacted in 2004, was signed by all ASEAN member countries in 2006. Indonesia ratified (ratified) AMLAT with Law Number 15 of 2008 concerning Ratification of Agreements Concerning Mutual Legal Assistance in Criminal Matters (Treaty on Mutual Legal Assistance In Criminal Matters).

seeks to strengthen cooperation in preventing and prosecuting transnational crimes among its member countries.[49]

As with other conventions referring to MLA, AMLAT requires the Parties to designate a central authority (CA) to follow up on all MLA requests. AMLAT also provides special exceptions so that emergency requests can be made verbally through INTERPOL or ASEANAPOL. AMLAT does not mention a specific crime that must be regulated in cooperation, but explains the limitations of MLA, namely excluding cooperation for crimes that a political, constitutes a military crime under the laws of the country of the requesting MLA, may cause prejudice/prejudice to someone because of race, religion, gender, ethnic origin, or nationality or political opinion, has been sentenced, acquitted or pardoned by a competent court or other authority, not prohibited by the laws of the requesting MLA's country.

Some of the agreements made by ASEAN member countries are included in the category of international agreements. Agreements, including international agreements, contain the main principles, namely the principle of pacta sunt servanda and the principle of good faith. This means that with the birth of several agreements as mentioned above, it imposes obligations on ASEAN member countries as subjects of international law which are also subjects of agreements, to carry out the contents of the agreement as agreed between them in good faith. Several obligations that must be carried out by the parties related to AMLAT, as stated in several articles, including Articles 1, 4, 9-11, 13, 14. 16-18, 20, 22.

As a realization of the existence of a Plan of Action to Combat Transnational Crime in preventing and fighting transnational crime, member countries in ASEAN have formed a framework, namely a highest decision-making body in tackling transnational crime. This body is called the Asean Ministerial Meeting on Transnational Crime or AMMTC. The ASEAN Ministerial Meeting on

[49] As is known, the Southeast Asian region is a region that has the potential to receive a greater threat of terrorism, namely the existence of various radical Islamic groups that are moving towards terrorism. These radical Islamic groups such as Jemaah Islamiyah (JI) in Indonesia,*Moro Islamic Liberation Front*(MILF), Abu Sayyaf Group (ASG), and the Bangsamoro Islamic Freedoms Fighter (BIFF) in the Philippines, the Bali Bombing Case, October 2002 and the JW Marriot Hotel Jakarta August 2003. The Abu Sayyaf and JI groups are considered the most dangerous terrorist organizations in the world

Transnational Crime is a ministerial-level forum and below, specifically discussing non-traditional issues in Southeast Asia.[50]

As a follow-up to some of these agreements, several ASEAN member countries individually followed up, such as: (1). Making a Memorandum of Understanding between the Indonesian National Police (POLRI) and the Philippine National Police (PNP) on Cooperation in the Prevention and Management of Transnational Crime, 2005. (2). Memorandum of Understanding between the National Police of the Republic of Indonesia and the Brunei Police on Cooperation in Eradicating Transnational Crime and Capacity Building, 2016. (3). Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of the Socialist Republic of Vietnam, 2010. (4). Agreement on Cooperation Between the Government of the Republic of the Philippines and The Government of the Kingdom of Thailand on The Prevention and Fight Against Criminal Activities, 1998. (5). Defense cooperation between Indonesia and Cambodia, 1993. (6). Coordinated Patrols between Indonesia-Malaysia-Singapore, 2004. (7). Coordinated Patrols between Indonesia and Singapore, 1992. (8). Indonesian – Singapore Military Cooperation, 1995. (9). Joint Border Monitoring Cooperation between Indonesia and Malaysia. (10). Trilateral Coordinated Maritime Patrol or Trilateral Maritime Patrol Indomalphi, between Indonesia-Malaysia-Philippines.[51]

In its relations with countries outside ASEAN countries, Indonesia also has a number of bilateral MLA agreements with other countries. These agreements provide a direct channel for legal assistance with countries outside of AMLAT, and potentially provide a stronger basis for collaboration and cover a wider scope of crimes than global conventions such as UNCAC and UNTOC. Indonesia has bilateral MLA agreements with several countries, such as Australia, China, Hong Kong, India, South Korea, Saudi Arabia (UAE), and Vietnam. This was done by Indonesia as a realization of Indonesia's commitment in the framework of its involvement in tackling and handling transnational crimes.

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[50] Jeanita Eka Aryanti, Handojo Leksono, 2017, *Penerapan Prinsip Shared Responsibility Sebagai Upaya Dalam Penanggulangan Kejahatan Transnasional Di Kawasan Asia Tenggara*, Belli ac Pacis. Vol. 3. No. 2 December 2017, p.32.

[51] Irdayanti. 2013. *Penguatan Hubungan Kerjasama Indonesia-Malaysia dalam Menangani Kejahatan Transnasional*. Transnational Journal. Vol. 5, No. 1, July 2013, p. 1-16.

In Indonesian perspective, Mutual Assistance agreements have an important meaning which is one of the solutions to jurisdictional problems in law enforcement. This is because Indonesian law enforcement officers find it easier to access information about flight proceeds of crime or evidence of crimes in other countries. Therefore, MLA can be used for the legal process of investigation, prosecution, until the execution of decisions that have permanent legal force. Investigations can obtain witness statements, look for a person's whereabouts, find out if there are assets in the form of movable assets, houses, land and others that can use the MLA.

Mutual assistance in criminal matters is a form of cooperation recommended in the United Nations Convention Against Corruption (UNCAC) which is then manifested at the national level in the form of Law Number 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters (Mutual Legal Assistance). The law includes, among other things, taking and giving evidence, including documents, identifying a person's location, carrying out requests to search for evidence, confiscating, freezing assets, confiscating assets resulting from crime, blocking, taking information, assisting in investigations, and making approvals. with witnesses. The entire coverage is subject to the principles of international agreements and international law, especially the principle of reciprocity (reciprocity).[52] and the principle of sovereignty.[53]

The implementation of Mutual Legal Assistance (MLA) is an important part of international cooperation to combat transnational crime, although Indonesia has regulations and a strong commitment to implementing MLA, there are a number of obstacles that hinder the effectiveness of its implementation, the obstacles faced include:

[52] That is, each country provides cooperation assistance in surrendering transnational crime perpetrators on the basis of requests.

[53] Based on the concept of international law, there are three aspects related to sovereignty: (i) The external aspect of sovereignty, namely that every country has the right to enter into relations with various countries and other groups without pressure or influence from other countries. (ii) The internal aspect of sovereignty, namely that there is an exclusive right of the state to determine how domestic institutional arrangements are made, including mechanisms for making legislation and arrangements regardingits enforcement. (iii) The territorial aspect of sovereignty, namely that each country has full and exclusive power over individuals and objects in the country's territory. Boer Mauna, 2005, *Hukum Internasional, Pengertian Peranan dan fungsi Dalam Era Dinamika Global*, Alumni, Bandung, p.24

1. Differences in Legal Systems

Indonesia adopts a civil law system, while several MLA partner countries adopt a common law system or a mixed legal system. These differences often lead to inconsistencies in legal procedures, for example in terms of evidence, standards for requests for assistance, or the form of documents that must be included.

2. Lack of Bilateral Agreements

Although Indonesia has ratified the UN Convention on Transnational Crime and Corruption which is the basis for multilateral cooperation, bilateral MLA agreements with partner countries are still limited. This slows down the cooperation process because not all countries are willing to provide assistance without a formal agreement.

3. Limited Resources

The limited personnel with technical expertise and a deep understanding of international law is an obstacle to following up on MLA requests quickly and effectively. In addition, the lack of budget and supporting infrastructure also slows down coordination between institutions.

4. Slow Bureaucratic Process

Coordination between domestic institutions, such as between the Ministry of Law and Human Rights, the Attorney General's Office, the Police, and the Ministry of Foreign Affairs, is often hampered by a long bureaucratic process. This can slow down the delivery of requests or responses to requests from other countries.

5. Lack of Regulatory Harmonization

The inconsistency between national laws and international legal provisions makes it difficult to fully implement MLA. Some countries require certain types of violations or certain forms of requests that are not explicitly regulated in Indonesian national law.

6. Sovereignty and Political Issues

Some countries are reluctant to provide legal assistance due to political reasons or sovereign sensitivity. Indonesia must also consider this aspect when making requests, especially in cases involving high-ranking officials or big businessmen.

Indonesia has actually attempted to resolve various obstacles faced in the implementation of MLA by issuing a legal umbrella for its implementation, namely Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters, which took effect on March 3, 2006. In the Mutual Assistance Law, assistance that can be requested or given includes matters such as: matters as specified in Article 3 paragraph (2) of Law no. 1 of 2006.[54]Law No. 1 of 2006 includes several principles that serve as guidelines for the Government of Indonesia in the implementation of mutual assistance, namely: (a). Principle of Specificity, Articles 3 and 4.; (b). Principle of reciprocity Article 5 paragraph (2).; (c). Principle of Ne Bis In Idem Article 6 letter b.; (d). The principle of double criminality or double crimes Article 6 letter c.; (e). Principle of Non-racism Article 6 letter c.; (f). Principle of sovereignty Article 6 letter e.; (g). The principle is not related to the death penalty.; (h). Principles of Diplomatic relations, Article 17.; (i). Not related to political crimes, except murder or attempted murder of heads of state/heads of government, terrorism; or a criminal offense under military law, Article 6.

In the Law on Mutual Assistance, it is stated that the party responsible for receiving and sending requests for mutual assistance is the ministry responsible for law, or in this case the Ministry of Law and Human Rights, [55] as the Central Authority.[56]This is in line with what was requested by UNTOC and UNCAC.[57] The task of the Central Authority is to obtain evidence from foreign countries, [58]

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[54] The assistance referred to in Article 3 paragraph (1) includes assistance to identify and search for people; obtain a statement or other form; show documents or other forms; seek the presence of people to provide information or assist in investigations; delivering letters; carrying out search and seizure requests; confiscation of proceeds of crime; recover fines in the form of money in connection with criminal acts; prohibit property transactions, freeze assets that can be released or confiscated, or which may be required to fulfill the fines imposed, in connection with criminal acts; looking for assets that can be released, or that may be needed to fulfill the fine imposed, in connection with a criminal act.

[55] Article 1 point 10 of Law no. 1 of 2006 concerning Mutual Criminal Assistance

[56] General Explanation of Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters

[57] Based on Article 18 paragraph (13) UNTOC jo. Article 43 paragraph (13) of the UNCAC, whereby states parties are required to appoint an authorized body that has the responsibility and power to receive requests for mutual legal assistance and also to carry out or send them to the competent body to be implemented, this body is referred to as the central authority . Indonesia has become a party to both of these international rules. Indonesia's attachment to UNTOC is carried out by Law Number 5 of 2009, and to UNCAC by Law Number 7 of 2006.

[58] As has been done by*Central Authority*Indonesia (in this case the Directorate of International Law, Directorate General of Legal Administration) submitted a request to the US Government through the Indonesian Consulate General in Los Angeles, regarding the BNI case on behalf of Adrian H. Woworuntu, which was a case of requesting confiscation and confiscation of

therefore domestic cooperation is needed with related institutions, such as the Ministry of Foreign Affairs (Diplomatic Channel), the National Police, the Attorney General's Office, the KPK, PPATK, to find out or obtain assets that can be confiscated, searched, blocked by agencies -authorized agency in a foreign country. The existence of these institutions is essentially part of the Central authority, and is an authorized institution and its existence is recognized by UNCAC.[59]

According to Marfuatul Latifah, the appointment of the Ministry of Law and Human Rights as the central authority has its advantages and disadvantages. The advantages can be seen from the position of the Ministry of Law and Human Rights as an institution responsible for formulating, determining and implementing policies in the field of law in Indonesia, due to this function the Ministry of Law and Human Rights has extensive relations in the field of law in Indonesia. The central authority is an entity that functions administratively in the implementation of mutual assistance, and has a strategic position. Meanwhile, the weaknesses referred to include the reluctance of law enforcement institutions to provide mutual criminal assistance through the Ministry of Law and Human Rights, because it requires another bureaucratic process, namely by submitting an application file to the Ministry of Law and Human Rights.[60]

For optimal implementation of MLA, Indonesia needs to increase the number of bilateral agreements, strengthen human resources and institutional capacity, simplify bureaucracy between agencies, and adjust national regulations to

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assets through mutual assistance in a criminal matter based on the principle of reciprocity (reciprocity).

The Government of Indonesia has also done the same thing to the Government of Australia, in relation to the Hendra Raharja case. The Government of Indonesia to the Government of Australia to seize Hendra Rahardja's assets in Australia which are suspected of originating from criminal acts committed in Indonesia. Through Interpol cooperation, it is known that Hendra Rahardja's assets in Australia are quite a lot and the data has been provided by the Australian Police (AFP) to the National Police. In order to take legal action on Hendra Rahardja's assets, a team called the "Indonesian Australia Task Force" was formed with the aim of collecting information, data, documents and evidence in legal proceedings in Australia.

[59] Article 46 paragraph (13) of the UNCAC states that a request for mutual criminal assistance can be made directly by the central authority, or it can also be forwarded to the competent authority (in this paper it is referred to as the competent authority).

[60] Marfuatul Latifah, *Penunjukan Otoritas Pusat Dalam Bantuan Timbal Balik Pidana di Indonesia*, Negara Hukum: Vol. 7, No. 1, Juni 2016, hlm.65.

international standards. This is important to build a transparent justice system that is able to effectively respond to the challenges of transnational crime.

CONCLUSION

MLA cooperation at the ASEAN level is one of the important instruments in combating transnational crimes, including terrorism. In general, the effectiveness of MLA in the ASEAN context shows significant progress, especially in strengthening coordination between member countries in terms of information exchange, extradition, asset confiscation, and the implementation of cross-jurisdictional investigations. Through legal instruments such as the Treaty on Mutual Legal Assistance in Criminal Matters, ASEAN countries have demonstrated their commitment to assist each other in the process of enforcing the law on terrorism cases. However, the effectiveness of this cooperation still faces various challenges, such as differences in legal systems between countries, slow bureaucratic processes, lack of trust between law enforcement officers, and limited resources and technology. In addition, not all member countries have the same capacity and mechanisms in following up on MLA requests. To increase the effectiveness of MLA as an effort to combat terrorism, it is necessary to strengthen regulatory harmonization, increase the capabilities of law enforcement agencies, and have a strong political commitment from all ASEAN member countries. Closer collaboration, transparency, and the establishment of a regional coordination center are also important factors in supporting the success of this cooperation in the future.

BIBLIOGRAPHY

Books:

Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI. 2012. *Central Authority dan Mekanisme Koordinasi dalam Pelaksanaan Bantuan Timbal Balik Dalam Masalah Pidana*

Boister, Neil, 2012, *An Introduction to Transnational Criminal Law*, Oxford University Press, Oxford, USA.

Budi, Risa, 2002, *Terorisme dan Konspirasi Anti Islam*, Pustaka Al Kautsar, Jakarta

Cahyadi, Antonius, dan E. Fernando M. Manulang. 2009. *Pengantar ke Filsafat Hukum*. Jakarta : PT. Grafindo Persada

Cyrer, Robert, Friman, Hakan, et all, 2010, *An Introduction to International Criminal Law and Procedure, Cambridge University Press*

Fatlolon, Costantinus, 2016, *Masalah Terorisme Global*, Kanisius, Yogyakarta

Fuady, Munir, 2013. *Teori-Teori Besar dalam Hukum*. Jakarta : Kencana

G.O.W Mueller, 2001, '*Transnational Crime: Definitions and Concepts*', dalam: P Williams and D Vlassis (eds), *Combating Transnational Crime: Concept, Activities, Responses,* Frank Cass, Portland, USA.

Istanto, F. Sugeng, 2012. *Hukum Internasional*. Yogyakarta : Laksbang Grafika

J.G, Starke, 2010. *Pengantar Hukum Internasional Jilid 2*. Jakarta : Sinar Grafika

Kementerian Luar Negeri. 2014. *Hasil Senior Official Meeting Mutual Legal Assistance Treaty*. Kementerian Luar Negeri

Mauna, Boer, 2005, *Hukum Internasional, Pengertian Peranan dan fungsi Dalam Era Dinamika Global*, Alumni, Bandung

Mitchel P., Roth, Historical Overview of Transnational Crime, dalam: *Handbook of Transnational Crime and Justice, Second Edition*, Reichel, Philip and Albanese, Jay, edt, SAGE Publications, Inc., California, 2014.

P., Andreas, & Nadelmann, E., 2006, *Policing the globe:Criminalization and crime control in international relations*, New York, NY: Oxford. University Press.

Parthiana, Wayan, I, 2002. *Hukum Perjanjian Internasional*, Mandar Maju, Bandung

Pitsuwan, Surin, Pitsuwan, 2010. *ASEAN Selayang Pandang*, Jakarta, Kementerian Luar Negeri.

Priyo, Marcus, Gunarto, 2012, *Terorisme Dalam Perspektif Hukum Pidana dan Kriminologi*, Genta Press, Yogyakarta

Reichel, Philip and Albanese, Jay, 2014, *Handbook of Transnational Crime and Justice, Second Edition,* SAGE Publications, Inc., California

Reuter, P., & Petrie, C. (Eds.). 1999, *Transnational organized crime: Summary of a workshop*. Washington, DC: National Academies Press, National Research Council.

SOMLAT, 2009, *Hasil Senior Official Meeting Mutual Legal Assistance Treaty 4th*. Kementerian Luar Negeri.

Sunarso, Siswanto, 2009, *Ekstradisi Dan Bantuan Timbal Balik Dalam Masalah Pidana:Instrumen Penegakan Hukum Pidana Internasional*, Rineka Cipta, Jakarta.

Journals and Scientific Papers:

Firdaus, *Perjanjian Bantuan Timbal Balik Dalam Masalah Pidana Antara Republik Indonesia Dan Republik Islam Iran (Reciprocal Judiciary Assistance Agreement in The Criminal Matters Between The Republic of Indonesia and The Islamic Republic of Iran)*, Jurnal Penelitian Hukum De Jure, Vol. 17, No. 4, Desember 2017

Irdayanti, *Penguatan Hubungan Kerjasama Indonesia-Malaysia dalam Menangani Kejahatan Transnasional*. Jurnal Transnasional. Vol. 5, No. 1, Juli 2013.

Marfuatul Latifah, *Penunjukan Otoritas Pusat Dalam Bantuan Timbal Balik Pidana di Indonesia*, Negara Hukum: Vol. 7, No. 1, Juni 2016.

Indira Devitasari, *Kekuatan Mengikat ASEAN Mutual Legal Assistance Treaty (AMLAT) Bagi Negara Anggota ASEAN Dalam Rangka Penegakan Hukum Kejahatan Transnasional*, Belli Ac Pacis, Vol. 1, No. 1, Juni 2015

Muhammad Ikhya Apriansyah, Maria Maya Lestari, Evi Deliana**,** *Efektivitas Asean Treaty On Mutual Legal Assistance (Amlat) Dalam Menghadapi Kejahatan Transnasional Di Negara Indonesia*, Jurnal Jurnal Pro Justitia, Vol.5, No.1, Februari 2024

Itok Dwi Kurniawan dan Vincentius Setyawan, dengan judul *Opportunities to Implement Mutual Legal Assistance in Criminal Law Enforcement in Indonesia*, yang diterbitkan di Jurnal Fundamental : Jurnal Ilmiah Hukum, Vol. 11, No.1, 2022

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Relevansi Peran Kementerian Koordinator dalam Sistem Presidensial: Studi Komparatif dan Rekomendasi Kebijakan untuk Sistem Pemerintahan Indonesia

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Abstract

This paper aims to analyze the relevance of the Coordinating Ministry in carrying out the functions of synchronization and coordination among state ministries in the administration of government in Indonesia, and to compare it with practices in several countries that adopt a Presidential system. The research employs a normative juridical method with statutory, conceptual, and comparative approaches. The findings indicate that the Coordinating Ministry plays a strategic role in maintaining policy coherence among ministries. However, overlapping authority with other ministries that also possess coordinative functions, coupled with the relatively large number of Coordinating Ministers, has the potential to hinder government effectiveness if not managed properly. A comparative study with Presidential countries such as the United States, the Philippines, Brazil, and South Korea suggests that governmental coordination can be carried out more efficiently by a single office or specialized institution. Therefore, this study recommends a reduction in the number of Coordinating Ministers in Indonesia and the strengthening of a single strategic coordinating institution under the President, as well as the possibility for the Vice President to assume a coordinating role when directly mandated by the President.

Abstrak

Tulisan ini bertujuan untuk menganalisis relevansi Kementerian koordinator dalam menjalankan fungsi sinkronisasi dan koordinasi antar kementerian negara dalam penyelenggaraan pemerintahan di Indonesia, serta membandingkannya dengan praktik di sejumlah negara yang menganut sistem Presidensial. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, dan komparatif. Hasil penelitian menunjukkan bahwa Kementerian koordinator memiliki peran strategis dalam menjaga keselarasan kebijakan antar kementerian. Namun, tumpang tindih kewenangan dengan kementerian lain yang juga memiliki fungsi koordinatif, ditambah jumlah Menteri Koordinator yang relatif banyak, berpotensi menghambat efektivitas pemerintahan jika tidak dikelola secara optimal. Studi perbandingan dengan negara-negara Presidensial seperti Amerika Serikat, Filipina, Brasil, dan Korea Selatan mengindikasikan bahwa koordinasi pemerintahan dapat dilaksanakan secara lebih efisien oleh satu jabatan atau lembaga khusus. Oleh karena itu, penelitian ini merekomendasikan pengurangan jumlah Menteri Koordinator di Indonesia dan penguatan satu lembaga koordinatif strategis di bawah Presiden, serta membuka ruang bagi Wakil Presiden untuk menjalankan fungsi koordinasi sepanjang mendapatkan penugasan langsung dari Presiden.

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PENDAHULUAN

Keberadaan menteri koordinator dalam sistem pemerintahan Indonesia pertama kali muncul pada masa Kabinet Kerja III Presiden Soekarno (1962–1963) dalam bentuk Wakil Menteri Pertama sebagai Koordinator.[1] Pada Kabinet Kerja IV, fungsi koordinasi ini ditegaskan dengan pembentukan 9 Menteri Koordinator,[2] dan jumlahnya sempat meningkat menjadi 17 pada Kabinet Dwikora I dan 15 pada Kabinet Dwikora II. Namun, pada Kabinet Dwikora III hingga Kabinet Ampera II, jabatan ini sempat ditiadakan. Pada masa Presiden Soeharto, menteri koordinator kembali dihadirkan dan terus ada dalam tiap kabinet, dengan jumlah yang bervariasi dari 2 hingga 5. Setelah masa transisi ke Presiden Habibie, hingga masa Presiden Megawati, jumlah menteri koordinator berkisar antara 3–4. Presiden Susilo Bambang Yudhoyono (2004–2014) mempertahankan keberadaan menteri koordinator dengan 4 orang pada periode pertama dan 3 orang pada periode kedua. Presiden Joko Widodo juga membentuk 4 menteri koordinator dalam dua periode pemerintahannya. Presiden Prabowo Subianto, usai dilantik pada 20 Oktober 2024, membentuk Kabinet Merah Putih yang terdiri dari 7 menteri koordinator.[3]

Dari masa Kabinet Kerja III pemerintahan Presiden Soekarno sampai Kabinet Merah Putih pemerintahan Presiden Prabowo, keberadaan menteri koordinator selalu ada meskipun jumlahnya berbeda-beda dalam setiap susunan kabinet. Jumlah menteri koordinator disesuaikan dengan kebutuhan Presiden untuk menjalankan fungsi koordinasi dan sinkronisasi antarkementerian agar tidak terjadi tumpang tindih kebijakan dalam penyelenggaraan urusan pemerintahan di bidangnya.[4] Peranan menteri negara memiliki keterkaitan erat dengan sistem pemerintahan, baik sistem pemerintahan parlementer maupun Presidensial.[5] Dalam sistem pemerintahan parlementer, Perdana Menteri memegang kekuasaan pemerintahan

[1] *Keppres No. 94 Tahun 1962*, 1962, diakses pada 15 November 2024, https://peraturan.bpk.go.id/Details/159108/keppres-no-94 tahun-1962.

[2] Sekretariat Kabinet RI, “Sekretariat Kabinet Republik Indonesia | Kabinet Kerja IV | Sekretariat Kabinet Republik Indonesia,” 2024 diakses pada 15 November 2024, https://setkab.go.id/kabinet-kerja-iv/ .

[3] *Ibid*

[4] *UU No. 39 Tahun 2008*, 2008, https://peraturan.bpk.go.id/Details/39719/uu-no-39-tahun-2008.

[5] Muliadi Anangkota, “KLASIFIKASI SISTEM PEMERINTAHAN (Perspektif Pemerintahan Modern Kekinian),” *CosmoGov: Jurnal Ilmu Pemerintahan* 3, no. 2 (7 Oktober 2017): 148–52, https://doi.org/10.24198/COSMOGOV.V3I2.14725.

tertinggi dan membawahi para menteri. Kemudian dalam sistem pemerintahan Presidensial menghendaki kedudukan Presiden sebagai kepala negara sekaligus kepala pemerintahan.[6] Dalam sistem pemerintahan Indonesia, Presiden memegang kekuasaan pemerintahan (Pasal 4 ayat (1) UUD NRI Tahun 1945). Kemudian Presiden dalam menjalankan pemerintahan dibantu oleh satu orang Wakil Presiden (Pasal 4 ayat (2) UUD NRI Tahun 1945). Selain dibantu oleh satu orang Wakil Presiden, Presiden juga dibantu oleh menteri-menteri negara. Kementerian negara berfungsi untuk membantu Presiden dalam menyelenggarakan urusan tertentu dalam pemerintahan.

Penunjukan menteri merupakan hak prerogatif yang diberikan konstitusi kepada Presiden untuk memilih pembantu-pembantunya dalam menjalankan fungsi pemerintahan.[7] Hak prerogatif dapat diartikan sebagai hak orisinil Presiden sebagai kepala negara dalam menentukan hal-hal yang bersifat kenegaraan dan tidak dapat dicampuradukkan dengan unsur kekuasaan lain.[8] Sementara itu dalam melaksanakan tugas dan wewenangnya, seorang menteri bertanggung jawab sepenuhnya kepada Presiden sebagai kepala pemerintahan tertinggi.[9] Berbeda halnya dengan sistem pemerintahan parlementer, pembentukan kabinet diberikan sepenuhnya kepada Perdana Menteri, tetapi para menteri bertanggung jawab bukan kepada perdana menteri melainkan kepada legislatif.[10]

Pembentukan kementerian setelah berlakunya Undang-Undang Nomor 39 Tahun 2008 tentang Kementerian Negara (selanjutnya disebut UU No. 39/2008) memberikan beberapa batasan kepada Presiden dalam menggunakan hak prerogatifnya. Undang-undang a quo memberikan batasan jumlah kepada Presiden dalam membentuk kementerian negara sebanyak 34 (tiga puluh empat). Pembentukan, pengubahan, dan pembubaran kementerian negara tidak lagi sepenuhnya menjadi hak prerogatif Presiden karena membutuhkan pertimbangan

[6] SB Praptadina M Rizaldi, "Jurnal Peradilan Indonesia Menakar Partisipasi Publik dalam Mengawasi Kinerja Aparat Penegak Hukum Pada Persidangan Pidana," t.t., diakses 28 Mei 2025.
[7] Andri Yanto and Harry Setya Nugraha, "Redesain Pengisian Jabatan Menteri Dalam Sistem Presidensial Di Indonesia," *PROGRESIF: Jurnal Hukum* 15, no. 2 (2021): 130–53.
[8] Rahyunir Rauf, "Posisi Dewan Perwakilan Rakyat Daerah Dalam Sistem Pemerintah Daerah" (Riau: Marpoyan Tujuh Publishing, 2016).
[9] Ni'matul Huda, "Kedudukan Dan Materi Muatan Peraturan Menteri Dalam Perspektif Sistem Presidensial," *Jurnal Hukum Ius Quia Iustum* 28, no. 3 (2021): 550–71.
[10] Imam Sukadi, "Sistem Pemerintahan Indonesia Dan Implikasinya Dalam Kehidupan Berbangsa Dan Bernegara," *Jurnal Hukum Bisnis Bonum Commune* 4, no. 1 (2021): 119–28.

dan persetujuan Dewan Perwakilan Rakyat (DPR). Selain itu, kementerian negara dibagi atas tiga kelompok kementerian: (1) kementerian yang nomenklaturnya secara tegas disebutkan dalam UUD NRI Tahun 1945, (2) kementerian yang menjalankan urusan pemerintahan yang ruang lingkupnya disebutkan dalam UUD NRI Tahun 1945, dan (3) kementerian yang menjalankan urusan pemerintahan dalam rangka penajaman, koordinasi, dan sinkronisasi program pemerintah.[11]

Pengelompokkan kementerian tersebut secara tidak langsung akan berdampak terhadap tata cara pembentukan, pengubahan, dan pembubarannya. Kementerian yang secara langsung disebutkan oleh UUD NRI Tahun 1945 tidak dapat dibubarkan.[12] Kementerian yang urusannya disebutkan dalam UUD NRI Tahun 1945 dapat diubah maupun dibubarkan apabila disetujui oleh DPR. Sedangkan untuk kementerian dalam konteks penajaman dan koordinasi ketika ingin diubah maupun dibubarkan harus disertai dengan pertimbangan dari DPR.[13] Selain 3 (tiga) kelompok kementerian yang sudah disebutkan tadi, masih terdapat entitas kementerian yang dapat dibentuk oleh Presiden untuk melaksanakan fungsi sinkronisasi dan koordinasi antar kementerian. Untuk menjalankan fungsi tersebut Presiden membentuk Kementerian koordinator dengan tugas menyelenggarakan koordinasi, sinkronisasi, dan pengendalian urusan kementerian dalam penyelenggaraan pemerintahan di bidangnya. Tugas tersebut dilaksanakan untuk memberikan dukungan, pelaksanaan inisiatif, dan pengendalian kebijakan berdasarkan agenda pembangunan nasional dan penugasan Presiden. Tugas dan wewenang yang diberikan kepada kementerian koordinator tersebut akan menimbulkan beberapa persoalan jika tidak dikelola secara baik oleh Presiden.

Misalnya, kerap terjadi sengketa wewenang dalam menyelenggarakan tugas koordinasi dan sinkronisasi di antara menteri koordinator, seperti yang pernah diberitakan oleh media CNBC Indonesia tentang perbedaan pendapat antara Menteri Koordinator Perekonomian (Menko Perekonomian) dan Menteri Koordinator Kemaritiman dan Investasi (Menko Marves) mengenai kenaikan pajak hiburan sebesar 40%-75%.[14] Perbedaan pendapat tersebut terjadi akibat keduanya

[11] *UU No. 39 Tahun 2008.*
[12] *UU No. 39 Tahun 2008.*
[13] *UU No. 39 Tahun 2008.*
[14] Arrijal Rachman and Rosseno Aji Nugroho, "Beda Airlangga, Luhut, Dan Hotman Soal Pajak Hiburan 40%," CNBC Indonesia, n.d., diakses pada 15 November 2024,

memiliki kesamaan kewenangan terutama berkaitan dengan urusan pertumbuhan ekonomi sehingga memunculkan perbedaan pendapat antara sesama pemegang kewenangan koordinasi. Bahkan saat ini, muncul wacana untuk menambah jumlah kementerian negara yang berpotensi diikuti oleh penambahan kementerian koordinator. Hal ini dimungkinkan karena pembentukan kementerian koordinator sepenuhnya merupakan hak prerogatif Presiden, sehingga tidak ada batasan yang menghalangi Presiden untuk membentuk kementerian koordinator baru.

Namun demikian, sinkronisasi dan koordinasi yang dikelola dengan baik dapat mempercepat penyelesaian masalah dan pelaksanaan kebijakan pemerintah. Contohnya adalah penanganan pandemi COVID-19 yang melibatkan lintas kementerian koordinator yang dibentuk berdasarkan Perpres Nomor 108 Tahun 2020. Dalam struktur ini, Menteri Koordinator Bidang Perekonomian ditunjuk sebagai Ketua, didampingi oleh enam Wakil Ketua, yaitu Menko Maritim dan Investasi, Menko Polhukam, Menko PMK, Menteri Keuangan, Menteri Kesehatan, dan Menteri Dalam Negeri. Model koordinasi ini terbukti efektif dalam menangani pandemi COVID-19. Dengan pengaturan koordinasi yang jelas, setiap kementerian dapat menjalankan fungsinya masing-masing namun tetap terarah pada tujuan bersama, yakni penanganan pandemi. Pengelolaan koordinasi yang tepat tidak hanya meningkatkan efisiensi pelaksanaan kebijakan, tetapi juga memperkuat integrasi antar-lembaga, yang pada akhirnya mendukung stabilitas dan kemajuan pemerintahan secara keseluruhan. Oleh karena itu, keberadaan kementerian koordinator ibarat dua sisi mata uang: di satu sisi dapat memperlambat proses kebijakan apabila tidak dikelola dengan baik, namun di sisi lain dapat mendorong tercapainya seluruh kebijakan pemerintah secara efektif.

Penelitian sebelumnya berjudul "Kedudukan Menteri Koordinator dalam Sistem Ketatanegaraan Indonesia Menurut Undang-Undang Nomor 39 Tahun 2008 tentang Kementerian Negara" oleh Tandi Arion, Siska Marbun, dan Rados Banjarnahor, [15] serta "Kedudukan Menteri Koordinator dalam Sistem

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https://www.cnbcindonesia.com/news/20240123105904-4-508223/beda-airlangga-luhut-dan-hotman-soal-pajak-hiburan-40.

[15] Tandi Arion dan Retno Saraswati, "Kedudukan Menteri Koordinator Dalam Sistem Ketatanegaraan Indonesia Menurut Undang-Undang Nomor 39 Tahun 2008 Tentang Kementerian Negara," *Diponegoro Law Journal* 5, no. 3 (13 Juli 2016): 1–16, https://doi.org/10.14710/DLJ.2016.12580.

Ketatanegaraan Indonesia" oleh Anggraini D.T. Ingkiriwang, [16] sama-sama membahas kedudukan dan fungsi menteri koordinator dalam sistem Presidensial Indonesia berdasarkan UU No. 39 Tahun 2008. Namun, kedua penelitian tersebut belum mengkaji perubahan mendasar pasca berlakunya UU No. 61 Tahun 2024 yang menghapus batas jumlah kementerian dan membuka ruang perluasan struktur kabinet. Selain itu, tidak terdapat analisis perbandingan dengan negara lain yang menganut sistem Presidensial, maupun rekomendasi konkret terkait desain koordinasi pemerintahan yang ideal. Penelitian ini mengisi kekosongan tersebut dengan menganalisis secara normatif dan komparatif desain kelembagaan koordinasi di Indonesia dan negara lain. Dari penjabaran latar belakang di atas, maka dirumuskan 2 (dua) rumusan masalah dari penelitian ini, yakni: Pertama, bagaimana relevansi peran kementerian koordinator dalam menjalankan fungsi koordinasi antarkementerian? Kedua, bagaimana desain kebijakan untuk penguatan fungsi koordinasi urusan pemerintahan?

METODE PENELITIAN

Jenis penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan komparatif. Penelitian yuridis normatif didefinisikan sebagai penelitian yang berfokus pada data sekunder belaka dan berfokus pada data kepustakaan.[17] Penelitian ini menggunakan pendekatan perundang-undangan untuk menganalisis topik berdasarkan peraturan perundang-undangan yang berlaku saat ini, khususnya Undang-Undang tentang Kementerian Negara (UU No.39/2008 dan UU No. 61/2024). Selain itu, penelitian ini juga menggunakan pendekatan konseptual untuk mengkaji gagasan-gagasan teoritis mengenai lembaga koordinatif dalam sistem pemerintahan Presidensial. Pendekatan komparatif turut digunakan dengan membandingkan praktik kelembagaan di beberapa negara lain, yaitu Amerika Serikat, Filipina, Brasil, dan Korea Selatan. Negara-negara tersebut dipilih karena sama-sama menganut sistem

[16] Anggraini D T Ingkiriwang, “Kedudukan Menteri Koordinator Dalam Sistem Ketatanegaraan Indonesia,” *LEX PRIVATUM* 13, no. 2 (2024).

[17] Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).

pemerintahan presidensial, memiliki struktur kelembagaan koordinatif, serta menyediakan akses hukum yang memadai untuk dianalisis secara normatif.

PEMBAHASAN

A. Relevansi Peran Kementerian Koordinator dalam Menjalankan Fungsi Koordinasi Antarkementerian

Kementerian Negara adalah perangkat pemerintah yang membidangi urusan tertentu dalam pemerintahan yang berkedudukan di Ibukota Negara dan bertanggungjawab kepada Presiden.[18] Nomenklatur kementerian sendiri telah mengalami perubahan mulai dari istilah "departemen", "kantor menteri negara", hingga "kantor menteri koordinator".[19] Secara yuridis hal ini dapat dipahami karena sebelumnya dalam ketentuan Pasal 17 ayat (3) UUD 1945 (sebelum amandemen) menyebutkan bahwa "Menteri-menteri itu memimpin departemen pemerintah". Setelah amandemen UUD NRI 1945, ketentuan yang mengatur terkait kementerian berubah menjadi "Setiap menteri membidangi urusan tertentu dalam pemerintahan" dan juga setelah disahkan UU No. 39/2008 dan PP No. 47/2009, semua istilah resmi untuk kementerian kembali disederhanakan menjadi "kementerian" saja, sesuai dengan praktik pada awal masa kemerdekaan. Selain itu, jumlah kementerian itu sendiri juga mengalami perubahan sejak awal kemerdekaan.[20] Setelah lahirnya UU No. 39/2008, jumlah kementerian dibatasi paling banyak berjumlah 34 kementerian.

Berlakunya ketentuan UU No. 39/2008 melahirkan 2 (dua) arus pandangan berbeda, yakni kelompok pertama sebagai pendukung dengan alasan efektifitas dan efisiensi, sedangkan kelompok kedua menganggap sebagai pembatasan terhadap hak prerogatif Presiden. Gagasan perubahan terhadap undang-undang kementerian negara akhirnya direalisasikan menjelang akhir tahun 2024 dengan berlakunya Undang-Undang Nomor 61 Tahun 2024 tentang Perubahan atas Undang-Undang Nomor 39 Tahun 2008 tentang Kementerian Negara (selanjutnya disebut UU No. 61/2024). Salah satu perubahan penting dalam undang-undang tersebut yaitu tidak

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[18] *UU No. 39 Tahun 2008.*

[19] anggraini D T Ingkiriwang, "Kedudukan Menteri Koordinator Dalam Sistem Ketatanegaraan Indonesia," *LEX PRIVATUM* 13, no. 2 (2024).

[20] *Ibid*

ada lagi pembatasan jumlah kementerian, tetapi ditetapkan sesuai dengan kebutuhan penyelenggaraan pemerintahan oleh Presiden.

Setiap menteri yang telah diangkat untuk membantu Presiden akan membidangi urusan tertentu dalam pemerintahan. Dalam Pasal 4 UU No.39/2008 membagi urusan tertentu dalam pemerintahan menjadi 3 (tiga) kelompok kementerian. Pertama, disebut kementerian Kelompok I membidangi urusan pemerintahan yang nomenklatur kementeriannya secara tegas disebutkan dalam UUD NRI 1945. Berdasarkan ketentuan Pasal 8 ayat (3) UUD NRI 1945, kementerian tersebut adalah Menteri Luar Negeri, Menteri Dalam Negeri, dan Menteri Pertahanan yang akan menjadi pelaksana tugas kePresidenan secara bersamaan jika Presiden dan Wakil Presiden mangkat, berhenti, diberhentikan atau tidak dapat melakukan kewajibannya dalam masa jabatannya secara bersamaan. Kedua, kementerian Kelompok II membidangi urusan pemerintahan yang ruang lingkupnya disebutkan secara langsung dalam UUD NRI Tahun 1945. Kementerian yang urusan pemerintahan disebutkan dalam UUD NRI Tahun 1945 meliputi urusan agama, hukum, keuangan, keamanan, hak asasi manusia, pendidikan, kebudayaan, kesehatan, sosial, ketenagakerjaan, industri, perdagangan, pertambangan, energi, pekerjaan umum, transmigrasi, transportasi, informasi, komunikasi, pertanian, perkebunan, kehutanan, peternakan, kelautan, dan perikanan.[21] Pembentukan, penggabungan, dan pembubaran kementerian yang urusan pemerintahannya disebutkan dalam UUD NRI Tahun 1945 mengharuskan adanya persetujuan DPR.

Ketiga, kementerian Kelompok III membidangi urusan pemerintahan dalam rangka penajaman, koordinasi, dan sinkronisasi program pemerintah. Kementerian yang bersifat penajaman, koordinasi, dan sinkronisasi pemerintah meliputi urusan perencanaan pembangunan nasional, aparatur negara, kesekretariatan negara, badan usaha milik negara, pertanahan, kependudukan, lingkungan hidup, ilmu pengetahuan, teknologi, investasi, koperasi, usaha kecil dan menengah, pariwisata, pemberdayaan perempuan, pemuda, olahraga, perumahan, dan pembangunan kawasan atau daerah tertinggal. Pembentukan, penggabungan, dan pembubaran kementerian ini hanya perlu mengantongi pertimbangan DPR saja, sehingga

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[21] *UU No. 39 Tahun 2008.*

kedudukannya dapat dimaksimalkan oleh Presiden dalam melaksanakan hak prerogatifnya pada pembentukan kementerian negara. [22] Pengelompokan tiga kementerian negara apabila dilihat dari pembentukan dan pembubarannya cenderung bersifat hierarkis. Meskipun demikian apabila dilihat dari segi strukturnya, seluruh kementerian negara memiliki kedudukan setara karena berada di bawah dan bertanggungjawab kepada Presiden.

Selain tiga kelompok kementerian tersebut, Presiden juga dapat membentuk Kementerian koordinator apabila diperlukan untuk mengatur dan mengkoordinasikan urusan-urusan pemerintahan tertentu yang dijalankan oleh Kementerian Negara. [23] Saat ini Kementerian koordinator berjumlah tujuh kementerian, diantaranya Kementerian koordinator bidang Politik dan Keamanan, Kementerian koordinator bidang Hukum Hak Asasi Manusia, Imigrasi dan Pemasyarakatan, Kementerian koordinator bidang Perekonomian, Kementerian koordinator bidang Pembangunan Manusia dan Kebudayaan, Kementerian koordinator bidang Infrastruktur dan Pembangunan Kewilayahan, Kementerian koordinator bidang Pemberdayaan Masyarakat, dan Kementerian koordinator bidang Pangan. Seluruh Kementerian koordinator memiliki tugas utama yang meliputi koordinasi, sinkronisasi, dan pengendalian urusan pemerintahan dalam bidangnya masing-masing. Mereka bertanggung jawab untuk mendukung pelaksanaan inisiatif dan kebijakan yang sesuai dengan agenda pembangunan nasional dan penugasan dari Presiden. Dalam menjalankan tugasnya, setiap kementerian memiliki fungsi-fungsi khusus yang meliputi koordinasi kebijakan, pengelolaan isu-isu terkait, pengawalan program prioritas nasional, penyelesaian isu antar kementerian, pengelolaan barang milik negara, koordinasi administratif, pembinaan, pengawasan, serta pelaksanaan fungsi lain yang diberikan oleh Presiden.Dalam menjalankan tugasnya secara teknis, kementerian harus mengembangkan peta bisnis proses yang mencerminkan hubungan kerja yang merefleksikan hubungan kerja yang efisien dan terintegrasi antar unit organisasi di lingkungan internal masing-masing. Ketentuan ini secara khusus relevan bagi

[22] Faishal Taufiqurrahman and others, "Urgensi Perluasan Alasan Dan Pemohon Dalam Permohonan Pembubaran Partai Politik Di Indonesia Pasca Reformasi" (Universitas Islam Indonesia, 2018).
[23] *UU No. 39 Tahun 2008.*

kementerian koordinator, di mana penyusunan peta bisnis proses tidak dilakukan secara mandiri, melainkan melalui mekanisme koordinasi dengan kementerian-kementerian yang berada dalam lingkup tugas dan fungsinya. Ini berarti bahwa penyusunan peta bisnis oleh Kementerian koordinator didasarkan pada koordinasi lintas kementerian yang berada di bawah tanggung jawabnya atau yang relevan dengan bidang kerjanya masing-masing.[24] Singkatnya, masing-masing kementerian koordinator memiliki fungsi yang tidak jauh berbeda yaitu memastikan masing-masing kementerian yang berada di bawah koordinasinya tidak saling tumpang tindih dalam menentukan kebijakan. Meskipun kewenangan kementerian koordinator terbatas pada aspek koordinasi dan sinkronisasi tanpa otoritas eksekutif yang dominan sebagaimana dimiliki kementerian teknis, posisi Menteri Koordinator tetap memiliki bobot strategis dalam konfigurasi politik pemerintahan. Hal ini tercermin, antara lain, dalam distribusi portofolio kementerian kepada partai-partai politik koalisi, di mana posisi Menteri Koordinator kerap kali diasosiasikan dengan porsi politik yang setara dengan dua portofolio kementerian teknis.[25] Selain fungsi koordinatif, kementerian koordinator juga berperan dalam mengawasi kinerja kementerian-kementerian di bawahnya untuk memastikan pelaksanaan tugas berjalan secara optimal.[26]

Dari struktur kelembagaan Kementerian koordinator, tampak adanya disparitas kelembagaan apabila dibandingkan dengan tiga kelompok kementerian lainnya, khususnya kelompok I yang nomenklaturnya disebutkan dalam UUD NRI Tahun 1945 dan kelompok III yang membidangi urusan pemerintahan dalam rangka penajaman, koordinasi, dan sinkronisasi program pemerintah. Sementara itu, Kementerian koordinator tidak memiliki dasar normatif yang secara eksplisit mengatur nomenklatur maupun ruang lingkup tugasnya dalam konstitusi. Sedangkan dalam tataran praktik, kedudukan Kementerian koordinator tampak lebih tinggi dibanding kementerian lainnya karena memiliki fungsi koordinasi

[24] Martinus Tukiran, Nugraheni Puspita Sari, and Anisa Dewi Mentari, Penyusunan SOP Administrasi Pemerintah: Berdasarkan Peta Proses Bisnis (PT Kanisius, n.d.).

[25] Media Tempo, Bagi-Bagi Kursi Kabinet Prabowo-Gibran Dan Cawe-Cawe Jokowi I Bocor Alus Politik (Jakarta, 2024), diakses pada 15 November 2024, https://www.youtube.com/watch?v=1eZVMgnfWTU.

[26] Shabine Charoline Sonia, "Strategi Komunikasi Kementerian Koordinator Bidangkemaritiman Dan Investasi Dalam Proses Monitoring Dan Evaluasi Capaian Tujuan Pembangunan Berkelanjutan (Tpb/Sdgs) Tahun 2021," 7 Juni 2023.

terhadap sejumlah kementerian. Sebagai ilustrasi, Kementerian koordinator Bidang Politik dan Keamanan (Kemenko Polkam) mempunyai tugas mengkoordinasikan Kementerian Luar Negeri, Kementerian Dalam Negeri, dan Kementerian Pertahanan.[27] Padahal, ketiga kementerian tersebut memiliki peran strategis yang sangat penting, termasuk sebagai pelaksana tugas kePresidenan apabila Presiden dan Wakil Presiden tidak dapat melakukan kewajibannya dalam masa jabatannya secara bersamaan.

Selain peran strategis tersebut, nomenklatur ketiga kementerian ini juga tidak dapat diubah maupun dibubarkan karena bersifat konsitusional bila dibandingkan dengan kementerian lain termasuk kementerian kordinator. Kendati demikian, keberadaan Kemenko Polkam menyebabkan ketiga kementerian tersebut tetap membutuhkan koordinasi yang intensif dalam pelaksanaan fungsi pemerintahan, khususnya dengan kementerian dan instansi lain yang berada di bawah koordinasi menteri politik dan keamanan. Kemudian dalam Pasal 7 Perpres No.141/2024 menyebutkan adanya frasa "instansi lain yang dianggap perlu" juga termasuk di bawah koordinasi Kemenko Polkam, menunjukkan bahwa jangkauan koordinasi dan pengawasan di bidang politik dan keamanan sangat luas.

Selanjutnya, terdapat persinggunga fungsi dan kewenangan antara kementerian kelompok III dan kementerian koordinator. Kementerian kelompok III bertanggung jawab atas koordinasi pelaksanaan tugas, pembinaan, dan pemberian dukungan administratif kepada semua bagian organisasi di bawah naungan kementerian. Di sisi lain, peran menteri koordinator adalah untuk mengkoordinasikan dan menyelaraskan perumusan, penetapan, dan pelaksanaan kebijakan Kementerian/Lembaga yang berkaitan dengan isu di bidangnya.[28] Perbedaan mendasar antara Kementerian kelompok III dan Kementerian koordinator terletak pada wilayah koordinasinya. Kementerian kelompok III hanya bertanggung jawab untuk mengkoordinasikan antar kementerian yang berada dalam kelompoknya, sedangkan kementerian koordinator memiliki kewenangan untuk melakukan koordinasi dengan kementerian dan lembaga pemerintah non-

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[27] Perpres No. 141 Tahun 2024," diakses 28 Mei 2025, https://peraturan.bpk.go.id/Details/306461/perpres-no-141-tahun-2024.

[28] "Perpres No. 140 Tahun 2024," diakses 28 Mei 2025, https://peraturan.bpk.go.id/Details/305099/perpres-no-140-tahun-2024.

kementerian, sehingga perannya lebih bersifat lintas sektoral. Dalam perspektif teori birokrasi, hal ini mencerminkan diferensiasi fungsi koordinasi yang bersifat vertikal pada kementerian kelompok III dan koordinasi horizontal pada kementerian koordinator.

Dalam perbandingan dengan wilayah koordinasi kementerian Kelompok III, terlihat perbedaan yang signifikan dalam cakupan tanggung jawab dan pengaruhnya. Kementerian kelompok III, meskipun bertanggung jawab atas koordinasi tugas dan dukungan administratif di dalam lingkup kementerian, memiliki batasan yang jelas dalam jangkauan koordinasinya. Fokusnya terbatas pada kementerian-kementerian yang terkait dengan kelompoknya, tanpa meluas ke lembaga-lembaga non-kementerian. Sebaliknya, kementerian koordinator, seperti yang disebutkan sebelumnya, ruang lingkup tanggung jawab Kementerian koordinator jauh lebih luas, memungkinkan pengelolaan kebijakan yang terintegrasi di berbagai sektor pemerintahan, yang penting untuk menjamin efektivitas dan efisiensi penyelenggaraan negara.

Namun demikian, UU No. 61/2024 perlu mendapat perhatian kritis, terutama karena penghapusan batas jumlah kementerian berpotensi menimbulkan perluasan struktur birokrasi yang tidak terkendali apabila tidak disertai mekanisme evaluasi kelembagaan yang ketat. Di satu sisi, ketentuan ini memperkuat fleksibilitas Presiden dalam membentuk kementerian sesuai kebutuhan pembangunan nasional. Akan tetapi, di sisi lain, tidak adanya batas kuantitatif berisiko mendorong pembentukan kementerian koordinator baru secara politis alih-alih fungsional, sehingga dapat menimbulkan tumpang tindih kewenangan dan melemahkan prinsip efisiensi kelembagaan. Selain itu, penambahan kementerian baru juga berpotensi mendorong terbentuknya kementerian koordinator tambahan untuk mengakomodasi kebutuhan koordinasi antarkementerian. Kekhawatiran ini dapat dijelaskan karena 2 (dua) alasan antara lain: pertama, kementerian koordinator yang berjumlah banyak menyebabkan terjadinya overlapping fungsi koordinasi dan berpotensi menghambat penyelenggaraan pemerintahan. Kedua, memunculkan hierarki semu antara kementerian koordinator dengan kementerian lainnya yang berpotensi menghambat jalannya eksekusi program pemerintahan.

Jika dikaji dari perspektif teori *good governance*, perluasan kelembagaan negara harus memenuhi prinsip-prinsip dasar seperti efisiensi, akuntabilitas, transparansi, dan orientasi pada pelayanan publik.[29] Tanpa batas yang jelas dan sistem evaluasi yang ketat, pengembangan struktur pemerintahan berisiko melanggar prinsip efisiensi dan akuntabilitas tersebut. Oleh karena itu, UU No. 61/2024 seharusnya disertai dengan penguatan norma akuntabilitas kelembagaan, agar perluasan kementerian benar-benar berorientasi pada kepentingan pelayanan publik dan bukan sekadar kepentingan kekuasaan. Dengan demikian, keberadaan Kementerian koordinator seharusnya dapat memberikan efektivitas atas kebijakan-kebijakan kementerian agar tidak saling tumpang tindih dan bisa terkoordinasi dengan baik dengan lintas kementerian. Jangan sampai keberadaan kementerian koordinator justru yang menjadi faktor penghambat jalannya efektivitas pelaksanaan urusan pemerintahan.

B. Rekomendasi Kebijakan untuk Penguatan Fungsi Koordinasi Urusan Pemerintahan Indonesia

Sistem koordinasi kementerian negara saat ini masih dipegang oleh Menteri Koordinator yang cenderung menguasai koordinasi antara Menteri dengan Presiden sehingga menyebabkan kesenjangan koordinasi antara para menteri dan Presiden. Selain itu, konteks adanya menteri koordinator juga menyebabkan hirarki semu antar kementerian negara. Padahal secara kedudukan, keseluruhan menteri memiliki kedudukan yang sama, bahkan dalam UU No. 39 Tahun 2008 tentang Kementerian Negara, terdapat pengelompokkan kementerian yang mana menteri koordinator menjadi entitas sendiri yang disebutkan dalam Pasal 14 UU No.39/2008. Sedangkan dalam pelaksanaan kewenangannya justru seakan-akan memiliki kewenangan yang "membawahi" menteri yang lain sehingga hal ini perlu untuk diubah mengenai konteks sistem koordinasi mengenai urusan pemerintahan di tingkat kementerian. Dengan demikian, desain baru mengenai koordinasi antar kementerian perlu dilakukan untuk mengurangi beberapa anomali koordinasi yang terjadi saat ini.

[29] Saggaf, Said, Muhammad Mario Said, and Widiawati Said Saggaf. *Reformasi Pelayanan Publik di Negara Berkembang*. Vol. 1. Sah Media, 2018.

Konteks Amerika Serikat menjadi tempat lahirnya sistem pemerintahan Presidensial, menghendaki adanya pimpinan tunggal kekuasaan eksekutif, yakni Presiden yang didampingi oleh seorang Wakil Presiden dalam memimpin jalannya pemerintahan negara.[30] Berbeda halnya dengan Indonesia, Wakil Presiden Amerika Serikat memiliki kedudukan yang lebih sentral ketimbang Wakil Presiden Indonesia.[31] Ketika melihat dari sistem Amerika Serikat, Wakil Presiden Amerika Serikat menjadi bagian dari kabinet yang memiliki tugas dalam hal memimpin rapat kabinet dan melakukan fungsi koordinasi dengan anggota kabinet lainnya.[32] Hal tersebut terjadi karena Wakil Presiden memiliki kedudukan tertinggi kedua dalam konteks kekuasaan eksekutif di Amerika Serikat.[33] Selain memiliki kedudukan yang sentral dalam kekuasaan eksekutif, Wakil Presiden memiliki fungsi koordinasi dalam hal hubungan eksekutif dan legislatif dilihat dari kedudukan wakil Presiden di Senat Amerika Serikat.[34] Ketua Senat diisi oleh Wakil Presiden sebagaimana disebutkan dalam *Article I Section 3 Paragraph 4 Constitution of USA* yang mana berbunyi bahwa "*The Vice President of United States shall be President of the Senate, but shall have no vote, unless they be equally divided*". Konteks pengaturan tersebut menghendaki bahwa fungsi wakil Presiden tidak hanya pada kekuasaan eksekutif, namun juga hingga kekuasaan legislatif walau perannya hanya sebagai pengisi suara ketika senat memiliki suara yang berimbang, maka wakil Presiden bisa masuk untuk mematahkan suara yang seimbang tersebut. Bahkan di beberapa situasi, Wakil Presiden dapat menjadi otonomi atau mengeluarkan kebijakan tanpa persetujuan dari Presiden. Namun hal ini biasanya dilaksanakan pada saat adanya pembagian awal antara Presiden dan Wakil Presiden. Hal ini memperlihatkan bahwa betapa besarnya peran Wakil Presiden dalam melaksanakan fungsi koordinasi di level departemen atau tingkat kementerian di kekuasaan eksekutif.

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[30] Syofyan Hadi, "Fungsi Legislasi Dalam Sistem Pemerintahan Presidensil (Studi Perbandingan Indonesia Danamerika Serikat)," *DiH: Jurnal Ilmu Hukum* 9, no. 18 (2013): 240040.

[31] Michael Lynch et al., "The Vice President in the US Senate: Examining the Consequences of Institutional Design," in *Congress & the Presidency*, vol. 45, 2018, 145–65.

[32] Pauline Eadie and Chester Yacub, "COVID-19 and Aid Distribution in the Philippines: A Patron-Clientelist Explanation," *Third World Quarterly* 45, no. 1 (2024): 229–46.

[33] Harold C Relyea, "The Law: The Executive Office of the Vice President: Constitutional and Legal Considerations," *Presidential Studies Quarterly* 40, no. 2 (2010): 327–41.

[34] Relyea.

Namun demikian, pelaksanaan utama fungsi koordinasi dan sinkronisasi urusan kementerian/departemen dalam sistem pemerintahan Amerika Serikat secara struktural dijalankan oleh *Executive Office of the President* (EOP), yang dibentuk melalui ketentuan *Reorganization Plan No. 1 of 1939* dan kemudian ditegaskan melalui *Title 3 of the United States Code*.[35] EOP merupakan badan administratif Presiden yang terdiri dari berbagai unit termasuk *White House Chief of Staff, Office of Cabinet Affairs, Office of Management and Budget, dan National Security Council*, yang semuanya menjalankan peran koordinatif kebijakan lintas sektor.[36]

Dasar hukum pendirian EOP sebagaimana tercantum dalam dokumen Reorganization Plan No. 1 of 1939 yang singkatnya menyatakan bahwa, *"The Executive Office of the President of the United States is hereby established to provide the President with the support needed to govern effectively".* (*Executive Office of the President* dari Amerika Serikat dengan ini dibentuk untuk memberikan dukungan yang diperlukan kepada Presiden dalam rangka pemerintahan yang efektif). Dalam praktiknya, White House Chief of Staff memainkan peran kunci dalam menyaring informasi dan kebijakan yang masuk ke Presiden, mengoordinasikan agenda pemerintah, serta memastikan jalannya komunikasi dan pelaksanaan kebijakan antardepartemen berjalan selaras. Selain itu, *Office of Cabinet Affairs* bertugas menyelenggarakan rapat kabinet dan menjaga konsistensi agenda kebijakan Presiden di seluruh badan eksekutif.

Dalam konteks sistem pemerintahan Indonesia yang memiliki struktur kementerian yang besar dan kompleks, model Amerika Serikat tidak dapat diadopsi secara langsung, tetapi memberikan pelajaran penting bahwa koordinasi yang efektif tidak selalu memerlukan pembentukan kementerian baru. Penguatan lembaga seperti Sekretariat Kabinet, Kantor Staf Presiden, atau unit-unit pendukung Presiden lainnya bisa diarahkan untuk mengadopsi semangat koordinasi cepat dan terarah ala EOP, namun tetap dalam kerangka akuntabilitas dan kelembagaan yang sesuai dengan prinsip negara hukum Indonesia.

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[35] "*REORGANIZATION PLAN NO. I OF 1939,"* diakses 26 Mei 2025, https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5a-node35-leaf37&num=0&edition=prelim.

[36] Executive Office of the President," The White House, diakses 26 Mei 2025, https://www.whitehouse.gov/eop/.

Negara lain yang menggunakan sistem pemerintahan Presidensial berikutnya adalah Negara Filipina. Baik Indonesia maupun Filipina sama-sama menempatkan Presiden berfungsi sebagai Kepala Negara dan Kepala Pemerintahan. Melihat dalam pelaksanaan fungsi koordinasi pada level kabinet/departemen, Filipina memiliki satu departemen yang memiliki fungsi sangat sentral dalam menangani koordinasi pada level kekuasaan eksekutif di samping Presiden dan Wakil Presiden.[37] Departemen tersebut bernama *Executive Secretary* atau Sekretaris Eksekutif yang memiliki salah satu fungsi untuk menyediakan koordinasi secara keseluruhan dalam pelaksanaan kantor eksekutif.[38] Bahkan fungsi koordinasi ini bisa merambah hingga kepada tanggung jawab administratif *Executive Secretary* kepada urusan-urusan yang ada dan berasal dari berbagai departemen dan lembaga pemerintahan.

Hal tersebut ditegaskan dalam *Book III Title III Chapter 9 Section 27 Executive Order No. 292 concerning Administrative Code of Philippines yang mana berbunyi bahwa "The Executive Secretary shall, subject to the control and supervision of the President, carry out the functions assigned by law to the Executive Office and shall perform such other duties as may be delegated to him. He shall: (1) Directly assist the President in the management of the affairs pertaining to the Government of the Republic of the Philippines; …. (3) Decide, for and in behalf of the President, matters not requiring personal Presidential attention;…. (5) Exercise supervision, in behalf of the President, over the various agencies under the Office of the President;…… (7) Provide overall coordination in the operation of the Executive Office;….. (9) Have administrative responsibility for matters in the Office of the President coming from the various departments and agencies of government; and (16) Provide secretarial and clerical services for the President, the Cabinet, the Council of State, and other advisory bodies to the President* (Sekretaris Eksekutif harus, tunduk pada kendali dan pengawasan Presiden, melaksanakan fungsi-fungsi yang ditugaskan oleh hukum kepada Kantor Eksekutif dan harus melaksanakan tugas-tugas lain yang dapat didelegasikan

[37] Eadie and Yacub, "COVID-19 and Aid Distribution in the Philippines: A Patron-Clientelist Explanation."
[38] Paul Chambers, "Superficial Consolidation: Security Sector Governance and the Executive Branch in the Philippines Today," in *Security Sector Reform in Southeast Asia: From Policy to Practice* (Springer, 2014), 102–30.

kepadanya. Dia harus: (1) Secara langsung membantu Presiden dalam pengelolaan urusan-urusan yang berkaitan dengan Pemerintah Republik Filipina; .... (3) Memutuskan, untuk dan atas nama Presiden, hal-hal yang tidak memerlukan perhatian Presiden secara pribadi; .... (5) Melaksanakan pengawasan, atas nama Presiden, terhadap berbagai lembaga di bawah Kantor Presiden;...... (7) Menyediakan koordinasi secara keseluruhan dalam pengoperasian Kantor Eksekutif;..... (9) Memiliki tanggung jawab administratif atas urusan-urusan di Kantor Presiden yang berasal dari berbagai departemen dan lembaga pemerintahan; dan (16) Menyediakan layanan kesekretariatan dan administrasi untuk Presiden, Kabinet, Dewan Negara, dan badan-badan penasihat lainnya kepada Presiden).

Pengaturan yang ada dalam pasal tersebut memang menghendaki adanya posisi *Executive Secretary* lebih tinggi dari departemen yang lain karena memegang kewenangan sentral yang bahkan bisa memutuskan atas nama Presiden dalam hal kebijakan suatu kementerian atau departemen tidak perlu hingga kepada Presiden dalam hal pemutusannya. Selain itu, konteks kewenangan koordinasi juga dipegang olehnya yang mana pada level Presiden dan Wakil Presiden tidak terlalu mengganggu proses jalannya pemerintahan karena sudah dikoordinasikan oleh *Executive Secretary*. Walau dalam hal ini Presiden juga berwenang untuk mengintervensi proses pemerintahan ketika memang menurutnya perlu untuk diurus olehnya sebagai konsekuensi posisinya sebagai kepala pemerintahan.[39] Ketika bukan menjadi hal yang penting baginya, cukup *Executive Secretary* yang memutuskannya atas nama Presiden. Dari penjelasan di atas, dapat dilihat bahwa kewenangannya yang begitu besar menyebabkan *Executive Secretary* dikatakan sebagai *The Little President*.

Model ini memiliki kelebihan berupa kecepatan dalam pengambilan keputusan dan efektivitas dalam menyinkronkan agenda pemerintah tanpa membebani Presiden secara langsung. Namun, model ini juga mengandung kelemahan. Sentralisasi kekuasaan administratif pada satu sosok non-elektif dapat memunculkan potensi penyalahgunaan wewenang serta mengurangi transparansi

[39] A Yanto, HS Nugraha - PROGRESIF: Jurnal Hukum, dan undefined 2021, "Redesain Pengisian Jabatan Menteri Dalam Sistem Presidensial Di Indonesia," *journal.ubb.ac.idA Yanto, HS NugrahaPROGRESIF: Jurnal Hukum, 2021•journal.ubb.ac.id*, diakses 28 Mei 2025, https://journal.ubb.ac.id/progresif/article/download/2508/1664.

dan akuntabilitas. Dalam konteks Indonesia, posisi ini dapat dibandingkan dengan Sekretaris Kabinet atau Menteri Sekretaris Negara, namun belum memiliki kekuatan kelembagaan dan kewenangan sekuat Executive Secretary. Oleh karena itu, model ini dapat menjadi rujukan penting dalam memperkuat kelembagaan koordinasi administratif di lingkungan Istana Negara agar beban koordinasi lintas kementerian tidak selalu bergantung pada Presiden secara langsung.

Brasil sebagai negara yang juga menganut sistem Presidensial, memiliki struktur kelembagaan yang kuat dalam menjalankan fungsi koordinasi pemerintahan melalui institusi bernama *Casa Civil da Presidência da República* atau Rumah Sipil KePresidenan.[40] Lembaga ini dibentuk berdasarkan otoritas Pasal 84 Konstitusi Federal Brasil Tahun 1988 *"Art. 84. Compete privativamente ao Presidente da República: (...) VI - dispor, mediante decreto, sobre: a) organização e funcionamento da administração federal, quando não implicar aumento de despesa nem criação ou extinção de órgãos públicos;"* (Pasal 84. Merupakan kewenangan eksklusif Presiden Republik: (…) VI - mengatur, melalui dekrit, mengenai: a) organisasi dan fungsi administrasi federal, sepanjang tidak menimbulkan peningkatan pengeluaran maupun pembentukan atau penghapusan lembaga public). [41] Ketentuan pasal ini memberikan kewenangan kepada Presiden untuk mengatur struktur dan fungsi administratif pendukung pelaksanaan kekuasaan eksekutif.

Dalam praktiknya, *Casa Civil* bertugas sebagai koordinator kebijakan pemerintah lintas kementerian dan sebagai penasihat langsung Presiden dalam urusan administratif, hukum, dan legislatif. Salah satu peran konkret *Casa Civil* adalah saat dibentuknya *Secretaria Extraordinária da COP30* berdasarkan *Decreto No. 11.955/2024*, yang menetapkan peran *Casa Civil* untuk memimpin koordinasi antarlembaga dan antarlevel pemerintahan dalam pelaksanaan agenda perubahan iklim skala internasional.[42] Kelebihan dari model ini adalah kekuatan koordinasi

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[40] "Institucional," Casa Civil, diakses 26 Mei 2025, https://www.gov.br/casacivil/pt-br/acesso-a-informacao/institucional/institucional-1.

[41] "Constituição," diakses 26 Mei 2025, https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

[42] "Portal da Câmara dos Deputados," diakses 26 Mei 2025, https://www2.camara.leg.br/legin/fed/decret/2024/decreto-11955-19-marco-2024-795388-publicacaooriginal-171284-pe.html.

yang langsung berada di bawah Presiden, memungkinkan adanya sinergi kebijakan yang kuat, kecepatan pengambilan keputusan, dan daya dorong tinggi dalam proyek lintas kementerian. Namun demikian, kelemahan sistem ini adalah potensi tumpang tindih kewenangan dengan kementerian teknis, terutama bila tidak ada delineasi yang jelas, serta kemungkinan terjadinya sentralisasi kekuasaan di lingkar dalam Presiden tanpa kontrol parlemen yang ketat. Dalam konteks Indonesia, model *Casa Civil* bisa menjadi inspirasi untuk memperkuat fungsi Kementerian Sekretariat Negara atau bahkan membentuk unit koordinasi strategis di bawah Presiden yang memiliki mandat kuat, khususnya dalam pelaksanaan proyek strategis nasional. Hal ini penting untuk mempercepat eksekusi lintas sektor tanpa menabrak batas fungsi kementerian teknis.

Korea Selatan menganut sistem pemerintahan Presidensial, tetapi berbeda dari Indonesia, negara ini tetap mempertahankan posisi Perdana Menteri sebagai pejabat tinggi negara yang membantu Presiden dalam pelaksanaan tugas administratif dan koordinasi pemerintahan. Ketentuan ini ditegaskan dalam Pasal 86 Ayat (1) dan (2) Konstitusi Republik Korea, yang berbunyi:

"(1) The Prime Minister shall be appointed by the President with the consent of the National Assembly. (2) The Prime Minister shall assist the President and shall direct the Executive Ministries under order of the President". (Pasal 86 (1) Perdana Menteri membantu Presiden dan menjalankan koordinasi terhadap kementerian berdasarkan perintah Presiden.
(2) Perdana Menteri diangkat oleh Presiden dengan persetujuan dari Majelis Nasional).[43]

Dalam menjalankan fungsi koordinasi tersebut, Korea Selatan membentuk lembaga *Office for Government Policy Coordination (OGPC)* yang berada di bawah Perdana Menteri. OGPC merupakan lembaga teknokratis yang memiliki fungsi perencanaan, sinkronisasi, evaluasi kebijakan pemerintah pusat, hingga reformasi regulasi. Fungsi OGPC diatur dalam *Government Organization Act,*

[43] "CONSTITUTION OF THE REPUBLIC OF KOREA," diakses 28 Mei 2025, https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=1.

khususnya pada bagian yang mengatur struktur kabinet dan peran lembaga koordinasi kebijakan.[44]

OGPC terdiri dari berbagai divisi seperti *Economic Policy Coordination Office*, *Social Policy Coordination Office*, *Regulatory Reform Office*, dan *Government Performance Evaluation Office*.[45] Masing-masing divisi memiliki direktorat jenderal tersendiri yang fokus pada bidang ekonomi, sosial, lingkungan, evaluasi kinerja, dan pengawasan proyek strategis seperti Net Zero 2050 dan kebijakan kepemudaan. OGPC juga menjalankan fungsi pengawasan disiplin aparatur dan investigasi administratif, menjadikannya pusat koordinasi yang tidak hanya administratif tetapi juga evaluatif. Kelebihan OGPC adalah struktur dan pembagian fungsionalnya yang rinci serta berbasis pada prinsip evaluasi kebijakan publik. Fungsi koordinasi tidak hanya berwujud sinkronisasi, tetapi juga mencakup pengawasan kualitas pelaksanaan kebijakan pemerintah. Namun demikian, kelemahan dari sistem ini adalah potensi rantai koordinasi yang terlalu panjang karena OGPC berada di bawah Perdana Menteri, bukan langsung di bawah Presiden. Efektivitas OGPC pun sangat bergantung pada stabilitas hubungan politik antara Presiden, Perdana Menteri, dan para menteri.

Relevansinya dengan sistem pemerintahan Indonesia cukup signifikan. Indonesia tidak mengenal posisi Perdana Menteri, namun memiliki struktur Menteri Koordinator yang sebenarnya bisa didesain ulang agar menjalankan fungsi seperti OGPC, yaitu tidak hanya sebagai jembatan komunikasi dan sinkronisasi, tetapi juga pusat evaluasi kinerja lintas kementerian. Penguatan fungsi monitoring dan evaluasi berbasis data serta reformasi regulasi lintas sektor yang terpusat pada satu badan seperti OGPC akan memperkuat efektivitas pemerintahan Presidensial Indonesia secara keseluruhan.

[44] "국무조정실 국무총리비서실," diakses 26 Mei 2025, https://www.opm.go.kr/opm/index.do
[45] *Ibid*

Tabel 1. Perbandingan Fungsi Koordinasi Pemerintahan dalam Sistem Presidensial

No	Indikator	Amerika Serikat	Filipina	Brazil	Korea Selatan
1.	Pemegang Kewenangan Koordinasi	Executive Office of the President (EOP), terutama *White House Chief of Staff* dan *Office of Cabinet Affairs*.	*Executive Secretary*	*Casa Civil da Presidência da República*	*Minister of the Office for Government Policy Coordination (OGPC)*
2.	Proses Pemilihan	Ditunjuk langsung oleh Presiden. Wakil Presiden dipilih melalui pemilihan umum,	Ditunjuk oleh Presiden dengan persetujuan *Commission of Appointment*	Ditunjuk langsung oleh Presiden	Ditunjuk oleh Presiden dengan persetujuan Majelis Nasional (National Assembly)
3	Kedudukan Jabatan	EOP berada langsung di bawah Presiden. Wakil Presiden berada dalam kabinet.	Di bawah Presiden dan Wakil Presiden, namun secara kedudukan lebih tinggi daripada kementerian yang lain.	Di bawah Presiden secara langsung	Di bawah Perdana Menteri, yang membantu Presiden dalam koordinasi kementerian

4.	Tingkat Pengaturan	Konstitusi Amerika Serikat dan Reorganization Plan No. 1 of 1939	Konstitusi Filipina Tahun 1987 (Amandemen)	*Constituição da República Federativa do Brasil de 1988, Artigo 84*, serta *Decreto No. 11.955/2024*	*Constitution of the Republic of Korea, Pasal 86*, serta *Government Organization Act*

Selanjutnya melihat dari segi Indonesia, fungsi koordinasi pada tingkat kementerian negara dipegang oleh 7 (tujuh) menteri koordinator, yakni Menteri Koordinator bidang Politik dan Keamanan, Menteri Koordinator bidang Hukum Hak Asasi Manusia, Imigrasi dan Pemasyarakatan, Menteri Koordinator bidang Perekonomian, Menteri Koordinator bidang Pembangunan Manusia dan Kebudayaan, Menteri Koordinator bidang Infrastruktur dan Pembangunan Kewilayahan, Menteri Koordinator bidang Pemberdayaan Masyarakat, dan Menteri Koordinator bidang Pangan. Ketujuh kementerian koordinator tersebut ketika ditarik dalam ketentuan normatif yang diatur dalam Pasal 14 UU No.39/2008 hanya masuk sebagai kementerian yang dibentuk oleh Presiden untuk menjalankan fungsi koordinasi, namun pada implementasinya seakan-akan menjadi lebih tinggi kedudukannya daripada kementerian yang lain.[46] Padahal konteks menteri koordinator di Indonesia tidak menjadi menteri tertinggi seperti halnya yang dianut di Filipina yang mengakui adanya menteri tertinggi, melainkan hanya sebagai kementerian yang dapat dibentuk maupun dihapus sesuai dengan kehendak Presiden sebagai pemegang kekuasaan eksekutif.

Ketika berkaca dari perbandingan Amerika Serikat dan Filipina desain koordinasi dan sinkronisasi urusan pemerintahan di tingkat kementerian negara di Indonesia dapat dilakukan dengan memaksimalkan peran 1 (satu) jabatan dalam hal pelaksanaan fungsi koordinasi antar kementerian. Pemberian 1 (satu) jabatan dalam menjalankan fungsi koordinasi akan mempermudah proses koordinasi tanpa

[46] *UU No. 39 Tahun 2008.*

perbedaan pendapat antar jabatan yang memegang fungsi koordinasi. Kericuhan antar pemegang kewenangan koordinasi kerap terjadi, seperti perbedaan pendapat antara Menteri Koordinator Perekonomian (Menko Perekonomian) dan Menteri Koordinator Kemaritiman dan Investasi (Menko Marves) yang berbeda pendapat mengenai kenaikan pajak hiburan sebesar 40%-75%. Ketika adanya 1 (satu) jabatan yang memegang kewenangan koordinasi, maka perbedaan pandangan kebijakan akan terminimalisir.

Jika mengacu pada praktik di Brasil dan Korea Selatan, efektivitas koordinasi justru dicapai bukan karena banyaknya pejabat yang diberi fungsi koordinasi, melainkan karena kuatnya struktur kelembagaan dan kejelasan pembagian tugas. Di Brasil, *Casa Civil da Presidência da República* menjadi satu-satunya poros utama yang memimpin koordinasi kebijakan lintas kementerian dan bertindak langsung di bawah Presiden. Meskipun terdapat berbagai kementerian teknis, koordinasi tetap efisien karena dilakukan melalui satu kanal utama yang memiliki legitimasi kuat. Begitu pula di Korea Selatan, koordinasi kebijakan dilaksanakan secara terpusat melalui Minister of the Office for Government Policy Coordination (OGPC) yang menangani sektor-sektor pemerintahan secara sistematis, namun tetap berada dalam satu kerangka koordinatif yang terkonsolidasi di bawah Perdana Menteri.

Dalam praktik sistem Presidensial di berbagai negara, pengalaman menunjukkan bahwa jabatan dengan kewenangan koordinatif biasanya tidak diberikan kepada banyak pejabat. Di Filipina, fungsi koordinasi pemerintahan dijalankan secara efektif oleh satu posisi utama, yakni Executive Secretary, yang secara administratif dapat menerima atau menolak program-program kementerian yang tidak strategis atau tidak memerlukan perhatian langsung Presiden. Di Brasil, fungsi serupa dijalankan oleh *Casa Civil*, sebuah badan khusus di bawah Presiden yang menjadi simpul koordinasi lintas kementerian. Bahkan di Amerika Serikat, tidak ada kementerian koordinator, dan fungsi koordinasi dilakukan oleh Executive Office of the President (EOP), serta oleh Wakil Presiden apabila mendapat penugasan langsung dari Presiden. Berbeda dengan negara-negara tersebut, Indonesia memiliki jumlah Menteri Koordinator yang lebih banyak, yang berisiko menimbulkan tumpang tindih kewenangan dan perbedaan pandangan dalam pengambilan kebijakan. Meskipun keberadaan Menteri Koordinator tetap penting dalam konteks sistem pemerintahan Indonesia yang kompleks, namun jumlahnya perlu dikaji kembali agar tetap proporsional dengan kebutuhan dan tidak menciptakan rantai birokrasi yang justru menghambat efektivitas koordinasi.

PENUTUP

KESIMPULAN

Penelitian ini menyimpulkan bahwa Kementerian Negara merupakan bagian dari struktur pemerintahan, termasuk di dalamnya Kementerian koordinator yang berfungsi mengoordinasikan urusan pemerintahan di tingkat kementerian, lembaga pemerintah non-kementerian, dan instansi lain yang menjalankan fungsi pemerintahan. Berdasarkan Undang-Undang Nomor 39 Tahun 2008 tentang Kementerian Negara, jumlah kementerian semula ditetapkan sebanyak 34. Namun, setelah perubahan melalui Undang-Undang Nomor 61 Tahun 2024, jumlah kementerian disesuaikan dengan kebutuhan pemerintahan yang ditetapkan oleh Presiden. Penambahan jumlah kementerian diikuti pula oleh peningkatan jumlah Kementerian koordinator, yang saat ini mencapai 7 (tujuh) kementerian. Setiap Kementerian koordinator memiliki peran yang serupa, yakni memastikan terciptanya koordinasi yang efektif antar kementerian yang berada dalam lingkup koordinasinya, guna menghindari tumpang tindih kebijakan. Sistem Presidensial Indonesia menekankan pentingnya mekanisme sinkronisasi dan koordinasi di tingkat kementerian negara yang dijalankan oleh Menteri Koordinator. Ke depannya, desain koordinasi dan sinkronisasi pemerintahan sebaiknya diarahkan pada model yang lebih terpusat dan efisien, dengan menghindari penambahan jabatan menteri koordinator yang justru dapat memicu konflik dan tumpang tindih kewenangan. Pengalaman dari negara-negara Presidensial seperti Amerika Serikat, Filipina, Brasil, dan Korea Selatan menunjukkan bahwa fungsi koordinasi dapat dilaksanakan secara efektif melalui satu jabatan atau lembaga utama yang berada langsung di bawah Presiden, seperti Executive Secretary di Filipina atau Casa Civil di Brasil. Dalam sistem pemerintahan Amerika Serikat, bahkan Wakil Presiden dapat diberikan mandat koordinatif secara khusus oleh Presiden. Hal ini menunjukkan bahwa efektivitas koordinasi tidak bergantung pada jumlah pejabat koordinatif, melainkan pada kejelasan mandat, struktur kelembagaan yang ramping, dan otoritas yang kuat.

SARAN

Sejalan dengan kesimpulan penelitan di atas, penulis merekomendasikan agar pemerintah Indonesia mengkaji ulang jumlah kementerian koordinator yang ada saat ini agar tidak terlalu banyak dan mempertimbangkan pembentukan satu posisi sentral atau lembaga koordinatif khusus yang memiliki otoritas administratif langsung di bawah Presiden, sebagaimana diterapkan dalam model *Executive Secretary* atau *Casa Civil*. Adapun peran Wakil Presiden tetap dapat dimaksimalkan dalam fungsi koordinatif, namun harus berbasis pada penugasan langsung dari Presiden, bukan melalui penambahan struktur kewenangan baru. Pendekatan ini akan mendukung sistem pemerintahan yang lebih sederhana, efisien, dan akuntabel tanpa mengurangi efektivitas dalam pelaksanaan kebijakan lintas sektor kementerian.

DAFTAR PUSTAKA

Buku:

Marzuki, Peter Mahmud. *Penelitian Hukum: Edisi Revisi*. Prenada Media, 2017.

Rauf, Rahyunir. “Posisi Dewan Perwakilan Rakyat Daerah Dalam Sistem Pemerintah Daerah.” Riau: Marpoyan Tujuh Publishing, 2016.

Sihombing, Eka Nam. *Hukum Kelembagaan Negara*. Ruas Media, 2018.

Taufiqurrahman, Faishal, and others. “Urgensi Perluasan Alasan Dan Pemohon Dalam Permohonan Pembubaran Partai Politik Di Indonesia Pasca Reformasi.” Universitas Islam Indonesia, 2018.

Tukiran, Martinus, Nugraheni Puspita Sari, and Anisa Dewi Mentari. *Penyusunan SOP Administrasi Pemerintah: Berdasarkan Peta Proses Bisnis*. PT Kanisius, n.d.

Jurnal:

Arion, Tandi, Dan Retno Saraswati. “Kedudukan Menteri Koordinator Dalam Sistem Ketatanegaraan Indonesia Menurut Undang-Undang Nomor 39 Tahun 2008 Tentang Kementerian Negara.” Diponegoro Law Journal 5, No. 3 (13 Juli 2016): 1–16. Https://Doi.Org/10.14710/Dlj.2016.12580.

Chambers, Paul. “Superficial Consolidation: Security Sector Governance and the

Executive Branch in the Philippines Today." In *Security Sector Reform in Southeast Asia: From Policy to Practice*, 102–30. Springer, 2014.

Eadie, Pauline, and Chester Yacub. "COVID-19 and Aid Distribution in the Philippines: A Patron-Clientelist Explanation." *Third World Quarterly* 45, no. 1 (2024): 229–46.

Hadi, Syofyan. "Fungsi Legislasi Dalam Sistem Pemerintahan Presidensil (Studi Perbandingan Indonesia Danamerika Serikat)." *DiH: Jurnal Ilmu Hukum* 9, no. 18 (2013): 240040.

Huda, Ni'matul. "Kedudukan Dan Materi Muatan Peraturan Menteri Dalam Perspektif Sistem Presidensial." *Jurnal Hukum Ius Quia Iustum* 28, no. 3 (2021): 550–71.

Ingkiriwang, Anggraini D T. "Kedudukan Menteri Koordinator Dalam Sistem Ketatanegaraan Indonesia." *LEX PRIVATUM* 13, no. 2 (2024).

Lynch, Michael, Anthony Madonna, Mark Owens, and Ryan D Williamson. "The Vice President in the US Senate: Examining the Consequences of Institutional Design." In *Congress & the Presidency*, 45:145–65, 2018.

Muliadi Anangkota. "Klasifikasi Sistem Pemerintahan (Perspektif Pemerintahan Modern Kekinian)." CosmoGov: Jurnal Ilmu Pemerintahan 3, no. 2 (7 Oktober 2017): 148–52. https://doi.org/10.24198/COSMOGOV.V3I2.14725.

Relyea, Harold C. "The Law: The Executive Office of the Vice President: Constitutional and Legal Considerations." *Presidential Studies Quarterly* 40, no. 2 (2010): 327–41.

Saggaf, Said, Muhammad Mario Said, and Widiawati Said Saggaf. *Reformasi Pelayanan Publik di Negara Berkembang*. Vol. 1. Sah Media, 2018.

Sonia, Shabine Charoline. "Strategi Komunikasi Kementerian Koordinator Bidang Kemaritiman Dan Investasi Dalam Proses Monitoring Dan Evaluasi Capaian Tujuan Pembangunan Berkelanjutan (Tpb/Sdgs) Tahun 2021," 2023.

Sudin, Ervin, and Septi Wijayanti. "Komparasi Kedudukan Wakil Menteri Sebelum Dan Sesudah Putusan Mahkamah Konstitusi Nomor 76/PUU-XVIII/2020." In *Proceedings University of Muhammadiyah Yogyakarta Undergraduate Conference*, 2:276–88, 2022.

Sukadi, Imam. "Sistem Pemerintahan Indonesia Dan Implikasinya Dalam Kehidupan Berbangsa Dan Bernegara." *Jurnal Hukum Bisnis Bonum Commune* 4, no. 1 (2021): 119–28.

Wijaya, Ahmad. "Mekanisme Koordinasi Dan Singkronisasi Lembaga Kementerian Negara Suatu Praksis Menuju Kabinet Yang Efektif." *Al Ahkam*

15, no. 2 (2019): 69–80.

Website:

Constituição, diakses 26 Mei 2025, https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm.

Constitution Of The Republic Of Korea, diakses 28 Mei 2025, https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=1.

Executive Office of the President," The White House, diakses 26 Mei 2025, https://www.whitehouse.gov/eop/.

Institucional, Casa Civil, diakses 26 Mei 2025, https://www.gov.br/casacivil/pt-br/acesso-a-informacao/institucional/institucional-1.

Media Tempo. *Bagi-Bagi Kursi Kabinet Prabowo-Gibran Dan Cawe-Cawe Jokowi I Bocor Alus Politik*. Jakarta, 2024. diakses 15 November 2024, https://www.youtube.com/watch?v=1eZVMgnfWTU.

M Rizaldi, SB Praptadina. "Jurnal Peradilan Indonesia: Menakar Partisipasi Publik dalam Mengawasi Kinerja Aparat Penegak Hukum Pada Persidangan Pidana," t.t. Diakses 28 Mei 2025.

Meilanova, Denis Riantiza. "5 Fakta Proyek Abadi Blok Masela, 25 Tahun Jalan Di Tempat," 2023. diakses 15 November 2024, https://ekonomi.bisnis.com/read/20230609/44/1663758/5-fakta-proyek-abadi-blok-masela-25-tahun-jalan-di-tempat.

Portal da Câmara dos Deputados, diakses 26 Mei 2025, https://www2.camara.leg.br/legin/fed/decret/2024/decreto-11955-19-marco-2024-795388-publicacaooriginal-171284-pe.html.

Rachman, Arrijal, and Rosseno Aji Nugroho. "Beda Airlangga, Luhut, Dan Hotman Soal Pajak Hiburan 40%." CNBC Indonesia, n.d. diakses 15 November 2024, https://www.cnbcindonesia.com/news/20240123105904-4-508223/beda-airlangga-luhut-dan-hotman-soal-pajak-hiburan-40.

Yanto, A, HS Nugraha - PROGRESIF: Jurnal Hukum, dan undefined 2021. "Redesain Pengisian Jabatan Menteri Dalam Sistem Presidensial Di Indonesia." journal.ubb.ac.idA Yanto, HS NugrahaPROGRESIF: Jurnal Hukum, 2021•journal.ubb.ac.id. Diakses 28 Mei 2025. https://journal.ubb.ac.id/progresif/article/download/2508/1664.

"국무조정실 국무총리비서실," diakses 26 Mei 2025, https://www.opm.go.kr/opm/index.do.

Peraturan Perundang-Undangan:

Keppres No. 94 Tahun 1962, 1962.

https://peraturan.bpk.go.id/Details/159108/keppres-no-94-tahun-1962.

PERPRES No. 35 Tahun 2020, 2020. https://peraturan.bpk.go.id/Details/133051/perpres-no-35-tahun-2020.

PERPRES No. 68 Tahun 2019, 2019. https://peraturan.bpk.go.id/Details/122754/perpres-no-68-tahun-2019.

Perpres No. 140 Tahun 2024, diakses 28 Mei 2025, https://peraturan.bpk.go.id/Details/305099/perpres-no-140-tahun-2024.

Perpres No. 141 Tahun 2024," diakses 28 Mei 2025, https://peraturan.bpk.go.id/Details/306461/perpres-no-141-tahun-2024.

REORGANIZATION PLAN NO. I OF 1939, diakses 26 Mei 2025, https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5a-node35-leaf37&num=0&edition=prelim.

Sekretariat Kabinet RI. "Sekretariat Kabinet Republik Indonesia | Kabinet Kerja IV | Sekretariat Kabinet Republik Indonesia," 2024. https://setkab.go.id/kabinet-kerja-iv/.

UU No. 39 Tahun 2008, 2008. https://peraturan.bpk.go.id/Details/39719/uu-no-39-tahun-2008.

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Anak dan Kekerasan Seksual: Tinjauan Yuridis terhadap Perlindungan Hukum dalam Sistem Hukum Indonesia

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Abstract

This study aims to examine the legal perspectives on the urgency of legal protection for child victims of sexual violence. It employs a normative juridical approach with a focus on legislation. The findings underscore the necessity of establishing rehabilitation for child victims of sexual violence as a legal obligation. First, the mental and physical conditions of victims are vulnerable and require rehabilitation. Second, there are significant weaknesses when rehabilitation is incorporated into the concept of restitution. Third, there are no legal provisions mandating rehabilitation for child victims of sexual violence; currently, only perpetrators are required to undergo rehabilitation as part of their punishment. Consequently, there is no clear and definitive regulation regarding the obligation of the state to provide rehabilitation for child victims of sexual violence.

Abstrak

Penelitian ini ditujukan untuk mengetahui tinjauaan penelitian yuridis tentang Urgensi Perlindungan Hukum terhadap Anak Korban kekerasan seksual. ini adalah yuridis normatif dengan pendekatan perundang-undangan. Hasil yang di peroleh urgensi untuk menetapkan rehabilitasi anak korban kekerasan seksual sebagai sebuah kewajiban dalam undang-undang. Pertama, kondisi mental dan fisik korban merupakan kondisi rawan yang perlu direhabilitasi. Kedua, terdapat sejumlah kelemahan ketika rehabilitasi dimasukkan ke dalam konsep restitusi. Ketiga, tidak ada ketentuan yang mewajibkan rehabilitasi terhadap anak korban kekerasan seksual. Saat ini yang wajib untuk menjalani rehabilitasi ialah pelaku kekerasan seksual, yang diberikan sebagai tindakan sehingga harus dilaksanakan. Maka dari itu, belum terdapat pengaturan secara jelas dan pasti terkait pemberian rehabilitasi terhadap anak korban kekerasan seksual sebagai kewajiban negara.

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PENDAHULUAN

Indonesia adalah negara hukum yang mengedepankan nilai-nilai hak asasi manusia, termasuk perlindungan terhadap warganya dari ancaman dan kekerasan, khususnya terhadap anak-anak. Dalam hal ini, Pasal 28B Ayat (2) Undang-Undang Dasar 1945 menegaskan bahwa setiap anak berhak mendapatkan perlindungan untuk menjalani kehidupan, berkembang, dan tumbuh secara optimal, serta berhak terbebas dari segala bentuk kekerasan dan diskriminasi.

Faktanya, meskipun Undang-Undang Dasar 1945 sudah menekankan pentingnya perlindungan terhadap hak anak dari kekerasan dan diskriminasi, realitasnya implementasi perlindungan tersebut masih belum sepenuhnya efektif dalam menjaga anak-anak dari ancaman dan kekerasan. Kendala dalam pelaksanaan hukum dan penegakan hak-hak anak membuat perlindungan yang dijanjikan belum sepenuhnya dirasakan oleh anak-anak di Indonesia. [1]

Kejahatan kesusilaan atau *moral offences* dan pelecehan seksual atau sexual harassment merupakan dua contoh pelanggaran kesusilaan yang tidak hanya menjadi permasalahan hukum nasional di suatu negara namun juga menjadi permasalahan global yang berdampak pada semua negara. 1 Kejahatan kesusilaan dan pelecehan seksual dilakukan oleh orang-orang dari semua kelas sosial ekonomi, dari yang terendah sampai yang tertinggi, dan tidak terutama dilakukan oleh anggota kelas menengah atau bawah, apalagi individu dengan pendidikan formal rendah atau tanpa pendidikan formal.[2]

Oleh sebab itu, anak-anak membutuhkan perhatian khusus dan perlindungan hukum yang berbeda dengan orang dewasa, mengingat kondisi fisik dan mental mereka yang belum matang. Dalam berbagai peraturan perundang-undangan, hal ini telah diatur untuk memastikan anak-anak mendapatkan perlindungan yang layak sesuai dengan kebutuhan mereka. Perlindungan ini tidak hanya berfungsi untuk memastikan anak-anak dapat tumbuh dan berkembang secara fisik, mental, dan sosial, tetapi juga untuk menjamin mereka dapat menikmati hak-hak mereka secara

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[1] Laurensius Arliman, "Kedudukan Komisi Perlindungan Anak Indonesia Sebagai State Auxiliary Bodies Dalam Sistem Hukum Ketatanegaraan Indonesia", Jurnal Hukum Justitia et Pax, Desember 2016, hal. 33.

[2] Heri Santoso, "Perlindungan Hukum Bagi Anak Korban Tindak Pidana Pelecehan Seksual," *Lex Journal: Kajian Hukum & Keadilan* 3, no. 2 (2019), https://doi.org/https://doi.org/10.25139/lex.v3i2.2186.

penuh dan merata, tanpa diskriminasi. [3] Agar anak-anak dapat memikul tanggung jawab di masa depan, mereka harus diberikan peluang dan kesempatan seluas-luasnya untuk berkembang secara optimal. Melalui usaha perlindungan dan pemenuhan hak-hak anak, kesejahteraan anak dapat terwujud, menciptakan generasi penerus yang berakhlak mulia dan mampu berkontribusi secara positif bagi masyarakat.

Kekerasan seksual merupakan isu yang masih menghadapi berbagai tantangan, termasuk dalam aspek penegakan hukum dan pemenuhan layanan bagi korban. Belum semua kasus teridentifikasi secara menyeluruh, yang dapat disebabkan oleh berbagai faktor seperti persepsi sosial yang mengaitkan kekerasan seksual dengan stigma, hambatan akses terhadap proses hukum, serta pendekatan penyelesaian yang belum sepenuhnya berorientasi pada pemulihan korban. Penanganan laporan masih beragam, tergantung pada individu penegak hukum. Pelatihan yang mumpuni bagi aparat penegak hukum belum merata diberikan, sehingga substansi hukum belum menjangkau seluruh jenis kekerasan seksual. Sistem hukum saat ini, juga tidak memberikan akses perempuan korban pada keadilan. Kekerasan seksual terhadap anak merupakan salah satu bentuk penyiksaan di mana orang dewasa atau remaja yang lebih tua memanfaatkan anak-anak untuk kepuasan seksual mereka.

Praktik kekerasan ini bisa mencakup berbagai tindakan, mulai dari memaksa atau meminta anak untuk melakukan aktivitas seksual (terlepas dari apakah tindakan itu berhasil atau tidak), memperlihatkan alat kelamin secara tidak senonoh kepada anak, memperlihatkan pornografi kepada mereka, melakukan hubungan seksual, melakukan kontak fisik dengan alat kelamin anak (dalam konteks yang bukan medis), hingga melibatkan anak dalam produksi pornografi. Bahkan melihat alat kelamin anak tanpa kontak fisik tetap termasuk bentuk pelecehan, kecuali dalam konteks non-seksual seperti pemeriksaan medis. [4]

Dalam beberapa tahun terakhir, perhatian terhadap isu kekerasan seksual terhadap anak semakin meningkat. Perkembangan teknologi informasi dan arus

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[3] M.Dikdik dan Elisastris Gultom, Urgensi Perlindungan Korban Kejahatan, PT Raja Grafindo Persada, Jakarta, 2006, hal 122

[4] Sulistyowati Irianto, Perempuan dan Anak dalam Hukum dan Persidangan, Jakarta: Yayasasn Pustaka Obor, 2020, hal 25

globalisasi turut memengaruhi cara kejahatan seksual dilakukan, sehingga menimbulkan tantangan tersendiri dalam upaya pencegahan dan penanganannya. Faktor-faktor seperti kebutuhan akan peningkatan pengawasan orang dewasa, pentingnya pendidikan mengenai perlindungan diri bagi anak, serta perlunya lingkungan yang aman dan mendukung, menjadi bagian dari diskusi dalam upaya melindungi anak dari risiko kekerasan seksual. Menanggapi kondisi yang memprihatinkan ini, pemerintah telah menetapkan undang-undang yang secara khusus mengatur tentang kekerasan seksual terhadap anak, dengan tujuan memberikan perlindungan yang lebih kuat bagi hak-hak anak serta menindak tegas para pelaku kejahatan seksual terhadap anak. Misalnya Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak, kemudian Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.

Perlindungan menyangkut terhadap anak, merupakan hak mutlak dari anak tersebut, karena itu adalah bagian dari suatu hak kehidupan yang ada, yaitu bagian dari manusia dan hak asasinya, dimana siapapun berhak untuk memberikan perlindungan kepada setiap anak, oleh karena itu, jika terjadi pelanggaran ataupun kejahatan terhadap anak, sudah sewajarnya pelaku diberikan sanksi yang tegas agar tidak mengulangi kesalahannya, sehingga hukumpun mempunyai kewibawaan di masyarakat.[5]

Kekerasan seksual yang dialami anak-anak dapat menyebabkan trauma yang berkepanjangan dan meninggalkan dampak negatif jangka panjang bagi korban. Lebih memprihatinkan lagi, korban kekerasan seksual kerap menjadi sasaran stigma negatif dari masyarakat, yang sering kali malah menghakimi mereka daripada pelaku. Masyarakat cenderung belum memahami perspektif korban dan cenderung menyalahkan mereka atas kejadian yang menimpa mereka, padahal seharusnya empati dan dukungan perlu diberikan untuk membantu mereka pulih dari trauma yang dialami. Maka, berdasarkan latar belakang yang telah di uraikan, maka dalam tulisan ini akan dibahas dua permasalahan yaitu bagaimana bentuk

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[5] Ika Dewi Sartika Saimima, Fransiska Novita Eleanora,Widya Romasindah, Pertanggungjawaban Pidana Korporasi Penyedia Konten Pornografi Anak (Studi Kasus Official Loly Candy's Group), Jurnal Perspektif Hukum, Vol. 1 No. 1, Mei 2019, doi.org/10.30649/ph.v19i1.97 hal. 3-4.

perlindungan hukum yang dapat diberikan terhadap hak-hak anak yang menjadi korban kekerasan seksual. Serta langkah-langkah hukum apa saja yang dapat diambil oleh anak korban kekerasan seksual untuk mendapatkan perlindungan hukum dari negara.

METODE PENELITIAN

Penelitian ini menggunakan pendekatan dengan metode yuridis normatif, di mana fokus utama penelitian adalah pada kajian terhadap bahan pustaka sebagai sumber data utama. Dalam hal ini, penelitian tidak melibatkan proses pengamatan langsung atau wawancara dengan responden. Pendekatan yang dipilih dalam penelitian ini adalah pendekatan perundang-undangan *(statute approach)*, yaitu dengan menelaah berbagai peraturan perundang-undangan dan regulasi yang berkaitan erat dengan isu hukum yang sedang diteliti.[6]

PEMBAHASAN

A. Bentuk Perlindungan Hukum Terhadap Hak Anak Korban Kekerasan Seksual

Perlindungan hukum mengacu pada terpeliharanya hak asasi manusia dan martabat subjek hukum. Sistem peraturan yang dapat melindungi subjek hukum dari perbuatan yang melanggar hukum disebut dengan perlindungan hukum. Setiap individu, termasuk anak korban, berhak atas pengakuan, jaminan, perlindungan, kepastian hukum yang adil, dan perlakuan yang sama di hadapan hukum, sesuai dengan UUD Negara Republik Indonesia Tahun 1945.

Menurut Satjipto Raharjo, Teori hukum kodrat atau aliran hukum kodrat menjadi titik tolak berkembangnya pengertian perlindungan hukum. Menurut aliran yang didirikan oleh Plato, muridnya Aristoteles, dan Zeno (pendiri aliran Stoa), moralitas dan hukum saling terkait erat dan bahwa hukum berasal dari Tuhan yang abadi dan universal. Para penganut aliran ini meyakini bahwa moralitas dan hukum

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[6] Peter Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi)*, 13th ed. (Jakarta: Kencana, 2017). h.133

merupakan cerminan lahiriah dan batin dari norma-norma kehidupan manusia, yang dimungkinkan oleh moralitas dan hukum.[7]

Dalam konteks tanggung jawab pemerintah, sudah seharusnya menjadi prioritas untuk memastikan kesejahteraan dan keamanan setiap warga negara, terutama dalam menjamin masa depan generasi muda. Salah satu tanggung jawab besar pemerintah adalah melindungi anak-anak dari berbagai bentuk ancaman, termasuk pelecehan seksual yang dilakukan oleh individu dengan orientasi seksual homoseksual. Perlakuan kasar seperti ini dapat berdampak buruk pada anak-anak, menyebabkan luka fisik seperti cedera tubuh, kerusakan organ reproduksi, hingga trauma psikologis yang bisa mempengaruhi pola pikir dan perkembangan mental mereka, bahkan mengganggu masa depan mereka.

Salah satu jenis perlindungan hukum yang harus diberikan kepada anak korban adalah perlindungan dan jaminan hukum. Perlindungan hukum adalah ketika kegiatan tertentu diatur untuk memberikan lingkungan yang aman atau ketika sesuatu diatur oleh undang-undang untuk menjamin ditegakkannya hak-hak. Setiap kegiatan yang berdasarkan ketentuan hukum akan mempunyai perlindungan hukum. Pelaku dapat dianggap bertanggung jawab secara hukum dan dikenakan hukuman sesuai dengan undang-undang dan peraturan terkait jika suatu tindakan kriminal merugikan anak-anak yang mengalami pelecehan seksual. Untuk memenuhi haknya untuk hidup, tumbuh, berkembang, dan berpartisipasi semaksimal mungkin sesuai dengan martabat kemanusiaan, anak korban kekerasan seksual berhak mendapatkan perlindungan khusus. Mereka juga harus dilindungi dari kekerasan dan diskriminasi, memastikan bahwa anak-anak Indonesia tumbuh menjadi anak-anak yang bermoral, mampu, dan sukses.

Guna memastikan bahwa anak-anak yang menjadi korban pelecehan seksual mendapat perlindungan maksimal, negara telah mengatur hak-hak anak dalam berbagai undang-undang. Secara khusus, Pasal 69A Undang-Undang Republik Indonesia Nomor 35 Tahun 2014, yang merupakan revisi dari Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak, menegaskan langkah-langkah penting dalam memberikan perlindungan khusus bagi anak yang menjadi korban kejahatan seksual. Peraturan ini mencakup beberapa upaya, yaitu:

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[7] Satjipto Rahardjo, *Ilhu Hukum* (Bandung: Citra Aditya Bakti, 2000). h. 53.

1. Pemberian pendidikan mengenai kesehatan reproduksi, nilai-nilai agama, serta norma kesusilaan untuk mencegah terjadinya hal serupa di masa depan.
2. Proses rehabilitasi sosial untuk membantu korban kembali ke kehidupan normal.
3. Pendampingan psikososial selama proses penyembuhan dan pemulihan korban.
4. Pemberian perlindungan serta pendampingan hukum selama setiap tahap pemeriksaan, mulai dari proses penyelidikan, penuntutan, hingga persidangan di pengadilan. [8]

Perlindungan hukum terhadap hak anak sebagai korban kekerasan seksual di Indonesia melibatkan berbagai aspek dan pendekatan. Berikut adalah beberapa bentuk perlindungan hukum yang dapat diterapkan:

1. Undang-Undang Perlindungan Anak: UU No. 35 Tahun 2014 tentang Perlindungan Anak memberikan landasan hukum untuk melindungi anak dari segala bentuk kekerasan, termasuk kekerasan seksual. Dalam undang-undang ini, terdapat ketentuan tentang hak anak untuk mendapatkan perlindungan, rehabilitasi, dan pemulihan.
2. Layanan Dukungan Psikososial : Anak korban kekerasan seksual berhak mendapatkan layanan psikologis dan sosial untuk membantu mereka pulih dari trauma. Ini dapat berupa konseling, terapi, dan dukungan sosial.
3. Pendidikan dan Kesadaran Hukum : Masyarakat dan anak-anak perlu mendapatkan pendidikan mengenai hak-hak mereka dan cara melaporkan kasus kekerasan seksual. Program pendidikan ini penting untuk meningkatkan kesadaran dan pencegahan.
4. Proses Hukum yang Ramah Anak : Penegakan hukum terhadap pelaku kekerasan seksual harus dilakukan melalui proses yang memperhatikan kepentingan terbaik anak, termasuk penggunaan sistem peradilan yang ramah anak.

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[8] Atikah Rahmi, 2018, “Urgensi Perlindungan Bagi Korban Kekerasan Seksual Dalam Sistem Peradilan Pidana Terpadu Berkeadilan Gender”. Medan: Jurnal Mercatoria Vol 11 No 1 (2018).

5. Pengaturan tentang Kerahasiaan dan Privas : Perlindungan identitas anak korban dalam proses hukum sangat penting. Undang-undang mengatur kerahasiaan identitas anak untuk mencegah stigma sosial.
6. Keterlibatan Lembaga Swadaya Masyarakat (LSM) : LSM berperan dalam memberikan advokasi dan dukungan hukum bagi anak korban kekerasan seksual. Mereka juga dapat membantu dalam pemulihan psikologis dan sosial anak.
7. Kebijakan Preventif : Pemerintah perlu mengimplementasikan kebijakan yang mencegah kekerasan seksual terhadap anak, termasuk pelatihan bagi tenaga pendidik dan masyarakat tentang pencegahan kekerasan.
8. Penyuluhan dan Sosialisasi : Melakukan kampanye penyuluhan kepada masyarakat mengenai dampak kekerasan seksual dan pentingnya melindungi anak.

Perlindungan hukum bagi anak-anak yang menjadi korban kekerasan seksual merupakan suatu hal yang sangat mendesak dan penting. Selain pemerintah yang memiliki tanggung jawab penuh dalam melindungi anak-anak dari tindak kekerasan seksual, masyarakat pun memiliki peran yang tidak kalah pentingnya dalam memberikan dukungan dan perlindungan kepada anak-anak yang pernah menjadi korban, agar mereka bisa tumbuh dan berkembang dengan baik tanpa terus terbebani oleh pengalaman buruk yang pernah mereka alami.

Kejahatan seksual yang dilakukan terhadap anak dapat menimbulkan dampak serius pada anak, seperti rasa ketakutan yang mendalam dan trauma berat. Trauma ini memiliki potensi menghambat pertumbuhan dan perkembangan anak, sehingga mereka tidak mampu berkembang secara normal sebagaimana mestinya. Lebih parah lagi, pengalaman traumatis ini dapat meninggalkan jejak yang mendalam dalam memori anak dan berpotensi menyebabkan siklus kejahatan serupa di masa depan, di mana anak yang pernah menjadi korban mungkin saja terjebak dalam dorongan untuk melakukan tindakan yang sama. [9]

[9] Dina Al-Karim, Kristina Sulatri, Wiwin Ariesta., Perlindungan Hukum Terhadap Anak Korban Kejahatan Seksual Oleh Homoseksual Dalam Perspektif Perlindungan Anaka, Jurnal Ilmiah HukuM, Vol. 5 No. 3 (2023)

B. Upaya Hukum Yang Dapat Dilakukan Oleh Anak Korban Kekerasan Seksual Agar Memperoleh Perlindungan Hukum Negara

Kejahatan seperti perkosaan atau pencabulan seringkali dikategorikan sebagai tindak pidana dengan kekerasan, karena biasanya perbuatan ini melibatkan penggunaan atau ancaman kekerasan terhadap korban. Faktor-faktor penyebab terjadinya kejahatan ini antara lain:

1. Keinginan memperoleh harta atau benda secara instan tanpa usaha yang benar.
2. Ketiadaan saluran untuk mengekspresikan hasrat atau emosi, yang bisa memicu tekanan psikologis.
3. Adanya dorongan atau keberanian untuk mengambil risiko tanpa memikirkan konsekuensi.
4. Rendahnya rasa bersalah dan pengaruh buruk dari teladan di sekitar lingkungan. [10]

Untuk memberikan perlindungan terhadap korban kejahatan, diperlukan pembentukan lembaga khusus yang menangani masalah ini secara menyeluruh. Akan tetapi, sebelum itu, penting untuk memberikan informasi kepada korban dan keluarganya tentang hak-hak yang mereka miliki jika mereka mengalami penderitaan atau kerugian akibat tindak kejahatan. Hak-hak ini perlu dijelaskan secara rinci, termasuk apa saja yang bisa mereka harapkan dari lembaga tersebut.

Langkah-langkah yang dapat dilakukan untuk memberikan perlindungan hukum bagi anak korban pemerkosaan meliputi beberapa aspek, seperti:

1. Pemberian rehabilitasi, baik di dalam lembaga maupun di luar lembaga, untuk membantu korban pulih secara fisik dan mental.
2. Upaya menjaga kerahasiaan identitas korban melalui media massa, guna mencegah stigma dan labelisasi negatif yang dapat merugikan korban lebih lanjut.
3. Memberikan jaminan keamanan, baik dalam aspek fisik, mental, maupun sosial, kepada saksi korban serta saksi ahli yang memberikan keterangan.

[10] Kresna Agung Yudhianto, Hukum Perlindungan Anak dan KDRT, Yogyakarta: Pustaka Baru Press, 2022, hlm 23

4. Menyediakan akses kepada informasi terkait perkembangan proses hukum atau perkara yang sedang berjalan. [11]

Setiap anak yang menjadi korban perkosaan memiliki hak atas perlindungan hukum yang menjamin keselamatan dan kesejahteraan mereka. Pemerintah wajib memberikan rehabilitasi yang meliputi aspek fisik, mental, spiritual, dan sosial. Selain itu, nama baik dan privasi korban harus dijaga dengan ketat, termasuk menjaga keamanan mereka sebagai saksi korban. Anak yang menjadi korban juga berhak mendapatkan informasi terkait perkembangan kasusnya, dan diberi tahu jika pelaku dibebaskan dari penjara, atau bahkan jika pelaku tidak dihukum karena kurangnya bukti. Dalam situasi di mana pelaku tidak dipenjara, akses kepada perlindungan harus disediakan agar korban tidak menjadi target balas dendam.

Kerja sama antara lembaga yang melindungi korban dan pihak kepolisian menjadi krusial untuk memastikan bahwa setiap kali terjadi kekerasan terhadap perempuan, laporan tersebut dapat segera ditindaklanjuti. Lembaga yang bertugas ini perlu didukung oleh berbagai ahli, termasuk pekerja sosial, psikolog, ahli hukum, dan tenaga medis, untuk memberikan pelayanan yang komprehensif kepada korban. Jika di wilayah tertentu sulit untuk menemukan profesional dengan kualifikasi tersebut, perlu ada upaya untuk mencari individu dengan keterampilan yang mendekati standar yang diinginkan agar misi lembaga ini tetap bisa berjalan dengan efektif.

Pendanaan dan keberlanjutan lembaga perlindungan ini harus menjadi tanggung jawab pemerintah, baik di tingkat pusat maupun daerah. Namun, dukungan dari masyarakat, baik secara individu maupun kelompok, juga diharapkan untuk memastikan perlindungan terhadap korban kejahatan dapat berjalan optimal dan efektif, serta memberikan dampak yang nyata bagi korban dan keluarga mereka.[12]

Anak korban kekerasan seksual di Indonesia memiliki beberapa upaya hukum yang dapat dilakukan untuk memperoleh perlindungan hukum. Berikut adalah langkah-langkah yang bisa diambil:

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[11] Fathonah, Rini, Sistem Peradilan Pidana Anak Mewujudkan Kepastian Hukum Terbaik Bagi Anak Yang Berhadapan Dengan Hukum, (Bandar Lampung: Pusaka Medi, 2021), hlm 13

[12] Aryani, N. M. (2016). Upaya Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual. Kertha Patrika, hlm 22

1. Melaporkan Kasus ke Penegak Hukum: Anak atau wali yang sah dapat melaporkan kejadian kekerasan seksual ke polisi. Dalam hal ini, penting untuk segera melaporkan untuk mengumpulkan bukti yang relevan.
2. Mengakses Layanan Perlindungan Anak: Memanfaatkan layanan yang disediakan oleh Dinas Sosial atau lembaga pemerintah lainnya yang fokus pada perlindungan anak. Mereka dapat memberikan dukungan psikologis dan hukum.
3. Mendapatkan Pendampingan Hukum: Meminta bantuan dari pengacara atau Lembaga Swadaya Masyarakat (LSM) yang khusus menangani kasus kekerasan terhadap anak. Pendampingan hukum ini penting agar anak memahami proses hukum dan hak-haknya.
4. Menggunakan Layanan Konseling: Mengakses layanan konseling untuk membantu pemulihan psikologis. Ini penting agar anak dapat mengatasi trauma yang dialami.
5. Melibatkan Orang Tua atau Wali: Anak sebaiknya melibatkan orang tua atau wali dalam proses hukum. Dukungan keluarga sangat penting dalam menghadapi situasi ini.
6. Mengajukan Permohonan Perlindungan Sementara: Jika diperlukan, anak dapat mengajukan permohonan perlindungan sementara ke pengadilan untuk menjamin keselamatan mereka selama proses hukum berlangsung.
7. Menggunakan Media untuk Advokasi: Dalam beberapa kasus, menggunakan media untuk menarik perhatian publik dan advokasi dapat membantu dalam mendesak penegakan hukum dan perlindungan.
8. Mengikuti Program Rehabilitasi: Setelah kasus dilaporkan, penting bagi anak untuk mengikuti program rehabilitasi yang disediakan oleh pemerintah atau lembaga terkait agar dapat pulih secara fisik dan mental.

PENUTUP

KESIMPULAN

Berdasarkan hasil yang telah diperoleh dari penelitian ini dapat disimpulkan pengaturan rehabilitasi dalam hukum positif Indonesia terdapat pada beberapa peraturan perundang-undangan. Kondisi mental dan fisik korban merupakan kondisi rawan yang perlu direhabilitasi Kesimpulan dari pembahasan pertama ialah bentuk perlindungan hukum terhadap hak anak korban kekerasan seksual di Indonesia mencakup beberapa poin penting. Landasan hukum yang kuat, proses hukum ramah anak, layanan dukungan psikososial kerahasiaan dan privasi dan memperkuat perlindungan identitas anak, pendidikan dan kesadaran masyarakat sangat penting dalam menciptakan lingkungan yang aman dan mendukung bagi anak-anak. Secara keseluruhan, perlindungan hukum terhadap hak anak korban kekerasan seksual harus bersifat komprehensif, melibatkan berbagai elemen masyarakat, dan berorientasi pada pemulihan dan keadilan bagi anak. Kemudian, menarik kesimpulan mengenai upaya hukum yang dapat dilakukan oleh anak korban kekerasan seksual untuk memperoleh perlindungan hukum dari negara mencakup beberapa poin penting dengan melakukan: Pelaporan segera, akses layanan perlindungan, memanfaatkan layanan yang disediakan oleh lembaga pemerintah, pendampingan hukum, dukungan keluarga, permohonan perlindungan, dan rehabilitasi psikologi. Dengan melakukan upaya-upaya tersebut, anak korban kekerasan seksual dapat memperoleh perlindungan hukum yang diperlukan dan mendapatkan keadilan.

DAFTAR PUSTAKA

Buku:

Aryani, N. M. (2016). Upaya Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual. Kertha Patrika

Fathonah, Rini, Sistem Peradilan Pidana Anak Mewujudkan Kepastian Hukum Terbaik Bagi Anak Yang Berhadapan Dengan Hukum, (Bandar Lampung: Pusaka Medi, 2021)

Kresna Agung Yudhianto, Hukum Perlindungan Anak dan KDRT, Yogyakarta: Pustaka Baru Press, 2022

Laurensius Arliman, "Kedudukan Komisi Perlindungan Anak Indonesia Sebagai State Auxiliary Bodies Dalam Sistem Hukum Ketatanegaraan Indonesia", Jurnal Hukum Justitia et Pax, Desember 2016

Marzuki, Peter Mahmud. *Penelitian Hukum (Edisi Revisi)*. 13th ed. Jakarta: Kencana, 2017.

M. Dikdik dan Elisastris Gultom, Urgensi Perlindungan Korban Kejahatan, PT Raja Grafindo Persada, Jakarta, 2006

Satjipto Rahardjo. *Ilhu Hukum*. Bandung: Citra Aditya Bakti, 2000.

Sulistyowati Irianto, Perempuan dan Anak dalam Hukum dan Persidangan, Jakarta: Yayasasn Pustaka Obor, 2020

Jurnal:

Atikah Rahmi, 2018, "Urgensi Perlindungan Bagi Korban Kekerasan Seksual Dalam Sistem Peradilan Pidana Terpadu Berkeadilan Gender". Medan: Jurnal Mercatoria Vol 11 No 1 (2018).

Dina Al-Karim, Kristina Sulatri, Wiwin Ariesta., Perlindungan Hukum Terhadap Anak Korban Kejahatan Seksual Oleh Homoseksual Dalam Perspektif Perlindungan Anaka, Jurnal Ilmiah HukuM, Vol. 5 No. 3 (2023)

Ika Dewi Sartika Saimima, Fransiska Novita Eleanora, Widya Romasindah, Pertanggungjawaban Pidana Korporasi Penyedia Konten Pornografi Anak (Studi Kasus Official Loly Candy's Group), Jurnal Perspektif Hukum, Vol. 1 No. 1, Mei 2019 doi.org/10.30649/ph.v19i1.97

Santoso, Heri. "Perlindungan Hukum Bagi Anak Korban Tindak Pidana Pelecehan Seksual." *Lex Journal: Kajian Hukum & Keadilan* 3, no. 2 (2019). https://doi.org/https://doi.org/10.25139/lex.v3i2.2186.

Peraturan Perundang-Undangan:

Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak.

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Determination of Indonesian Islands Sea Lane as a Tools of Providing Legal Certainty for Foreign Flag Vessels Through Indonesian Waters

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Abstract

This research discusses the current determination of Archipelagic Sea Lanes determined by the Indonesian government which is able to provide legal certainty for foreign-flagged ships crossing Indonesian waters. The problem that arises with the determination is whether they do not create vulnerabilities that have the potential to harm the national interests of the Indonesian people. This research is normative legal research with a conceptual and statutory approach. The research results show that the Indonesian government has established archipelagic sea lanes so that it can provide legal certainty for foreign ships crossing Indonesian waters. This determination is a mandate from the ratification of the 1982 international maritime law convention. However, this determination still creates vulnerabilities that have the potential to harm the national interests of the Indonesian people. The cause of this vulnerability is because the norms contained in the regulations regarding archipelagic sea lanes does not contain sanctions norms so that legal violations often occur in the archipelagic sea lanes area. The need for more significant sanctions is due to the fact that archipelagic sea lanes have specificities compared to other maritime zones.

Abstrak

Penelitian ini membahas tentang penetapan Alur Laut Kepulauan yang ditetapkan oleh pemerintah Indonesia saat ini yang mampu memberikan kepastian hukum bagi kapal berbendera asing yang melintasi perairan Indonesia. Permasalahan yang timbul dengan penetapan tersebut adalah apakah tidak menimbulkan kerentanan yang berpotensi merugikan kepentingan nasional bangsa Indonesia. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan konseptual dan perundang-undangan. Hasil penelitian menunjukkan bahwa pemerintah Indonesia telah menetapkan alur laut kepulauan sehingga dapat memberikan kepastian hukum bagi kapal asing yang melintasi perairan Indonesia. Penetapan ini merupakan amanat dari ratifikasi konvensi hukum laut internasional tahun 1982. Namun, penetapan ini masih menimbulkan kerentanan yang berpotensi merugikan kepentingan nasional bangsa Indonesia. Penyebab terjadinya kerentanan ini adalah karena norma yang terdapat dalam pengaturan mengenai alur laut kepulauan belum memuat norma sanksi sehingga sering terjadi pelanggaran hukum di wilayah alur laut kepulauan. Perlunya sanksi yang lebih tegas dikarenakan alur laut kepulauan memiliki kekhususan dibandingkan dengan wilayah maritim lainnya.

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INTRODUCTION

Indonesia is an archipelagic country in the form of a maritime archipelago.[1] When reviewed from a political, legal, economic, socio-cultural and defense and security perspective, the Indonesian maritime region has strategic value so that conditions are needed that are safe, peaceful, controlled, and sustainable. Conditions like this are beneficial for the international community of sea users and the Indonesian nation itself.[2] Indonesia, as a large maritime country, uses the sea as a means of supporting the national economy, so an active role in the international community is absolutely necessary. A country that declares itself as a maritime country means that country has a big responsibility to the international community to provide rights to cross archipelagic sea lanes in archipelagic waters and territorial seas.[3]

In order to implement this participation, the Indonesian Government ratified the 1982 convention on International Sea Law, better known as the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982). This ratification was carried out by ratifying Law Number 17 of 1985 concerning Ratification of the UNCLOS 1982.[4] This convention is a new chapter in the development of maritime regulation as a compromise step between large maritime countries and developing and underdeveloped coastal countries. This convention became an international agreement after being ratified by various countries and is the legal umbrella for marine management throughout the world.

UNCLOS 1982 was the result of various UN conferences discussing the law of the sea, which took place from 1973-1982.[5] This convention contains provisions that coastal states do not have sovereignty and absolute sovereign rights in maritime

[1] Juan Matheus, Natashya, Ariawan Gunadi, Steven Nigel Bunalven, Ratifikasi Konvensi Sua 1988: Optimalisasi Pengaturan Hukum dalam Memberantas Perompakan Bersenjata di Wilayah Perairan Indonesia, *Jurnal Rechtvinding,* Vol. 12 No. 3, 2023, p. 526.

[2] Budi Pramono, *Penegakan Hukum di Perairan Indonesia*, Surabaya, Scopindo, 2021, p. 3.

[3] Victor Presscott & Clive Schofield, *The Maritime Political Boundaries of The World*, Boston, Martinus Nijhoff Publishers, 2005, p. 45.

[4] Melly Aida, Penanggulangan Penangkapan Ikan Secara Tidak Sah (Illegal Fishing) Oleh Kapal Ikan Asing di Zona Ekonomi Eksklusif Indonesia, Jurnal Fiat Justitia, Vol. 5, No. 2, 2012, p. 2.

[5] Patrisius Bagus Alvito Baylon (et all), Kajian Validitas Klaim China Atas Wilayah Laut Cina Selatan Indonesia, *Jurnal Kewarganegaraan*, Vol. 5, No. 2, 2021, p. 692.

areas. Coastal countries must pay attention to the interests of international shipping by providing peaceful passage, archipelagic passage, transit and communication access to the international community of sea users. The coastal state must provide access to foreign ships that will pass through its territory according to the regulations in the country's national law.[6]

In providing seaborne access, coastal countries are given the authority to regulate certain sea lanes commonly used by international shipping.[7] The conception of Indonesian Archipelagic Sea Lanes is outlined in Government Regulation Number 37 of 2002 concerning the Rights and Obligations of Foreign Ships and Aircraft in Exercising Archipelagic Sea Lane Passage Rights Through Determined Archipelagic Sea Lanes. The problem that arises is whether the determination made by the Indonesian government is in accordance with international regulations and does not create vulnerabilities that have the potential to harm the interests of the Indonesian nation. This question arises because of the view of several coastal countries that this international convention benefits large maritime countries more than coastal countries that are still underdeveloped and developing. Determination of Indonesian Archipelagic Sea Lanes as mandated by the convention needs to be carried out using the principles of caution and accuracy. If the Archipelagic Sea Route is not managed properly, it has the potential to create vulnerabilities for coastal countries.

Some examples of crime cases that occurred around the Indonesian Archipelagic Sea Lane area include the presence of the United States, China, Russia and Australia's sea forces in Indonesian waters passing through the Indonesian Archipelagic Sea Lane. The entry of foreign powers is carried out legally or illegally under the pretext of social missions such as Search and Rescue, intelligence interests and military cooperation.[8] Apart from this, the large number of foreign ships passing through the Archipelagic Sea Channel directly or indirectly can cause

[6] Monica Carolina Ingke Tampi, Pengaturan Hukum Hak Lintas Damai Menurut Konvensi Hukum Laut 1982 dan Implementasinya Di Indonesia, *Lex et Societatis*, Vol. V, No. 5, Juli 2017, p. 55.

[7] Budi Pramono, *Penegakan Hukum di Perairan Indonesia*, Surabaya, Scopindo, 2021, p. 63.

[8] Poltak Partogi Nainggolan, Indonesia dan Ancaman Keamanan di Alur Laut Kepulauan Indonesia (Security Threats to Indonesia's Sea Lanes), *Kajian*, Vol. 20 No. 3, 2015, p. 195.

various vulnerabilities that have the potential to cause disruption and loss of the country's economic resources. Violations that often occur in the Indonesian Archipelagic Sea Lanes include international terrorism, territorial violations, piracy and piracy, illegal immigrants, human trafficking, weapons smuggling, narcotics, marine pollution, fish theft, mining, and so on.

By referring to the background of the problems that have been explained, the problem in this paper is determining whether the Indonesian Archipelagic Sea Lanes can provide legal certainty for foreign-flagged ships crossing Indonesian waters and not create vulnerabilities for the integrity of the Indonesian nation and state.

RESEARCH METHODS

The type of research used in this writing is normative legal research. Normative legal research is a type of research used in the development of legal science. The approach used in this research is a statutory and conceptual approach. These two approaches are used together, this is because normative legal research can use two or more approaches.[9] The legislative approach is carried out by examining laws and regulations related to the legal issue being studied. The statutory approach opens up opportunities for researchers to study the consistency and suitability of one law to another. The conceptual approach is carried out by referring to the views and doctrines that have developed in legal science. Concepts in legal science can be used as a starting point or approach for legal analysis. Legal concepts will emerge based on or sourced from legal facts.[10]

RESULT AND DISCUSSION

A. Concept of Indonesian Archipelagic Sea Lanes

The meaning of Indonesian Archipelagic Sea Lanes has been defined in Article 1 point 8 of Law Number 6 of 1996 concerning Indonesian Waters, which states as follows: “Archipelagic sea lanes are traversed by foreign ships or aircraft

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[9] Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta, Prenada, 2008, p. 93.

[10] Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Yokyakarta, Pustaka Pelajar, 2010, p. 186.

over these sea lanes, to carry out navigation and flights in a normal manner solely for continuous, direct and as fast as possible and unimpeded transit through or over archipelagic waters. and adjacent territorial seas between one part of the high seas or the Indonesian Exclusive Economic Zone and another part of the high seas or the Indonesian Exclusive Economic Zone."

The Indonesian Archipelagic Sea Lanes were established as a consequence of the ratification of the UNCLOS 1982, with Indonesia's obligations as an archipelagic country, which are regulated by Articles 47-53 of the Law of the Sea Convention. Article 47 of the UNCLOS 1982 states that island countries can draw straight archipelagic baselines. In order to follow up on these international norms, the Indonesian nation subsequently issued the Indonesian Waters Law, which was further elaborated in Government Regulation Number 37 of 2002 concerning the Rights and Obligations of Foreign Ships and Aircraft in Exercising Rights of Archipelagic Sea Lane Passage Through Established Sea Lanes.[11] Referring to this determination, Indonesia can be categorized as a country that has implemented and guaranteed the implementation of archipelagic passage rights for foreign ships. In reality, the determination of the Indonesian Archipelagic Sea Lanes brings vulnerability to the Unitary State of the Republic of Indonesia, this is because the Indonesian Archipelagic Sea Lanes passage is a passage that contains certain freedoms.

There are two options for regulating maritime law, namely based on the principle of nationality of the ship or based on the law of the ship's flag without considering the location of the ship and regulations based on the existing authority of a country's national law in certain parts without taking into account the nationality of the ship.[12] In maritime regulation, the UNCLOS 1982 recognizes three types of passage rights for foreign ships, namely the right of innocent passage, the right of transit passage and the right of archipelagic sea lane passage. The right of innocent passage can be exercised through territorial seas, straits used by international shipping and archipelagic waters. The right of transit passage can only

[11] Nuryanto, *Memahami Laut Indonesia*, Jakarta, Mitra Wacana, 2014, p. 10.

[12] Bernard H. Oxman, Environment Protection in Archipelagic Waters and International Strait- The Role of the International Maritime Organization, *The International Journal of Marine and Coastal Law,* Vol. 10, No. 4, 1995, p. 467.

be exercised through straits used for international shipping, while the right of transit passage can only be enjoyed through archipelagic waters, especially through archipelagic sea lanes.[13]

The Indonesian Archipelagic Sea Route is a transaction of recognition by the international community for the concept of the Archipelago Insight and the Djuanda Declaration. If the Indonesian nation does not grant the right of peaceful passage in the Archipelagic Sea Lanes, it will be difficult to obtain international recognition of full sovereignty in its territorial waters as conceptualized in the Indonesian Insight and the Djuanda Declaration.[14] The benefits that the Indonesian people get from the Indonesian Archipelagic Sea Route include: (a) Indonesia is a vital part as a connector for the Eurasian Blue Belt; (b) Indonesia can play a role in the Global Logistic Support System, especially in relation to Sea Lanes of Communication and Consolidated Ocean Web of Communication; (c) The seas and sea lanes of the Indonesian archipelago are vital means of connecting Highly Accessed Sea Areas because the three seas (Indian, South and South Pacific) meet; and (d) Relating to world shipping that crosses the Indonesian Archipelagic Sea Lane with dry cargo and liquid cargo Declaration.[15]

The Indonesian Archipelagic Sea Route is related to Indonesia's existence as an archipelagic country. With the existence of archipelagic sea lanes, in one aspect its sovereignty is recognized by international law, while in other aspects it also recognizes and respects the international right to peaceful passage for foreign ships. This conception went through a difficult, long and continuous struggle and was finally accepted by the international community as part of the principles of international law regarding maritime affairs. The three sea lanes contained in the Government Regulation concerning Indonesian Archipelagic Sea Lanes are as follows:

1) The Indonesian Archipelagic Sea Route I is used for shipping from the South China Sea to the Indian Ocean or vice versa from the

[13] Etty R. Agoes, Upaya Diplomasi Indonesia Dalam Menentukan Alur Laut Kepulauan, *Indonesia Journal of Internatonal Law,* Vol. 6, No. 3, 2009, p. 356.

[14] Richard M. Waas, Penegakan Hukum Di Kawasan Alur Laut Kepulauan Indonesia Menurut Konsepsi Hukum Internasional dan Hukum Nasional Indonesia, Jurnal Sasi, Vol. 22, No. 1, 2016, p. 24.

[15] *Ibid.*

Indian Ocean to the South China Sea by crossing the waters of Natuna Sea, Karimata Strait, Java Sea and Sunda Strait. Apart from that, it is also used as a means of shipping from the Singapore Strait through the Natuna Sea, Karimata Strait, Java Sea and Sunda Strait to the Indian Ocean and vice versa.

2) The Indonesian Archipelagic Sea Route II is used as a means of shipping from the Sulawesi Sea to the Indian Ocean or vice versa from the Indian Ocean to the Sulawesi Sea by crossing the Sulawesi Sea, Makasar Strait, Flores Sea and Lombok Strait.
3) The Indonesian Archipelagic Sea Route III A is used as a means of carrying out shipping from the Pacific Ocean to the Indian Ocean and vice versa from the Indian Ocean to the Pacific Ocean by crossing the waters of the Maluku, Seram Sea, Banda Sea, Ombai Strait and Savu Sea.
4) The Indonesian Archipelagic Sea Route III B is used as a means of carrying out shipping from the Pacific Ocean to the Timor Sea by crossing the Maluku Sea, Seram Sea, Banda Sea, Leti Strait to the Timor Sea, and vice versa.
5) The Indonesian Archipelagic Sea Lane III-C is used as a means of carrying out shipping from the Pacific Ocean to the Arafura Sea or vice versa from the Arafura Sea to the Pacific Ocean by crossing the Maluku Sea, Seram Sea, Banda Sea and Arafura Sea.
6) The Indonesian Archipelagic Sea Route III-D is used as a means of shipping from the Pacific Ocean to the Indian Ocean or vice versa from the Indian Ocean to the Pacific Ocean by crossing the Maluku Sea, Seram Sea, Banda Sea, Ombai Strait and Savu Sea.
7) Indonesian Archipelagic Sea Lane III-E which is one with Archipelagic Sea Lane IIIA at point IIIA-2, which is used for shipping from the Pacific Ocean to the Indian Ocean by crossing the Sulawesi Sea, Maluku Sea, Seram Sea, Banda Sea, Ombai Strait and Savu Sea or vice versa, or passing through the Maluku Sea, Seram

Sea, Banda Sea, Leti Strait and East Sea or vice versa, or Seram Sea and Banda Sea to the Arafura Sea or vice versa.

With the establishment of three archipelagic sea lanes with their branches as shown above, this does not mean that the three archipelagic sea lanes with their branches can only be used for the implementation of the right of archipelagic sea lanes passage by foreign ships wishing to sail from one part of the sea, free or exclusive economic zone across Indonesian waters to other parts of the free sea or exclusive economic zone. Foreign ships wishing to sail from one part of the free sea or exclusive economic zone to one of the ports in Indonesia or to another part of the free sea or exclusive economic zone can carry out their voyage based on the Right of Peaceful Passage in Indonesian Waters, both in archipelagic sea lanes and outside archipelagic sea lanes. Conditions like this allow the emergence of vulnerabilities for the Indonesian people so that a patrol concept is needed to prevent violations of Indonesian law and territory.

B. Establishment of Indonesian Archipelagic Sea Lanes as a means of providing legal certainty for foreign-flagged vessels passing through Indonesian waters

Modern thought relating to the monumental aims of law is the thought of Gustav Radbruch, who explains that the aims of law are in the form of 3 (three) basic values including justice (philosophical aspect), legal certainty (juridical aspect) and benefit to society (sociological aspect). Radbruch's thought is a combination of classical philosophical, normative and empirical views into one approach with each approach used as a main element and the basis for Radbruch's legal approach.[16] Gustav Radbruch's thinking departs from the view that there is a close relationship between society and order, the relationship between the two is like two sides of a coin that cannot be separated. Every community in a region

[16] M. Muslih, Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum), Jurnal Legalitas, Vol. IV, No. 1, 2013, p. 143-144.

certainly needs order and in order to realize order there are several norms that must be guided by, such as morality, customs and laws.[17]

The difference between the three legal norms (justice, certainty and expediency) found in society can be explained by the fact that habits are more oriented towards actions that are commonly carried out by society on a daily basis. Custom is not identical with law and morality but rather describe the opposite of morality. Habits must be based on human behavior, while morality adheres to ideal behavior that must be realized in society. The parameters used for behavior that can be accepted or rejected by society in the idealism of humans themselves, namely perfect humans. Legal norms are more oriented to the ideal world (morality) and reality or reality (customs) so that ideal law must accommodate philosophical values and if it wants to meet the demands of reality it must prioritize sociological elements.[18]

The reality in society between the three basic values has the potential to cause tension. Justice is in conflict with expediency and on other occasions justice is in conflict with legal certainty, and it is also possible that there is tension between expediency and justice. In order to resolve the tension, Gustav Radbruch provides a solution through the teaching of standard priorities, namely by providing a benchmark in deciding a case, the main priority is justice, the second is expediency and the last is legal certainty. This priority conception is wiser when compared with ethical legal teachings which focus on justice, the utilitarian school which focuses on utility and the dogmatic (positivism/legalistic) school of law which focuses on legal certainty.

The increasingly complex development of society's interests in daily life means that standard priority teachings no longer meet the ideals expected by society. In order to improve the conception of standard reality, the teaching of casuistry priorities developed. This conception allows the prioritization of the three

[17] Satjipto Rahardjo, *Ilmu Hukum*, Alumni, Bandung, 1996, p.13 –17.
[18] *Ibid*, p. 14-16.

basic values above alternately according to the context of the problem being faced so that each basic value can take turns becoming the dominant element in a case. In contemporary legal practice, this casuistry priority teaching is considered the most relevant teaching to answer legal problems that develop in society.[19]

If these three basic values from Gustaf Radbruch are applied to the stipulation of the Indonesian Archipelagic Sea Routes Government Regulation, this stipulation can provide legal certainty for foreign ships passing through Indonesian waters. The reason for consideration in the UNCLOS 1982 there is a provision that coastal states do not have sovereignty and absolute sovereign rights in maritime areas. Coastal countries must pay attention to the interests of international shipping and aviation, namely by providing peaceful passage, archipelagic passage, transit and communication access to the international community of sea users. The coastal state must provide access to foreign ships and aircraft that will pass through its territory as regulated in national law. Article 53 Paragraph (2) UNCLOS 1982 mandates that all ships and aircraft enjoy the right to cross archipelagic sea lanes in sea lanes and flight routes. The norms of this article mean that ships and aircraft can enjoy the right to cross archipelagic sea lanes through territorial seas and archipelagic waters from one part of the free sea or Exclusive Economic Zone to another part of the free sea or Exclusive Economic Zone.[20]

In providing sea crossing access, coastal countries are given the authority to regulate certain sea lanes commonly used by international shipping. The implementation of archipelagic sea lane passage rights is carried out via routes commonly used by international shipping. This norm is mandated in Article 53 Paragraph (1) UNCLOS 1982, the formulation of which is as follows: "An archipelagic State may determine sea lanes and flight routes over them, which are suitable for continuous and direct and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the territorial sea adjoining them."

[19] M. Muslih, *Op.cit,* p. 150.

[20] Eriec Firman, Sri Lestari Rahayu, Anugrah Adistuti, Wacana Pembentukan Alur Laut Kepulauan Indonesia (ALKI) Rute Timur-Barat ditinjau dari Hukum Internasional, *Jurnal Belli ac Pacis.* Vol. 2. No. 2, 2016, p. 42.

Following up on the mandate of Article 53 Paragraph (1) UNCLOS, on August 30 1996 the Indonesian government submitted a proposal for the Indonesian Archipelago Sea Route to the International Maritime Organizations. On 2-6 December 1996 (67th session) the Indonesian Archipelagic Sea Routes proposal was discussed by the Maritime Safety Committee which is an organization under the auspices of the International Maritime Organizations. At the end of the 69th session of the Maritime Safety Committee on May 19 1998, it accepted the Indonesian government's proposal and adopted the General Provisions for the Adoption, Designations and Substitution of Archipelagic Sea Lanes and recognized the Indonesian Archipelagic Sea Lane proposed by the Indonesian government as a partial Indonesian Archipelagic Sea Lane. This partial Indonesian Archipelagic Sea Lane is a new term that is only listed in The General Provisions for the Adoption, Designations and Substitution of Archipelagic Sea Lanes. UNCLOS 1982 itself does not regulate the existence of partial Indonesian Archipelagic Sea Lanes as regulated in The General Provisions for the Adoption, Designations and Substitution of Archipelagic Sea Lanes.[21]

This conception of Indonesian Archipelagic Sea Lanes is further outlined in Government Regulation Number 37 of 2002 concerning the Rights and Obligations of Foreign Ships and Aircraft in Exercising Archipelagic Sea Lane Passage Rights Through Determined Archipelagic Sea Lanes.[22] With this determination, Indonesia can be categorized as a country that has implemented and guaranteed the implementation of archipelagic passage rights for foreign ships. However, this determination gave rise to various kinds of problems in the field. In reality, the determination of the Indonesian Archipelagic Sea Lanes brings vulnerability, this is because the Indonesian Archipelagic Sea Lanes passage is a passage that contains certain freedoms. This provision was made as a form of obligation to the international community carried out by archipelagic countries, although determining the route and crossing of islands will cause many difficulties because it intersects with the interests of many countries.

[21] Dhiana Puspitawati, *Hukum Laut Internasional*, Jakarta, Prenada, 2019, p. 123-124.
[22] Nuryanto, *Memahami Hukum Laut Indonesia*, Jakarta, Mitra Wacana Media, 2014, p. 10

The problem that arises is whether the determination made by the Indonesian government is in accordance with the provisions of the UNCLOS 1982 and does not create vulnerabilities that have the potential to harm the Indonesian nation. This question arises because of the view of several coastal countries that the UNCLOS 1982 is more beneficial to large maritime countries than coastal countries that are still underdeveloped and developing. The determination of the Indonesian Archipelagic Sea Lanes by the Indonesian people as mandated by UNCLOS 1982 needs to be carried out with the principle of caution and accuracy. If not managed properly, the Indonesian archipelagic sea lanes have the potential to cause vulnerability.

Some examples of crime cases that occurred around the Indonesian Archipelagic Sea Lane area include the presence of the United States, China, Russia and Australia's sea forces in Indonesian waters passing through the Indonesian Archipelagic Sea Lane. The entry of foreign powers is carried out legally or illegally under the pretext of social missions such as Search and Rescue, intelligence interests and military cooperation.[23] Apart from this, the large number of foreign ships passing through the Indonesian Archipelagic Sea Lanes directly or indirectly can cause various vulnerabilities that have the potential to cause disruption and loss of the country's economic resources. Violations that often occur in the Indonesian Archipelagic Sea Lanes include international terrorism, territorial violations, piracy and piracy, illegal immigrants, human trafficking, weapons smuggling, narcotics, marine pollution, fish theft, mining, and so on.[24] The regulation of Archipelagic Sea Lanes as a means of ship and aircraft traffic passing through a country is contained in Article 53 UNCLOS 1982.

Determining archipelagic sea lanes actually not required because archipelagic countries may not determine their archipelagic sea lanes, but if archipelagic sea lanes are not determined, then all ships are allowed to pass through normal navigation routes which are usually used for international shipping. This norm is contained in the formulation of Article 53 paragraph 12 UNCLOS 1982, which

[23] Poltak Partogi Nainggolan, Indonesia dan Ancaman Keamanan di Alur Laut Kepulauan Indonesia (Security Threats to Indonesia’s Sea Lanes), *Kajian*, Vol. 20 No. 3, 2015, p. 195.

[24] *Ibid.*

states that if an archipelagic country does not determine sea lanes and archipelagic flight routes, it can be carried out via routes usually used for international shipping.

The establishment of archipelagic sea lanes is considered to be more beneficial in providing recognition of Indonesia's existence with its maritime civilization, as an important connecting part of the Eurasian Blue Belt, Global Logistic Support System, Sea Lanes of Communication, Consolidated Ocean Web of Communication and Highly Accessed Sea Areas. Archipelagic sea lanes can unite three seas, namely the Indian Ocean, Southeast Asia and the South Pacific. Apart from this, what is no less important is that the implementation of the Indonesian Archipelagic Sea Lane makes Indonesia a shipping area for world ships, with dry cargo and liquid cargo.

The making of Indonesian Archipelagic Sea Route Government Regulations which are an elaboration of the UNCLOS 1982 as ratified by Law Number 17 of 1985, if analyzed from legal primacy theory, falls into the category of monism, namely the making of national regulations as an elaboration of the International Agreement. Such legal politics in state practice is commonplace and there is no need to debate whether these regulations are implementing regulations for International Agreements that are already binding at the domestic level (implementing legislation) or transformational regulations (dualism). This practice is carried out to carry out the country's international responsibilities, namely harmonization and ensuring that International Agreements (especially non-self-executing treaties) can be implemented at the domestic level. These reasons are very realistic and essential in both dualist and monist country.[25]

Referring to this explanation, it can be seen that Indonesia is inconsistent in applying the primacy of law theory (dualism or monism), depending on which is beneficial for the interests of the Indonesian nation and state. This practice is carried out to carry out the country's international responsibilities, namely harmonization and ensuring that International Agreements can be implemented at the national

[25] Pierre-Hugues Verdier and Mila Versteeg, International Law in National Legal Systems: An Empirical Investigation, *The American Journal of International Law*, 109, No. 3, 2015, p. 209-230.

level. This reason is very realistic and essential in both dualist and monist countries.[26]

The establishment of archipelagic sea lanes as a new regime for shipping must be carried out as regulated in the UNCLOS 1982. An archipelagic country can determine sea lanes that are suitable for the continuous and fastest possible passage of ships through or over its waters and territorial seas. side by side with him. The basis used by island countries in formulating cross-archipelagic routes is Article 53 Paragraph (1) UNCLOS 1982. In addition to archipelagic sea lanes, archipelagic countries can establish traffic separation schemes for the purposes of safe passage of ships through narrow channels in archipelagic sea lanes. From the provisions of article 53 paragraph (1) UNCLOS 1982, it can be explained that archipelagic sea lanes are intended for various types of foreign ships. In addition, archipelagic sea lanes also include nearby territorial waters and must be suitable for direct and uninterrupted passage. By referring to the formulation of the norm in Article 53 Paragraph (1), it can be seen that there is no obligation for the Indonesian government to create archipelagic sea lanes and it is permissible for Indonesia not to determine it. However, as a consequence, if the Indonesian Archipelagic Sea Lanes are not established then all international ships are allowed to pass through navigation routes which are normally used in world shipping as formulated in Article 53 Paragraph (12) UNCLOS 1982, routes normally used for international navigation.

The criteria for archipelagic sea lanes must be continuous, suitable and not discontinuous or suitable, safe for ships from navigational interference. Kresno Buntoro said that continuous passage means that island countries in determining archipelagic sea lanes must consider the Exclusive Economic Zone and continental shelf.[27] Foreign ships passing through continuously can enter or depart from island nation ports without prior notification. In determining archipelagic sea lanes there are factors that must be considered, including: (a) The provisions of the UNCLOS

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[26] Ary Aprianto, Relevansi Monisme dan Dualisme Bagi Pemberlakuan Perjanjian Internasional di Indonesia, *Jurnal Konstitusi*, Vol. 19, No. 3, 2022, p. 598.

[27] Kresno Buntoro, *Alur Laut Kepulauan Indonesia (ALKI), Prospek dan Kendala*, Jakarta, Sekolah Staf dan Komando TNI AL, 2012, p. 51.

1982 and other international law provisions; (b). Marine engineering which includes, among other things, hydrography, marine environmental protection, mining areas, pipelines and undersea pipes, dumping and mine disposal areas, fisheries areas; (c) Location of archipelagic sea lanes; and (d). How many archipelagic sea lanes and archipelagic sea lanes have been established by Indonesia?[28]

CONCLUSION

Determination of the Indonesian Archipelagic Sea Lanes as regulated in Government Regulation Number 37 of 2002, if viewed from the aspect of legal objectives as conceptualized by Gustaf Radbruch, can provide legal certainty for foreign-flagged ships passing through Indonesian waters. The 1982 international law of the sea convention mandates the obligation to provide passage for foreign-flagged vessels and coastal states have the authority to regulate such passage in accordance with the laws and regulations in their country. However, the current determination of the archipelagic channel still has the potential to create vulnerabilities in the security of the Indonesian state.

SUGGESTION

In determining the Indonesian Archipelagic Sea Lanes, it is necessary to use the principle of precision and caution, this is because in the Indonesian Archipelagic Sea Lanes there are international norms which state that coastal countries must provide access to foreign ships and aircraft that will pass through their country's territory with the regulations in national law. If these two principles are not implemented, it could result in violations of law and territorial sovereignty, thereby potentially harming the national interests of the Indonesian nation.

[28] Ary Aprianto, Relevansi Monisme dan Dualisme Bagi Pemberlakuan Perjanjian Internasional di Indonesia, *Jurnal Konstitusi*, Vol. 19, No. 3, 2022, p. 599.

BIBLIOGRAPHY

Books:

Budi Pramono, *Penegakan Hukum di Perairan Indonesia*, Surabaya, Scopindo, 2021.

Budi Pramono, *Penegakan Hukum di Perairan Indonesia*, Surabaya, Scopindo, 2021.

Dhiana Puspitawati, *Hukum Laut Internasional*, Jakarta, Prenada, 2019

Kresno Buntoro, *Alur Laut Kepulauan Indonesia (ALKI), Prospek dan Kendala*, Jakarta, Sekolah Staf dan Komando TNI AL, 2012.

Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Yokyakarta, Pustaka Pelajar, 2010.

Nuryanto, *Memahami Laut Indonesia*, Jakarta, Mitra Wacana, 2014.

Nuryanto, *Memahami Hukum Laut Indonesia*, Jakarta, Mitra Wacana Media, 2014.

Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta, Prenada, 2008.

Satjipto Rahardjo, *Ilmu Hukum*, Alumni, Bandung, 1996.

Victor Presscott & Clive Schofield, *The Maritime Political Boundaries of The World*, Boston, Martinus Nijhoff Publishers, 2005.

Journals and Scientific Papers:

Ary Aprianto, Relevansi Monisme dan Dualisme Bagi Pemberlakuan Perjanjian Internasional di Indonesia, *Jurnal Konstitusi*, Vol. 19, No. 3, 2022.

Bernard H. Oxman, Environment Protection in Archipelagic Waters and International Strait- The Role of the International Maritime Organization, *The International Journal of Marine and Coastal Law*, Vol. 10, No. 4, 1995.

Etty R. Agoes, Upaya Diplomasi Indonesia Dalam Menentukan Alur Laut Kepulauan, *Indonesia Journal of Internatonal Law*, Vol. 6, No. 3, 2009.

Eriec Firman, Sri Lestari Rahayu, Anugrah Adistuti, Wacana Pembentukan Alur Laut Kepulauan Indonesia (ALKI) Rute Timur-Barat ditinjau dari Hukum Internasional, *Jurnal Belli ac Pacis.* Vol. 2. No. 2, 2016.

Juan Matheus, Natashya, Ariawan Gunadi, Steven Nigel Bunalven, Ratifikasi Konvensi Sua 1988: Optimalisasi Pengaturan Hukum dalam Memberantas Perompakan Bersenjata di Wilayah Perairan Indonesia, *Jurnal Rechtvinding*, Vol. 12 No. 3, 2023.

Melly Aida, Penanggulangan Penangkapan Ikan Secara Tidak Sah (Illegal Fishing) Oleh Kapal Ikan Asing di Zona Ekonomi Eksklusif Indonesia, Jurnal Fiat Justitia, Vol. 5, No. 2, 2012.

Monica Carolina Ingke Tampi, Pengaturan Hukum Hak Lintas Damai Menurut Konvensi Hukum Laut 1982 dan Implementasinya Di Indonesia, *Lex et Societatis*, Vol. V, No. 5, Juli 2017.

M. Muslih, Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum), Jurnal Legalitas, Vol. IV, No. 1, 2013.

Patrisius Bagus Alvito Baylon (et all), Kajian Validitas Klaim China Atas Wilayah Laut Cina Selatan Indonesia, *Jurnal Kewarganegaraan*, Vol. 5, No. 2, 2021.

Pierre-Hugues Verdier and Mila Versteeg, International Law in National Legal Systems: An Empirical Investigation, *The American Journal of International Law*, 109, No. 3, 2015.

Poltak Partogi Nainggolan, Indonesia dan Ancaman Keamanan di Alur Laut Kepulauan Indonesia (Security Threats to Indonesia's Sea Lanes), *Kajian*, Vol. 20 No. 3, 2015.

Richard M. Waas, Penegakan Hukum Di Kawasan Alur Laut Kepulauan Indonesia Menurut Konsepsi Hukum Internasional dan Hukum Nasional Indonesia, Jurnal Sasi, Vol. 22, No. 1, 2016.

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Advocates and Law Enforcement Officers: Towards Harmonization in the Legal Enforcement Process

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Abstract

The Advocates are the only law enforcers who can be involved in all law enforcement processes. Advocates can also intersect and conflict with all other law enforcers in the law enforcement process. Therefore, harmonization of advocates with other law enforcers in the law enforcement process is essential. This study aims to determine the urgency of such harmonization and the factors that influence it. This research is a normative juridical research using a statutory and conceptual approach. Primary and secondary legal materials were collected through literature study and analyzed qualitatively. This research found that harmonizing advocates and other law enforcers in the law enforcement process is essential because without harmonization, the law enforcement process cannot run well, thus harming the interests of the people involved in the case. Three factors influence the harmonization of advocates with other law enforcers in the law enforcement process: statutory, authority, and interest factors.

Abstrak

Advokat merupakan satu-satunya penegak hukum yang dapat terlibat dalam semua proses penegakan hukum. Advokat juga dapat bersinggungan dan berkonflik dengan semua penegak hukum yang lain dalam proses penegakan hukum. Oleh karena itu, harmonisasi advokat dengan penegak hukum lainnya dalam proses penegakan hukum menjadi penting. Penelitian ini bertujuan untuk mengetahui urgensi harmonisasi tersebut dan faktor-faktor yang mempengaruhinya. Penelitian ini merupakan penelitian yuridis normatif dengan menggunakan pendekatan perundang-undangan dan pendekatan konseptual. Bahan hukum primer dan sekunder dikumpulkan melalui studi kepustakaan dan dianalisis secara kualitatif. Hasil penelitian ini menemukan bahwa harmonisasi advokat dan penegak hukum lainnya dalam proses penegakan hukum sangat penting karena tanpa harmonisasi, maka proses penegakan hukum tidak dapat berjalan dengan baik sehingga merugikan kepentingan masyarakat yang sedang berperkara. Ada tiga faktor yang memengaruhi harmonisasi advokat dengan penegak hukum lainnya dalam proses penegakan hukum, yaitu faktor peraturan perundang-undangan, faktor kewenangan, dan faktor kepentingan.

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INTRODUCTION

The law enforcement process cannot be separated from law enforcers because the executors of law enforcement are law enforcers. In the law enforcement system in Indonesia, the chess nation of law enforcement is known as the police, prosecutors, judges, and advocates. However, there are also those who add correctional institutions as law enforcement institutions. [1] However, law enforcement in this study is limited to police, prosecutors, judges and advocates. Although advocates are not part of the state apparatus, their status as law enforcers has been affirmed in Article 5 paragraph (1) of Law No. 18/2003 on Advocates (Law No. 18/2003), which states, “Advocates have the status of law enforcers, free and independent guaranteed by laws and regulations”.

Advocates are the only law enforcers authorized to be involved in all stages of law enforcement. Advocates' existence in the law enforcement process can even be in the opposite position. In a criminal case, an advocate can be the legal advisor of the perpetrator or the legal advisor of the victim. Likewise, in a civil case, an advocate can be the plaintiff's or defendant's attorney. Of course, this does not mean that an advocate can be both the plaintiff's attorney and the defendant's attorney. However, it means that two or more advocates are in opposing positions, representing the interests of their clients as plaintiffs or defendants, respectively.

Advocates always intersect with other law enforcers in the law enforcement process. In criminal cases, advocates can even intersect with all law enforcers. The advocate's relationship with other law enforcers begins with the police when the case is reported to the police. Then with the prosecutor when the case is transferred to the prosecutor's office. And with the judge when the case is submitted to the court. Only advocates can always be involved in all stages of law enforcement. Meanwhile, other law enforcers can only be partially involved in accordance with their authority.

[1] Erlangga Alif Mufti dan Ontran Sumantri Riyanto, “Peran Lembaga Pemasyarakatan Dalam Upaya Rehabilitasi Narapidana Untuk Mengurangi Tingkat Residivis,” *Al-Manhaj Jurnal Hukum dan Pranata Sosial* 5, no. 2 (2023): 2425–38, https://doi.org/10.37680/almanhaj.v5i2.4026.

Basically, the law enforcement process has been regulated in sufficient detail in procedural law, both in Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), Herzien Inlandsch Reglement (HIR), Rechtreglement voor de Buitengewesten (RBg), as well as in other laws and regulations. But in its application, it still often causes conflicts, both conflicts between advocates and the police,[2] conflicts between advocates and prosecutors,[3] and conflicts between advocates and judges.[4] This certainly disrupts the harmonization of advocates with other law enforcers in the law enforcement process, which results in the law enforcement process cannot run properly, and ultimately cannot present a fair law enforcement process.

According to Soerjono Soekanto, law enforcers have different positions and roles. So that the various positions and roles may give birth to conflicts.[5] If there is a conflict between law enforcers, of course the law enforcement process will be disrupted. Therefore, harmonization of law enforcement is needed in the law enforcement process. According to the chairman of the Judicial Commission (Komisi Yudisial), the success of law enforcement is highly dependent on the substance of law, legal structure, legal culture, and law enforcement officials. Therefore, law enforcers, such as police, prosecutors, judges, and advocates need to synergize because they play an important role in law enforcement in Indonesia.[6]

Advocates and other law enforcers are an important part of the law enforcement process, because it is law enforcers who carry out law enforcement. However, conflicts between law enforcers disrupt the law enforcement process. In

[2] Priska Sari Pratiwi, "Oknum Polisi Diduga Intervensi Perkara, Pengacara Ngamuk Hamburkan Uang Rp. 40 Juta di Polsek Banyuwangi," Kompas.com, 2023, https://regional.kompas.com/read/2021/11/16/070850678/oknum-polisi-diduga-intervensi-perkara-pengacara-ngamuk-hamburkan-uang-rp.

[3] Andrian Supendi, "Konflik Jaksa dan Pengacara, Ormas ALIBI Angkat Suara," Cuplik.com, 2023, https://www.cuplik.com/read/17982/Konflik-Jaksa-dan-Pengacara,-Ormas-ALIBI-Angkat-Suara.

[4] Desca Lidya Natalia, "Pengacara Juliari Batubara Menilai Vonis Penuh Konflik Kepentingan," Antaranews.com, 2023, https://www.antaranews.com/berita/2345410/pengacara-juliari-batubara-menilai-vonis-penuh-konflik-kepentingan.

[5] Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum* (Jakarta: Rajawali Grafindo Persada, 2012), 20–21.

[6] Yuni dan Festi, "Perlu Sinergi APH dan Advokat dalam Penegakan Hukum," Komisi Yudisial, 2023, https://komisiyudisial.go.id/frontend/news_detail/1156/perlu-sinergi-aph-dan-advokat-dalam-penegakan-hukum.

addition, the applicable procedural law in Indonesia is no longer in accordance with the current situation and conditions. There are even law enforcement processes that have not been regulated by law. So that law enforcers who are given the authority as regulators, namely the Supreme Court, the Police, and the Attorney General's Office often issue procedural laws that are considered detrimental to the interests of advocates.

Several research discuss law enforcement in the law enforcement process. First is the research by Ali Imron, titled “The Role and Position of the Four Pillars in Law Enforcement Judges, Prosecutors, Police, and Advocates in Connection with Law Enforcement in Corruption Cases”. Ali Imron's research focuses on the role and behavior of law enforcers in solving corruption problems. The results of Ali Imron's research show that the involvement of law enforcement officers in corruption crimes greatly affects the creation of the rule of law.[7] Meanwhile, this research focuses on finding the urgency of harmonizing advocates with other law enforcers in the law enforcement process and the factors that influence it.

Second, Novriansuah and Syaiful Ahmad Dinar's research entitled “Analysis of the Duties and Authorities of Law Enforcement Officials in Indonesia”. Novriansyah and Syaiful Ahmad Dinar's research focused on analyzing the authority of advocates who are not balanced with the authority of judges, prosecutors and police. The results of Novriansyah and Syaiful Ahmad Dinar's research concluded that if advocates are given equal authority with judges, prosecutors and police, the law enforcement system will be better.[8] Novriansuah and Syaiful Ahmad Dinar's research is different from this research which focuses on finding the urgency of harmonizing advocates with other law enforcers in the law enforcement process and the factors that influence it.

Third, Mohammad Fadhil’s research, “The Harmonization of Wiretapping Regulations in Indonesia: Law Enforcement Perspective,” focuses on the

[7] Ali Imron, “Peran dan Kedudukan Empat Pilar dalam Penegakan Hukum Hakim Jaksa Polisi serta Advocat Dihubungkan dengan Penegakan Hukum pada Kasus Korupsi,” *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* 6, no. 1 (2016): 83.

[8] Novriansyah dan Syaiful Ahmad Dinar, “Analisis Tugas dan Kewenangan Aparat Penegak Hukum di Indonesia,” *Morality: Jurnal Ilmu Hukum* 9, no. 1 (2023): 132–39.

harmonization of the law enforcement system carried out by law enforcement officers in various law enforcement agencies regarding wiretapping authority in criminal law enforcement processes. The author found that there is still overlapping authority regulated by law. Furthermore, the law does not yet regulate the provisions for permits for wiretapping, which is a privacy right.[9]

Based on the description of the background of the problem above, it is necessary to research the factors that influence the harmonization of advocates with other law enforcers in the law enforcement process.

RESEARCH METHODS

This research is normative juridical research. The approaches used are statutory approaches and conceptual approaches. The statutory approach and conceptual approach are used to analyze legal materials qualitatively.[10] The legal materials used are primary and secondary legal materials. Primary legal materials are authoritative, including KUHAP, HIR, RBg, and other laws and regulations relating to law enforcement and law enforcement. While secondary legal materials are in the form of legal scientific works in journals, reference books, theses, dissertations, and other scientific works. The research begins by collecting legal materials through literature studies, both conventional and electronic libraries (digital library). All legal materials collected were then grouped according to the subject matter, both physically and electronically. Furthermore, legal materials were verified and analyzed qualitatively. The analysis results are then described prescriptively by the prescriptive nature of legal science.

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[9] Mohammad Fadhil, "The Harmonization of Wiretapping Regulations in Indonesia: Law Enforcement Perspective," *Substantive Justice International Journal of Law* 3, no. 2 (2020): 125–46, https://doi.org/http://dx.doi.org/10.33096/substantivejustice.v3i2.75.

[10] Burhan Bungin, *Metodologi Penelitian Kualitatif: Aktualisasi Metodologis ke Arah Ragam Varian Kontemporer* (Depok: Rajawali Pers, 2017), 124.

RESULT AND DISCUSSION

A. The Urgency of Harmonizing Advocates with Other Law Enforcement Officers

The term harmonization comes from the Greek word harmonia which means harmoniously bound.[11] Philosophically, the term harmony is interpreted as cooperation between various factors in such a way as to produce a noble unity.[12] Meanwhile, the word harmonization is defined as the quality of two or more things going well together and producing an attractive result; the process of making systems or rules similar in different countries or organizations.[13]

Rudolf Stammler argued that the concept and principles of fair law include harmonization between the goals, objectives and interests of individuals with the goals, objectives and interests of the general public.[14] Harmonization in law includes the adjustment of laws and regulations, government decisions, judges' decisions, legal systems and legal principles to increase legal unity, legal certainty, justice and equity, usefulness and clarity of law, without obscuring and sacrificing legal pluralism if needed. Legal harmonization brings a very important perspective as a necessity to be able to realize certainty, justice and benefits.[15]

The harmonization of law is an essential tool to address the regulatory challenges arising from globalization and the increase in international commercial transactions. This phenomenon focuses on creating consistent legal frameworks that reduce conflicts of laws and transaction costs while improving legal certainty. The harmonization of law remains an evolving process, reflecting global changes and the need to bridge legal divides that transcend territorial boundaries. This phenomenon fosters normative integration and promotes

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[11] Hassan Shadily, *Ensiklopedi Indonesia* (Jakarta: Ichtiar Baru, 1983), 1262.

[12] Suhartono, "Harmonisasi Peraturan Perundang-undangan dalam Pelaksanaan Anggaran Belanja Negara," (Universitas Indonesia, 2011), 94.

[13] Oxford English Dictionary, "Harmonization," Oxford Dictionaries, 2023, https://www.oxfordlearnersdictionaries.com/definition/english/harmonization.

[14] Alsyam, Delfina Gusman, dan Didi Nazmi, "Pelaksanaan Peran Kantor Wilayah Kementerian Hukum dan Ham Sumatera Barat Dalam Rangka Harmonisasi Peraturan Daerah Provinsi Sumatera Barat Tahun 2019," *UIR Law Review* 5, no. 2 (2021).

[15] Endrik Safudin, *Harmonisasi Hukum dalam Antinomi Hukum: Telaah Kritis atas Penerapannya oleh Mahkamah Agung* (Yogyakarta: Q-Media, 2021), 38–39.

international cooperation,demonstrating that, despite its complexity, the pursuit of legislative alignment is an indispensable path for global development.[16]

In the process of setting up legislation, harmonization is a required, compulsory instrument to achieve the validity of a regulation so that the implementation of the regulation still obeys its principles. Due to the fact that a regulationmust not conflict with the relevant statutes, vertical harmonization is required during the legislation process.[17] The principle of vertical harmonization is to ensure that the regulation meets the mandate of the constitution while horizontal harmonization is an attempt to standardize seemingly similar provisions stated in several different regulations. The standardization is set so that in its implementation, each regulation to some extend does not overlap resulting in the emergence of legal uncertainty.In turn, this will lead to a disorder or disparity regulatory regime.[18]

The disharmony in the law has implications for legal uncertainty.[19] In the law enforcement process, disharmony between advocates and other law enforcement officials not only results in legal uncertainty but also hinders the process itself. In the investigation process, for example, disharmony between advocates and investigators can lead to protracted investigations. Similarly, in court proceedings involving advocates and public prosecutors, who are often in conflict, the two parties are often in conflict.

Essentially, the role of advocates as legal counsel for suspects or defendants is almost the same as that of prosecutors as public prosecutors, namely, testing criminal cases in court. However, their positions are opposite. While prosecutors have the role of indicting and prosecuting defendants, advocates play the opposite role: refuting the charges and demands submitted by the public prosecutor. Both also have the authority to present evidence in court. The goal is to strengthen the

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[16] Emmanuel Guillermo Carreño Bernal, "Harmonization of cross border contract law: Legal solutions in a globalized world," *Journal of Policy and Society* 2, no. 2 (2024): 1–11, https://doi.org/https://doi.org/10.59400/jps2273.

[17] K.A. Sudiarawan, P.E. Tanaya, dan B. Hermanto, "Discover the Legal Concept in the Sociological Study," *Substantive Justice International Journal of Law* 3, no. 1 (2020): 94–108, https://doi.org/http://dx.doi.org/10.33096/sjijl.v3i1.69.

[18] Fadhil, "The Harmonization of Wiretapping Regulations in Indonesia: Law Enforcement Perspective."

[19] M. Hamdi et al., "The urgency of Harmonization of Central and Regional LawsinthePerspective of Constitutional Law," *Iuridica Pancasila* 1, no. 3 (2025): 146–53.

arguments presented, namely the arguments outlined by the public prosecutor in the indictment and charges, and the arguments outlined by advocates as legal counsel for the defendant in their exceptions and defense.

The often-conflicting positions of advocates and other law enforcement officials in the law enforcement process do not necessarily mean their relationship must be antagonistic and conflicting. The relationship between advocates and public prosecutors must remain cordial. The law enforcement process is fundamentally about verifying the truth of a legal event, not creating conflict between law enforcement officials. Therefore, the relationship between advocates and other law enforcement officials in the law enforcement process must remain harmonious. If advocates and other law enforcers are in conflict with each other, the law enforcement process will not be able to provide justice to the parties involved in the case. Harmonization of advocates with other law enforcers in the law enforcement process is needed to be able to realize a fair law enforcement process (fairness).

Soerjono Soekanto emphasized the importance of behavior of law enforcement officers in conducting law enforcement.[20] In fact, the relationship between advocates and other law enforcement officials is often strained during the law enforcement process. This includes advocates and investigators during investigations, advocates and prosecutors during prosecutions, and even advocates and judges during court hearings. This strained relationship ultimately disrupts the law enforcement process. Consequently, procedural violations often occur during the law enforcement process. This is undoubtedly detrimental to the public involved in litigation. There are several factors that encourage disharmonious relations between advocates and law enforcers in the law enforcement process. One of them is because of sectoral ego.

The high sectoral ego and intersection of authority are still obstacles in the harmonization process.[21] The function of legal harmonization is to prevent and

[20] Feby Milenia yahya Krisna Putri et al., "Thinking the Future Potential of Artificial Intelligence in Law Enforcement," *Perspektif Hukum* 24, no. 2 (2024): 269–94, https://doi.org/https://doi.org/10.30649/ph.v24i2.319.

[21] Padma Widyantari dan Adi Sulistiyono, "Pelaksanaan Harmonisasi Rancangan Undang-Undang Perlindungan Data Pribadi (RUU PDP)," *Jurnal Privat Law* 8, no. 1 (2020): 102.

overcome legal disharmony.[22] Harmonization of law is directly proportional to the harmonization of law enforcement. Because law enforcement is the executor of law enforcement. If law enforcement is influenced by its own legal factors, law enforcement factors, factors of means or facilities supporting law enforcement, community factors, and cultural factors,[23] then there are three factors that affect the harmonization of advocates and other law enforcers in the law enforcement process, namely statutory factors, authority factors, and interest factors.

B. Statutory Factor

Statutory is one of the factors that influence the harmonization of advocates with other law enforcers in the law enforcement process.[24] Leaning on Soerjono Soekanto's opinion,[25] laws and regulations can affect the harmonization of advocates and other law enforcers due to the following matters:

a. Law enforcers do not heed the principle of the applicability of the law;

b. There are differences in legal interpretation among law enforcers;

c. The absence of implementing regulations from the law or procedural law has not regulated.

First, law enforcers do not heed the principle of the applicability of the law. In the law enforcement process, law enforcers often do not heed the principle of the applicability of the law. The principle of the applicability of law that is often ignored by law enforcers in the law enforcement process is the principle of preference consisting of the principle of lex specialis derogat legi generali, the principle of lex posterior derogat legi priori, and the principle of lex superior derogat legi inferiori.[26] The principle of lex specialis derogat legi generali provides a rule that regulations that regulate specifically override regulations that regulate

[22] Kusnu Goesniadhie, *Harmonisasi Sistem Hukum: Mewujudkan Tata Pemerintahan Yang Baik* (Malang: Nasa Media, 2020), 11.
[23] Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, 5.
[24] Mohammad Zamroni dan M. Tauchid Noor, "Harmonisasi Jaksa dan Advokat dalam Proses Penegakan Hukum" (Surabaya, 2023), 22–23.
[25] Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, 17–18.
[26] Shinta Agustina, "Implementasi Asas Lex Specialis Derogat Legi Genarali dalam Sistem Hukum Peradilan Pidana," *MMH* 44, no. 4 (2015): 503–10.

generally. Meanwhile, the principle of lex posterior derogat legi priori provides a rule that new regulations override old regulations. Meanwhile, the principle of lex superior derogat legi inferiori provides a rule that hierarchically higher regulations override lower regulations.

The principle of lex specialis derogat legi generali is often debated by advocates and other law enforcers in law enforcement practice. This is also triggered by differences in interpreting statutory provisions. The disregard of the principle of lex specialis derogat legi generali can be seen in applying the provisions of Article 310 of Law No. 17 of 2023 on Health (Law No. 17/2023). Article 310 of Law No. 17/2023 states, "In the event that a Medical Personnel or Health Personnel is suspected of committing an error in carrying out their profession that causes harm to the Patient, disputes arising from the error shall first be resolved through alternative dispute resolution outside the court". The above provision actually already exists in the old health law, namely Law No. 36/2009 on Health (Law No. 36/2009). Article 29 of Law No. 36/2009 states, "In the event that health workers are suspected of committing negligence in carrying out their profession, the negligence must first be resolved through mediation".

Some of the above provisions are lex specialis of medical dispute resolution arrangements. Therefore, medical disputes should first be resolved through mediation or out-of-court dispute resolution. But the fact is that law enforcers such as police, prosecutors, and judges never heed them. Often medical disputes are directly prosecuted without going through mediation or out-of-court dispute resolution.[27] One of them is a medical dispute that occurred in Manado. Although in the end the defendant, who is a doctor, was acquitted by the Supreme Court, the law enforcement process that has been carried out has led to detention without going through mediation procedures. The detention that has been carried out against doctors is a violation of legal principles.[28]

[27] Sugiyarto, "Dituding Lakukan Malpraktik, Dokter RS Baptis Kediri Dilaporkan ke Polisi," Tribun News, 2016, https://www.tribunnews.com/regional/2016/01/09/dituding-lakukan-malapraktik-dokter-rs-baptis-kediri-dilaporkan-ke-polisi.

[28] Muchamad Nafi, "Cukup Berbelit, Dokter Ayu Akhirnya Bebas," Tempo.co, 2023, https://nasional.tempo.co/read/552246/cukup-berbelit-dokter-ayu-akhirnya-bebas.

Second, differences in legal interpretation. Differences in interpretation are common between advocates and other law enforcers in law enforcement practices, both on clear statutory norms, especially on unclear statutory norms. Differences in interpretation of clear statutory norms can be seen in the practice of legal remedies against acquittals. Article 67 of KUHAP states, “The defendant or public prosecutor has the right to appeal against a decision of the court of first instance except for acquittal, release from all legal charges concerning issues of inaccurate application of the law and court decisions in a speedy trial”. Furthermore, Article 244 of KUHAP states, “Against criminal case decisions rendered at the final level by a court other than the Supreme Court, the defendant or public prosecutor may file a request for cassation to the Supreme Court except for acquittals”.

The provisions of Articles 67 and 244 of KUHAP clearly regulate the exclusion of legal remedies against acquittals. If interpreted literally or textually,[29] then an acquittal verdict cannot be appealed or cassated. However, in reality, in the practice of law enforcement, the prosecutor as the public prosecutor often files a cassation appeal against an acquittal (vrijspraak) on the grounds that the verdict is not pure acquittal. The terms pure acquittal and impure acquittal used by the public prosecutor are of course subjective and do not provide legal certainty. Moreover, the judge's verdict did not use the terms pure acquittal and impure acquittal. However, the legal remedy taken by the public prosecutor was accepted by the Supreme Court, as recorded in decision No. 275 K/Pid/1983 dated December 10, 1983.

The advocate as the defendant's legal counsel viewed that the legal remedy against the acquittal decision made by the public prosecutor and accepted by the Supreme Court, in addition to harming the defendant, also did not provide legal certainty. The problem of differences in interpretation was then submitted for judicial review to the Constitutional Court by a defendant who had been acquitted in the Lubuk Sikaping District Court. Despite the dissenting opinion, the Constitutional Court in Case No. 114/PUU-X/2012 dated March 28, 2013 held the

[29] Mohammad Zamroni, “Penafsiran Kontrak dalam Perspektif Hermeneutik,” *Yuridika* 31, no. 3 (2016): 521–43.

view that cassation appeal against acquittal has been accepted and implemented in the practice of law enforcement. Therefore, the phrase "except for acquittals" in Article 244 of KUHAP was declared contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force. This means that acquittals can be appealed in cassation. The Constitutional Court's decision also provides a basis for public prosecutors to file cassation appeals against acquittals without the need to use the term acquittal.

Differences in legal interpretation between advocates and other law enforcers on unclear norms of legislation are certainly more common.[30] One of them is the provision of Article 21 paragraph (1) of KUHAP which states, "Detention or continued detention is ordered for a suspect or defendant who is strongly suspected of committing a criminal offense based on sufficient evidence, in the event that there are circumstances that raise concerns that the suspect or defendant will escape, damage or eliminate evidence and or repeat the criminal offense". The phrase "there are circumstances that raise concerns that the suspect or defendant will escape, damage or eliminate evidence and or repeat a criminal offense" contains ambiguity and is subjective, so law enforcers can interpret as they wish. In law enforcement practice, this vague provision on detention often leads to conflicts between advocates and other law enforcers.[31]

Law enforcers representing government institutions, namely the police, prosecutors and judges are indeed given discretionary authority to overcome specific problems that arise in the administration of government, especially when laws and regulations are unclear, incomplete or ambiguous.[32] But the interpretations made by police, prosecutors and judges are often different from those of advocates. So that the differences in interpretation that occur between advocates and other law enforcers in the law enforcement process interfere with the law enforcement process. In the practice of law enforcement, this difference in interpretation also has the potential to give birth to unprofessional and corrupt law

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[30] Zamroni dan Noor, "Harmonisasi Jaksa dan Advokat dalam Proses Penegakan Hukum," 26.

[31] Zamroni dan Noor, 39.

[32] Tugimin Supriyadi et al., "Wewenang Polisi Dalam Menagakkan Hukum," *Jurnal Administrasi Negara* 2, no. 4 (2024): 204–10.

enforcement actions. Corruption among law enforcers is done through bribery between advocates and other law enforcers.[33]

Third, the absence of implementing regulations from the law or procedural law has not regulated. Basically, laws and regulations can only be made by state institutions that have the authority to form laws (rechtsvorming),[34] including implementing regulations. However, state institutions are also regulators, so they are given the authority to make laws and regulations. This is confirmed in Article 8 paragraph (1) of Law No. 11/2011 on the Formation of Legislation (Law No. 12/2011) which states that laws and regulations include regulations stipulated, among others, by the Supreme Court, agencies, institutions, or commissions of the same level established by law.

The Supreme Court, the Police Force and the Public Prosecutor's Office are state institutions, so they have the authority to make laws and regulations. In addition to being regulated in Law No. 12/2011, the authority of the Supreme Court, the Police and the Public Prosecutor's Office is also affirmed in laws that specifically regulate the institutions of the Supreme Court, the Police and the Public Prosecutor's Office. This authority is regulated in Article 79 of Law No. 14/1985 on the Supreme Court (Law No. 14/1985) which states, “The Supreme Court may further regulate matters necessary for the smooth administration of justice if there are matters that have not been sufficiently regulated in this Law”. Thus, the Supreme Court has the authority to make laws and regulations relating to the implementation of law enforcement in judicial institutions. The same applies to the police and the prosecutor's office. Meanwhile, Indonesian Advocates Association (Peradi), although declared by the Constitutional Court as a state organ,[35] is not given the authority to make laws and regulations.

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[33] Ahmad Faiz Ibnu Sani, “Mahfud MD Beberkan Contoh Perilaku Korup Aparat Penegak Hukum,” Kumparan.com, 2023, https://kumparan.com/irsan-arief/upaya-hukum-kasasi-terhadap-putusan-bebas-pasca-putusan-mahkamah-konstitusi-1wQmFRXFKh7/2.

[34] Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan: Dasar-Dasar Pembentukannya* (Yogyakarta: Kanisius, 1998), 54.

[35] Daniel Romi Sihombing, “The Indonesian Advocates Association As a Constitutional State Organ,” *Jurnal Pembaharuan Hukum* 11, no. 2 (2024): 315–32.

Implementing regulations and procedural laws are often not issued or issued late in Indonesian constitutional practice, so relevant institutions - including the Supreme Court, police and prosecutors - then make their own implementing regulations and/or procedural laws to regulate the technical implementation of the law. In the practice of law enforcement, the existence of regulations made by law enforcement agencies often disrupts the harmonization of advocates with other law enforcers. This can be seen in the decision of the Constitutional Court No. 92/PUU-XV/2017 dated March 20, 2018, which was submitted by an advocate who felt hindered by technical regulations made by law enforcement, so that he could not carry out his profession in accordance with the provisions of Article 69 and Article 70 paragraph (1) of KUHAP.

Article 69 of KUHAP states, "Legal counsel has the right to contact the suspect from the time of arrest or detention at all levels of examination according to the procedures specified in this law". Furthermore, Article 70 paragraph (1) of KUHAP states, "Legal counsel has the right to contact and speak with the suspect at every level of examination and at any time for the purpose of defending his case".

The provisions of Article 69 and Article 70 paragraph (1) of KUHAP above expressly regulate that the advocate as legal counsel can contact his client who is a suspect at any time for the purpose of defending his case. However, other law enforcement agencies that detain suspects or defendants make internal regulations on how to contact suspects or defendants who are in detention. As a result, advocates are hindered by these internal regulations, so they cannot freely contact their clients. This view of the Constitutional Court also confirms the existence of problems in applying statutory norms.

C. The Authority Factor

The term authority is defined as the power to influence or command thought, opinion, or behavior.[36] According to Alan Renwick and Ian Swinburn, authority is linked to respect, which creates legitimacy and, therefore, leads to power.[37]

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[36] Merriam-Webster Dictionary, "Authority," Merriam-Wesbter, 2023, https://www.merriam-webster.com/dictionary/authority.

[37] Alan Renwick dan Ian Swinburn, "Power and Authority," *Hyphen* 7, no. 2 (1992): 67–78.

Therefore, McMahon argues that authority cannot be separated from the question of power sharing.[38] Max Weber divides authority into three types, namely traditional, legal-rational, and charismatic.[39] According to Stout, authority as coming from administrative law. Authority as part of the law of government organization in the form of rules relating to the acquisition and use of government authority in public law.[40] The authority referred to in this research is legal-rational authority based on the rule of law.

Basically, all law enforcers, including police, prosecutors, judges and advocates, have the authority granted by law. However, there are considerable differences between the authority of the police, prosecutors and judges and the authority of advocates, especially in the law enforcement process. The authority of the police as investigators in the law enforcement process includes: a. Conducting investigations into criminal cases; b. Receiving reports or complaints of criminal cases; c. Ordering to stop and checking the identification of suspects; d. Taking fingerprints of suspects; e. Summoning people, either as witnesses, experts, or suspects for examination; f. Bringing in experts for the sake of explaining an offence. Bringing in experts for the sake of illuminating a criminal offence; g. Stopping the investigation of a criminal case where sufficient evidence is not found; h. To arrest a suspect; i. To detain a suspect; j. To transfer the type of detention of a suspect; k. Conduct searches of a person, house or certain places; l. To confiscate evidence of criminal cases; m. To open, examine and confiscate letters. To open, examine and confiscate letters sent by post.

The authority of the prosecutor as a public prosecutor in the law enforcement process includes: a. Receiving and examining investigation case files from investigators; b. Conducting pre-prosecution of cases submitted by investigators; c. Making indictments in criminal cases; d. Submitting criminal cases received from investigators to the court; e. Prosecuting defendants in court; f. Closing cases submitted to him in the interest of the interests of justice; g. Implementing the

[38] McMahon, *Authority and Democracy: A General Theory of Government and Management* (Princenton: Princenton University Press, 2017), 25.

[39] Renwick dan Swinburn, "Power and Authority," 69.

[40] H.D. Stout, *De Betekenissen van de Wet: Theoritisch-Kritische Beschouwingen over het Principe van Wetmatigheid van Bestuur* (Zwolle: W.E.J. Tjeenk Willink, 1994), 102.

judge's decision or judge's determination; h. Detain suspects who investigators have handed over; i. Transfer the type of detention of suspects who have been handed over by investigators. The powers frequently abused by public prosecutors are the authority to detain and the authority to file charges. The authority to detain often opens up opportunities for arbitrary action, just as the authority to determine sentence lengths opens up opportunities for the trading of prison sentences or fines.

The authority of judges as a representation of the judiciary in law enforcement, among others: a. To hear, examine, decide and settle cases, whether civil, criminal or administrative; b. Detain the defendant; c. Transfer the type of detention of the defendant; d. Examine and decide on pretrial proceedings. Examine and decide on pretrial proceedings. Judges have independence in conducting examinations and deciding cases. Judges cannot be influenced by anyone, including the leadership of the judicial institution. However, judges must also not be influenced by their own interests. In examining and deciding cases, judges must always adhere to the interests of justice.

Meanwhile, the authority of advocates as law enforcers in the law enforcement process includes: a. Providing legal services both inside and outside the court; b. Issuing opinions or statements in defense of cases in court; c. Carrying out their professional duties to defend the interests of clients; d. Requesting information, data, and other documents from government agencies and other parties for the benefit of clients; e. Contacting and speaking with suspects in criminal cases; f. Request a copy of the minutes of examination of a criminal case; g. Send a letter to the suspect and receive a letter from the suspect. In general, advocates do not have coercive powers like investigators, prosecutors, and judges. However, this does not mean advocates are immune from corruption. Corruption by other law enforcement officers is often influenced by advocates.

If we look at the authority of law enforcers mentioned above, the authority of the police, prosecutors and judges The authority of advocates in the law enforcement process is not comparable and even unbalanced when compared to the authority possessed by other law enforcers.[41] The authority of the police, prosecutors and judges seems superior to the authority of advocates. So that the police, prosecutors and judges are more powerful in the law enforcement process than advocates. In relation to detention, for example, police, prosecutors and judges have absolute authority to detain or not detain suspects. Detention authority is also only sufficiently based on the subjective reasons of the police, prosecutors and judges. Advocates, on the other hand, do not have the authority to refuse or give consideration to detention. Advocates can only surrender to the detention made by the police, prosecutors and judges. Even if they file a pretrial appeal, they will certainly lose if the detention is in accordance with existing procedures.[42]

The unbalanced authority of the police, prosecutors, judges and advocates often disrupts the harmonization of advocates with the police, prosecutors and judges. In relation to detention, for example, police, prosecutors and judges consider that they have absolute authority to detain or not detain suspects based only on subjective reasons. Detention authority by law enforcers other than advocates is also often carried out arbitrarily.[43] Meanwhile, advocates consider the subjective reasons used by the police, prosecutors and judges do not have a clear measure, thus harming the interests of advocate clients. The authority of advocates who are not equal to other law enforcers will be difficult to create a better law enforcement system.[44]

D. Interest Factor

Law enforcers certainly each have an interest in law enforcement. The interests of the police, prosecutors and judges may be different from those of advocates. In the matter of detaining a suspect or defendant, for example, the police, prosecutors and judges may detain a suspect or defendant in the interest of a smooth law

[41] Novriansyah dan Dinar, "Analisis Tugas dan Kewenangan Aparat Penegak Hukum di Indonesia."

[42] Zamroni dan Noor, "Harmonisasi Jaksa dan Advokat dalam Proses Penegakan Hukum," 28–29.

[43] Ramsen Marpaung dan Tristam Pascal Moeliono, "Perbandingan Hukum antara Prinsip Habeas Corpus dalam Sistem Hukum Pidana Inggris dengan Praperadilan dalam Sistem Peradilan Pidana Indonesia," *Wawasan Yuridika* 5, no. 2 (2021): 224–48.

[44] Novriansyah dan Dinar, "Analisis Tugas dan Kewenangan Aparat Penegak Hukum di Indonesia."

enforcement process. On the other hand, the advocate who accompanies the suspect or defendant also has an interest that the suspect or defendant is not detained during the law enforcement process. On the other hand, the police, prosecutors and judges may also not detain a suspect or defendant because they consider the suspect or defendant to be cooperative. On the other hand, advocates who assist victims have an interest in having the suspect or defendant detained during the law enforcement process.

The different interests of the police, prosecutors and judges with advocates can certainly affect harmonization among law enforcers in the law enforcement process. In the practice of law enforcement, the interests of law enforcers are not only related to the interests of law enforcement, but also often colored by the personal interests of law enforcers.[45] This is not only a result of the existence of absolute authority, but also due to the existence of unclear and multi-interpretation laws and regulations. So that law enforcers can use their authority for personal gain. Ambiguous legal norms often create loopholes for law enforcers to take arbitrary action and open up opportunities for corrupt acts.

The authority of the police as investigators to make someone a suspect, for example, or the authority of the police as investigators and prosecutors to detain or not detain a suspect. Or the authority of the judge to decide whether the defendant is guilty or not guilty. In the practice of law enforcement, the absolute authorities granted by the law often give birth to corruptive behaviour, both bribery and gratuities. This can be seen in several corruption cases involving law enforcers.

Some cases of legal violations – especially corruption – which were actually carried out by law enforcers include corruption case verdict No. 92/Pid.Sus-TPK/2019/PN.Smg. involving a prosecutor, corruption case verdict No. 66/Pid.Sus-TPK/2021/PN Jkt.Pst. involving the police, corruption case verdict No. 66/Pid.Sus-TPK/2022/PN.Sby. involving a judge, and corruption case verdict No. 84/Pid.Sus-TPK/2022/PN.Sby. involving a judge. 84/Pid.Sus-

[45] Angel Nikhio, Cindy Sekarwati Amalia, dan Zain Irawan, "Penegakan hukum di Indonesia: Peran Pemerintah dalam Mewujudkannya," *Indigenous Knowledge* 2, no. 6 (2023): 414–23.

TPK/2023/PN.Jkt.Pst. involving advocates shows that the interests of law enforcers are not only related to the fulfilment of law enforcement procedures but also the personal interests of law enforcers in order to gain benefits. Therefore, the interest factors that can affect the harmonization of advocates with other law enforcers can be in the form of law enforcement interests, as well as the personal interests of law enforcers.

Interest factors, both law enforcement interests and the personal interests of law enforcers can affect the harmonization of advocates and other law enforcers in the law enforcement process. The existence of interest factors, especially personal interests, is not only a violation of the law but also detrimental to the justice-seeking public and cannot present a fair law enforcement process. This factor is what triggers legal violations committed by law enforcers, namely by violating the law enforcement process which should be carried out properly. The primary interest in law enforcement should be the interests of law enforcement itself, or the interest in upholding law and justice. However, the reality is that the most pressing interest is often the personal interest of profit. As a result, many law enforcement officials, who should be enforcing the law, end up breaking the law.

CONCLUSION

Harmonization of advocates with other law enforcers in the law enforcement process is needed to be able to realize a fair law enforcement process (fairness). There are three factors that affect the harmonization of advocates with other law enforcers, namely statutory factors, authority factors, and interest factors. Statutory factors include law enforcement not heeding the principles of law, the existence of unclear statutory norms, and the absence of implementing regulations or procedural laws that have not yet been regulated. The authority factor, among others, occurs because of the unbalanced authority between advocates and other law enforcers. The interest factor, among others, occurs due to differences in the interests of law enforcers, both for the sake of law enforcement as well as the personal interests of law enforcers.

BIBLIOGRAPHY

Books:

Bungin, Burhan. *Metodologi Penelitian Kualitatif: Aktualisasi Metodologis ke Arah Ragam Varian Kontemporer*. Depok: Rajawali Pers, 2017.

.

Goesniadhie, Kusnu. *Harmonisasi Sistem Hukum: Mewujudkan Tata Pemerintahan Yang Baik*. Malang: Nasa Media, 2020.

McMahon. *Authority and Democracy: A General Theory of Government and Management*. Princenton: Princenton University Press, 2017.

Safudin, Endrik. *Harmonisasi Hukum dalam Antinomi Hukum: Telaah Kritis atas Penerapannya oleh Mahkamah Agung*. Yogyakarta: Q-Media, 2021.

Shadily, Hassan. *Ensiklopedi Indonesia*. Jakarta: Ichtiar Baru, 1983.

Soekanto, Soerjono. *Faktor-faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Grafindo Persada, 2012.

Soeprapto, Maria Farida Indrati. *Ilmu Perundang-Undangan: Dasar-Dasar Pembentukannya*. Yogyakarta: Kanisius, 1998.

Stout, H.D. *De Betekenissen van de Wet: Theoritisch-Kritische Beschouwingen over het Principe van Wetmatigheid van Bestuur*. Zwolle: W.E.J. Tjeenk Willink, 1994.

Suhartono. “Harmonisasi Peraturan Perundang-undangan dalam Pelaksanaan Anggaran Belanja Negara,.” Universitas Indonesia, 2011.

Zamroni, Mohammad, dan M. Tauchid Noor. “Harmonisasi Jaksa dan Advokat dalam Proses Penegakan Hukum.” Surabaya, 2023.

Journals and Scientific Papers:

Agustina, Shinta. “Implementasi Asas Lex Specialis Derogat Legi Genarali dalam Sistem Hukum Peradilan Pidana.” *MMH* 44, no. 4 (2015): 503–10.

Alsyam, Delfina Gusman, dan Didi Nazmi. “Pelaksanaan Peran Kantor Wilayah Kementerian Hukum dan Ham Sumatera Barat Dalam Rangka Harmonisasi Peraturan Daerah Provinsi Sumatera Barat Tahun 2019.” *UIR Law Review* 5, no. 2 (2021).

Bernal, Emmanuel Guillermo Carreño. “Harmonization of cross border contract law: Legal solutions in a globalized world.” *Journal of Policy and Society* 2, no. 2 (2024): 1–11. https://doi.org/https://doi.org/10.59400/jps2273.

Fadhil, Mohammad. “The Harmonization of Wiretapping Regulations in Indonesia: Law Enforcement Perspective.” *Substantive Justice International Journal of Law* 3, no. 2 (2020): 125–46.

https://doi.org/http://dx.doi.org/10.33096/substantivejustice.v3i2.75.

Hamdi, M., Gasper Doroh, Moh Ali, dan Indra Rukmono. "The urgency of Harmonization of Central and Regional LawsinthePerspective of Constitutional Law." *Iuridica Pancasila* 1, no. 3 (2025): 146–53.

Imron, Ali. "Peran dan Kedudukan Empat Pilar dalam Penegakan Hukum Hakim Jaksa Polisi serta Advocat Dihubungkan dengan Penegakan Hukum pada Kasus Korupsi." *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* 6, no. 1 (2016): 83.

Marpaung, Ramsen, dan Tristam Pascal Moeliono. "Perbandingan Hukum antara Prinsip Habeas Corpus dalam Sistem Hukum Pidana Inggris dengan Praperadilan dalam Sistem Peradilan Pidana Indonesia." *Wawasan Yuridika* 5, no. 2 (2021): 224–48.

Mufti, Erlangga Alif, dan Ontran Sumantri Riyanto. "Peran Lembaga Pemasyarakatan Dalam Upaya Rehabilitasi Narapidana Untuk Mengurangi Tingkat Residivis." *Al-Manhaj Jurnal Hukum dan Pranata Sosial* 5, no. 2 (2023): 2425–38. https://doi.org/10.37680/almanhaj.v5i2.4026.

Nikhio, Angel, Cindy Sekarwati Amalia, dan Zain Irawan. "Penegakan hukum di Indonesia: Peran Pemerintah dalam Mewujudkannya." *Indigenous Knowledge* 2, no. 6 (2023): 414–23.

Novriansyah, dan Syaiful Ahmad Dinar. "Analisis Tugas dan Kewenangan Aparat Penegak Hukum di Indonesia." *Morality: Jurnal Ilmu Hukum* 9, no. 1 (2023): 132–39.

Putri, Feby Milenia yahya Krisna, Hary Abdul Hakim, Chrisna Bagus Edhita Praja, dan Gerald Espares. "Thinking the Future Potential of Artificial Intelligence in Law Enforcement." *Perspektif Hukum* 24, no. 2 (2024): 269–94. https://doi.org/https://doi.org/10.30649/ph.v24i2.319.

Renwick, Alan, dan Ian Swinburn. "Power and Authority." *Hyphen* 7, no. 2 (1992): 67–78.

Sihombing, Daniel Romi. "The Indonesian Advocates Association As a Constitutional State Organ." *Jurnal Pembaharuan Hukum* 11, no. 2 (2024): 315–32.

Sudiarawan, K.A., P.E. Tanaya, dan B. Hermanto. "Discover the Legal Concept in the Sociological Study." *Substantive Justice International Journal of Law* 3, no. 1 (2020): 94–108. https://doi.org/http://dx.doi.org/10.33096/sjijl.v3i1.69.

Supriyadi, Tugimin, Intan ratna Sari, Risma Ayu Sulistyowati, Suci Larosanthy Putri, dan Talitha Fairuz Marsya Nugraha. "Wewenang Polisi Dalam Menagakkan Hukum." *Jurnal Administrasi Negara* 2, no. 4 (2024): 204–10.

Widyantari, Padma, dan Adi Sulistiyono. "Pelaksanaan Harmonisasi Rancangan Undang-Undang Perlindungan Data Pribadi (RUU PDP)." *Jurnal Privat Law* 8, no. 1 (2020): 102.

Yuni, dan Festi. "Perlu Sinergi APH dan Advokat dalam Penegakan Hukum." Komisi Yudisial, 2023. https://komisiyudisial.go.id/frontend/news_detail/1156/perlu-sinergi-aph-dan-advokat-dalam-penegakan-hukum.

Zamroni, Mohammad. "Penafsiran Kontrak dalam Perspektif Hermeneutik." *Yuridika* 31, no. 3 (2016): 521–43.

Website:

Dictionary, Merriam-Webster. "Authority." Merriam-Wesbter, 2023. https://www.merriam-webster.com/dictionary/authority.

Dictionary, Oxford English. "Harmonization." Oxford Dictionaries, 2023. https://www.oxfordlearnersdictionaries.com/definition/english/harmonization

Nafi, Muchamad. "Cukup Berbelit, Dokter Ayu Akhirnya Bebas." Tempo.co, 2023. https://nasional.tempo.co/read/552246/cukup-berbelit-dokter-ayu-akhirnya-bebas.

Natalia, Desca Lidya. "Pengacara Juliari Batubara Menilai Vonis Penuh Konflik Kepentingan." Antaranews.com, 2023. https://www.antaranews.com/berita/2345410/pengacara-juliari-batubara-menilai-vonis-penuh-konflik-kepentingan.

Pratiwi, Priska Sari. "Oknum Polisi Diduga Intervensi Perkara, Pengacara Ngamuk Hamburkan Uang Rp. 40 Juta di Polsek Banyuwangi." Kompas.com, 2023. https://regional.kompas.com/read/2021/11/16/070850678/oknum-polisi-diduga-intervensi-perkara-pengacara-ngamuk-hamburkan-uang-rp.

Sani, Ahmad Faiz Ibnu. "Mahfud MD Beberkan Contoh Perilaku Korup Aparat Penegak Hukum." Kumparan.com, 2023. https://kumparan.com/irsan-arief/upaya-hukum-kasasi-terhadap-putusan-bebas-pasca-putusan-mahkamah-konstitusi-1wQmFRXFKh7/2.

Sugiyarto. "Dituding Lakukan Malpraktik, Dokter RS Baptis Kediri Dilaporkan ke Polisi." Tribun News, 2016. https://www.tribunnews.com/regional/2016/01/09/dituding-lakukan-malapraktik-dokter-rs-baptis-kediri-dilaporkan-ke-polisi.

Supendi, Andrian. "Konflik Jaksa dan Pengacara, Ormas ALIBI Angkat Suara." Cuplik.com, 2023. https://www.cuplik.com/read/17982/Konflik-Jaksa-dan-Pengacara,-Ormas-ALIBI-Angkat-Suara.