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PERSPEKTIF HUKUM

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DEVELOPING A REGULATORY MODEL FOR DIGITAL INHERITANCE OF CRYPTOCURRENCY ASSETS: THE INDONESIAN LEGAL PERSPECTIVE

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Article	Abstract
Keywords: Cryptocurrency; Inheritance Law; Inheritance Assets; Civil Law; Digital Executors **Article History** Received: Sep 06, 2025; Reviewed: Oct 14, 2025; Accepted: Oct 31, 2025; Published: Nov 11, 2025;	The rapid development of digital technology has introduced new forms of wealth, with cryptocurrencies being a prominent example. In Indonesia, these assets have gained significant popularity as investment instruments, but their intangible nature and reliance on private keys for ownership pose serious legal challenges in the realm of inheritance. The research aims to analyze the legal position of cryptocurrencies as inheritable objects and to formulate a viable inheritance mechanism that ensures legal certainty for heirs. This research uses normative legal methods by analyzing relevant statutory law, legal doctrine, and comparative perspectives of the legal system in the Netherlands and the United States. The findings show that cryptocurrencies meet the criteria to be classified as movable and intangible objects, in accordance with Articles 503 and 504 of the Civil Code. Nevertheless, a significant gap was identified between the legal rights of heirs (de jure) and their practical

ability to access assets (de facto), due to the lack of uniform technical regulations. Therefore, the research concludes that two strategic steps are needed: the issuance of national technical guidelines to standardize inheritance claims procedures and the development of a "Digital Executor" mechanism, which is officially empowered to manage the digital assets of the deceased.

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Introduction

The global financial and investment landscape is undergoing a fundamental transformation in line with the rapid development of digital technology[1]. One of the most disruptive innovations is the emergence of crypto assets, which in Indonesia have been legally recognized as a popular investment instrument[2]. However, the legal framework that oversees it has now entered a crucial new chapter. The enactment of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK Law) is a milestone, which expressly transfers the task of regulating and supervising crypto assets from Bappebti to the Financial Services Authority (OJK).[3] This transition, which is further regulated in Government Regulation Number 49 of 2024 and OJK Regulation (POJK) Number 27 of 2024, is not just an administrative change[4]. This is a paradigm shift that

[1] Budau, Victor. 2024. "ASAP: A Conceptual Model for Digital Asset Platforms." *IMF Working Paper* 2024 (19): 1. https://doi.org/10.5089/9798400266157.001.

[2] Tajriani, Dini Tiara, and Burhanudin Rabani. 2024. "An Analysis of the Impact of Cryptocurrency Investment as a Digital Transaction for a Sustainable World Economy." JOURNAL of APPLIED BUSINESS and BANKING (JABB) 5 (2): 1. https://doi.org/10.31764/jabb.v5i2.27109.

[3] Gandasari, Nur Mutiara, Rendy Riansyah Hidayat, and Farahdinny Siswajanthy. 2025. "The Role of the Financial Services Authority (OJK) in Overseeing Fintech Lending as a Digital Economy Instrument." Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory. 3 (1): 399. https://doi.org/10.62976/ijijel.v3i1.941.

[4] Mulyana, Septira Putri, I Gusti Bagus Sakah Sumaragatha, and Beverly Evangelista. 2025. "THE URGENCY OF INTEGRATING THE AUTHORITY OF OJK AND BAPPEBTI IN REGULATING CRYPTO ASSET INVESTMENT IN

reclassifies crypto assets from "commodities" traded on the futures market to "Digital Financial Assets".[5] The placement of Digital Financial Assets under the jurisdiction of the OJK—the main regulator of the banking, capital markets, and other financial services sectors—implicitly reinforces the status of these assets as part of legitimate and inheritable personal wealth, on par with conventional financial instruments such as stocks, bonds, or mutual funds.

This transition created unprecedented momentum for comprehensive legal reform. This shift of authority is a key catalyst that makes the regulatory model proposed in this study not only relevant, but also urgent and implementable. Bappebti's previous mandate was more focused on the commodity trading aspect, while the OJK has a broader mandate covering consumer protection, financial system stability, and, most importantly, professional regulation in the financial services sector[6]. OJK's well-established institutional capacity in licensing and supervising various financial professions provides a solid foundation for the proposed formation of new fiduciary roles such as "Digital Executors". By accepting jurisdiction over Digital Financial Assets, the OJK also inherently has a mandate to resolve all legal and consumer protection issues inherent in such assets, including inheritance, which is a fundamental aspect of asset ownership.

The practice of inheriting crypto digital assets faces unique challenges. Juridically, based on the progressive interpretation of the Civil Code (KUHPerdata), especially Articles 499, 503, and 504, Digital Financial Assets meet the criteria as intangible movable objects (onlichamelijk) that have economic value and can be transferred, so that they are valid as part of the inheritance (boedel)[7]. However, this (de jure) legal recognition often becomes futile in the face of technical reality. The diversity of forms and properties of digital assets makes

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INDONESIA." Journal of Notary Treatises 6 (1): 238. https://doi.org/10.29303/risalahkenotariatan.v6i1.356.

[5] Ibid

[6] Kardinata, Henes, and Jonker Sihombing. 2024. "Reconstruction of Arrangements on the Role of the Financial Services Authority in Bank Health Supervision Post-Law on Development and Strengthening of the Financial Sector." *International Journal of Religion* 5 (12): 259. https://doi.org/10.61707/ydkgwc22.

[7] Rilda, Rilda Murniati, and Muhamad Dafa Razwa Ramadhan. 2025. "A Normative Legal Analysis of Crypto Assets as Collateral for Debt in Indonesia." *Fiat Justisia Journal of Law* 19 (1): 21. https://doi.org/10.25041/fiatjustisia.v19no1.3586.

conventional inheritance provisions not easy to implement[8]. For example, access to a digital wallet or crypto exchange account belonging to the deceased requires special credentials (private key, password) that may not be known to the heirs. Unlike traditional assets, digital assets are often protected by an encrypted security system and regulated by the terms of service providers that cross countries[9]. As a result, heirs can have a hard time claiming crypto assets without a clear legal arrangement.

Indonesia does not yet have a special regulation that regulates the execution or procedures for the transfer of digital assets to heirs. The applicable inheritance law – both based on the Civil Code and the Compilation of Islamic Law – does stipulate that all forms of inheritance are transferred to the heirs[10]. However, the absence of technical rules for digital assets creates a norm vacuum. The petitioners in a recent case of material review at the Constitutional Court highlighted this by stating that the absence of special provisions on digital inheritance creates legal uncertainty and makes it difficult for heirs and legal practitioners to manage the deceased's digital assets[11]. The Constitutional Court in its decision (Case 51/PUU-XXIII/2025) acknowledged that the complexity of heritage in the digital era needs to be accommodated, even though the application was rejected because it was considered not a direct constitutional issue[12].

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[8] Yang, Qi Xiang. 2025. "Principles for the Standardized Handling of Digital Property Inheritance." *Humanities and Social Science Research* 8 (3). https://doi.org/10.30560/hssr.v8n3p29.

[9] Akramov, Akmaljon A., Nilufar Kh. Rakhmonkulova, Odilbek Khazratkulov, Elnora E. Inamdjanova, Diyora I. Imamalieva, Shakhzoda R. Tuychieva, Sayidkomil B. Ibodullaev, Azamat E. Ergashev, Shokhrukh Khamidov, and Nodira R. Rustamova. 2024. "The Impact of Digitalization in Inheritance Law." *Qubahan Academic Journal* 4 (3): 100. https://doi.org/10.48161/qaj.v4n3a863.

[10] Maru'atun, Dika Ratu, Dwi Juniyanto, Wahyu Rivaldi, and Asep Sunarya. 2024. "Analysis of the Distribution of Inheritance to Heirs According to Civil Law (BW)." *Amendment* 1 (3): 350. https://doi.org/10.62383/amandemen.v1i3.449.

[11] Agarwal, Shalabh, and Asoke Nath. 2025. "Digital Inheritance: Scope and Challenges." In , 15. https://doi.org/10.9734/bpi/mcsru/v3/4190.

[12] Constitutional Court of the Republic of Indonesia, "Inheritance of Digital Assets Difficult to Implement," *Constitutional Court of the Republic of Indonesia*, June 7, 2024, https://www.mkri.id/berita/pewarisan-aset-digital-sulit-diterapkan-23428.

This phenomenon, known as dead wallets, creates a sharp "execution gap": the heirs have legal rights to the asset, but do not have the technical (de facto) ability to claim or access it[13]. This is not just a technical challenge, but a legal-procedural failure that causes permanent losses to the rightful heirs. The absence of uniform technical regulation from regulators exacerbates this situation, where inheritance claim procedures are left entirely to the internal policies of each Digital Financial Asset broker, creating uncertainty and potential unfair treatment.

Based on this background, this research focuses on two main legal issues. First, how can the Indonesian legal system bridge the execution gap in the inheritance of Digital Financial Assets after the transition of authority to the OJK? Second, what kind of regulatory model can provide legal certainty for heirs while also being institutionally implemented within the existing OJK framework? 1 To answer this question, this study not only analyzes the existing legal vacuum, but also proposes a novelty in the form of a comprehensive conceptual solution. The novel is the formulation of the "Two-Pillar Digital Executor Model", a regulatory framework designed specifically for the Indonesian context.1 The purpose of this paper is to formulate a structured, secure, and enforceable Digital Financial Asset inheritance mechanism, thereby engineering legal certainty in the digital age and ensuring that the civil rights of heirs are not eroded by technological developments.

Method

This research uses a research method with a juridical-normative approach. This approach was chosen because the problems studied are normative and directly related to the emptiness or ambiguity of the law in dealing with new phenomena. This method focuses on a systematic analysis of applicable laws and regulations and relevant legal doctrines, as well as examining their relationship to legal principles and practices in other countries. The data sources used are divided into two main categories:

Primary Data is in the form of primary legal materials that are authentic and binding, such as the Civil Code (Civil Code), the

[13] Hernando-Corrochano, Jesús, Rafael Vargas, and Roberto Hernández-Berlinches. 2025. "Trusted Wills for Digital Assets Using Blockchain: A Practical Case." *Blockchain Research and Applications*, April, 100289. https://doi.org/10.1016/j.bcra.2025.100289.

Commercial Law Code, Law Number 10 of 2011 concerning Commodity Futures Trading, as well as a series of Bappebti Regulations that specifically regulate cryptocurrency assets. Data related to inheritance claim procedures on digital asset platforms such as Indodax and Reku, the data was obtained from the company's public policy documentation, not through direct interviews. Thus, this research is entirely based on a literature study. Secondary Data consists of secondary legal materials used to complement and support the analysis, such as law books, scientific articles, journals, and official research from relevant institutions (such as Bappebti and OJK). This research also refers to the practice and court decisions in the Netherlands that have a similar legal system to enrich comparative studies.

The analytical approach used is qualitative. The collected data is analyzed to identify the interconnectedness, patterns, and gaps between legal norms and practical reality. This research not only presents the findings, but also analyzes the legal implications of each data, outlines the cause-and-effect relationship, and provides in-depth insights into how the existing legal framework can be interpreted progressively to address the challenges of the digital age. Comparative studies with the Netherlands and the United States are an important instrument to show the model of solutions that have been applied in countries with the same legal tradition, which can then be adapted to the Indonesian context.

Result and Discussion

A. Conditions of Cryptocurrency Regulation as Objects of Inheritance in Indonesia

1. *Cryptocurrency* as an Inherited Object in Civil Property Law

In the Indonesian civil law system, the concept of "property" (zaak) is not limited to physical entities. Article 499 of the Civil Code defines an object as "every property and every right, which can be the object of property".[14] This definition suggests that the main emphasis of material law lies in an entity's ability to have and have value, not in its physical form alone. *Cryptocurrency* is a tangible manifestation of the concept of intangible things (onlichamelijk). This classification is in line with Articles 503 and 504 of the Civil Code which states that

[14] Nofriza, N. "The Application of Cessie in Debt Settlement in Islamic Banking," *Responsive Law*, V. 13, No. 1, 2022, p. 142.

"rights to movable objects" and "receivables and bills" are also considered movable objects[15].

In this case, *cryptocurrencies* can be analogized to other intangible property rights such as copyrights, patents, or receivables that are legally recognized as legal and transferable objects[16]. This flexibility of civil law interpretation allows *cryptocurrencies* to qualify as intangible movable objects. Civil inheritance law, an asset can be an object of inheritance if it has an economic value that can be valued with money[17]. Most *cryptocurrency* assets, such as Bitcoin, have an algorithmically limited amount of supply, which creates a digital scarcity[18]. This phenomenon of scarcity mimics the properties of physical commodities such as gold or oil, which are the fundamental basis of their value[19]. Market price analysis shows that assets such as Bitcoin, Ethereum, and Shiba Inu have real and substantial economic value, which can be quantitatively measured and converted into conventional currencies[20].

Table 1: Market Value of Popular *Cryptocurrency* Assets (As of June 2025)

Parameters	Bitcoin (BTC)	Ethereum (ETH)	Shiba Inu (SHIB)
Price per unit (USD)	USD 103,700–105,900	USD 2,640–2,650	USD 0.00001226

[15] Widianti, I. A., and Iskandar, H. "Legal Protection for Investors in Cryptocurrency Transactions on Binance Application in Indonesia," Jurisprudence Journal of Sharia Science of Islamic Economic Legislation, V. 15, No. 1, 2023, p. 41.

[16] Hariri, M. R., Ramli, A. M., and Ramli, T. S. "Legal Review of the Practice of Commercialization of Songs and/or Music Through Non-Fungible Tokens (NFTs) by Musicians in Indonesia," *COMSERVA Journal of Research and Community Service*, V. 2, No. 11, 2023, p. 2645.

[17] Ramadhany, Hero of Dhoga. The position of crypto assets as inherited property in the perspective of civil law. *Lex Positivis*, 2024, 2.8: 960-973.

[18] Rilda, R. M., and Ramadhan, M. D. R. "A Normative Legal Analysis of Crypto Assets as Collateral for Debt in Indonesia," *Fiat Justisia Journal of Legal Sciences*, V. 19, No. 1, 2025, p. 21.

[19] Zhou, Y., Xie, C., Wang, G., et al. "Forecasting cryptocurrency volatility: a novel framework based on the evolving multiscale graph neural network," Financial Innovation, V. 11, No. 1, 2025.

[20] Qurani, E. F. "The impact of earnings per share, debt to equity ratio, and return on equity on company stock prices: An empirical study," *Management & Entrepreneurship Implementation*, V. 2, No. 1, 2022, p. 38.

Parameters	Bitcoin (BTC)	Ethereum (ETH)	Shiba Inu (SHIB)
Conversion Value (IDR)	IDR 1.68–1.72 billion	IDR 42.8–42.9 million	IDR 0,19
Global Market Capitalization	> USD 2 trillion	> USD 300 billion	> USD 6.8 billion

Note: Exchange rate: IDR 16,200/USD

This data shows that *cryptocurrencies* are not just digital entities with no value, but assets that have real value, can be cashed, and are widely traded. The fact that these assets can be converted into Rupiah through Bappebti-supervised brokers is strong evidence that they are eligible to be counted as part of a person's inheritable estate[21]. The relevance of Article 1977 of the Civil Code is that Article 1977 paragraph (1) of the Civil Code establishes the principle of bezit, namely "legal possession of movable objects is proof of perfect ownership".[22] This principle provides a legal basis that can be applied to cryptocurrency inheritance. In the digital context, control over assets can be analogous to the control of private keys or access to digital wallets (crypto wallets) that store these assets[23].

2. Analysis of Legal Gaps and Practical Challenges of Crypto Asset Inheritance in Indonesia

Juridical *cryptocurrencies* qualify as an object of inheritance, the process of inheritance in Indonesia still faces significant legal gaps and practical challenges[24]. This challenge stems from fundamental differences including:

a. Technical Challenges: Reliance on Private Keys and Network Anonymity

[21] Tejawati, D. N., Salviana, F. M., and Wulandari, S. "Conceptual formulation of establishing A bullion bank within the Indonesian legal system," 2024.

[22] Омельчук, О. С., Іліопол, І. М., and Alina, S. "Features of Inheritance of Cryptocurrency Assets," *Ius Humani Law Journal*, V. 10, No. 1, 2021, p. 103.

[23] Aldweesh, A. "Blockchain-Based Secure Firmware Updates for Electric Vehicle Charging Stations in Web of Things Environments," *World Electric Vehicle Journal*, V. 16, No. 4, 2025, p. 226.

[24] Siregar, G. H. P., and Handoko, W. "A Case Study of the Law of the Inheritance of the Supreme Court Decision Number 784 K/Pdt/2014 Against the Legal Provisions of the West Inheritance," *NOTARIUS*, V. 15, No. 2, 2022, p. 607.

Cryptocurrency ownership is not recorded with a central authority such as a bank, but rather within a distributed blockchain network. Access and control of assets is entirely dependent on the ownership of private keys that are unique and confidential[25]. These keys cannot be recovered or reset by a third party. Consequently, if the heir dies without leaving a private key or instructions to access it, the asset will be locked forever within the network and inaccessible to anyone, including legal heirs[26]. This is a crucial point that shows the inability of traditional inheritance systems to address the structural problems caused by the decentralized nature of *cryptocurrencies*[27]. Additionally, blockchain systems are designed to be anonymous or pseudonymous, which means that the identity of the owner is not directly linked to the digital wallet address[28]. This makes it difficult for the heirs to identify the existence of *the heir*'s cryptocurrency assets without specific information from the heirs themselves. Without clues such as the broker's name or wallet address, the heirs have to do manual search, which is very inefficient and even impossible given the sheer number of platforms available.

b. Juridical Challenge: Absence of Special Regulations

A special regulation from Bappebti or OJK that uniformly regulates the procedure for *claiming the inheritance of cryptocurrency* assets in Indonesia. The current procedures are Ad hoc and depend on the internal policies of each digital asset broker.[29] Communication with Indodax and Reku shows that although they have an inheritance claim procedure, the conditions can vary and there are no nationally binding standards[30]. As a result, the heirs will experience unnecessary uncertainty and administrative

[25] Salikhov, M. "Model of a Distributed Storage System for Crypto Wallet Private Keys," *Automatic Control and Computer Sciences*, V. 58, No. 8, 2024, p. 1289.

[26] Nur, F., and Mujib, A. "Mutual Funds: Sengeketa Settlement at the Indonesian Capital Market Arbitration Board (BAPMI)," *Sharia Economic Law Journal*, V. 7, No. 1, 2023, p. 44.

[27] Pucci, F. "An Alternative Juridical Take on Cryptoassets," 2025.

[28] Lee, L. "Examining the Legal Status of Digital Assets as Property: A Comparative Analysis of Jurisdictional Approaches," SSRN Electronic Journal, 2024.

[29] Op.cit. Rilda, R. M., and Ramadhan, M. D. R, 2025, p. 21.

[30] Op.cit. Nur, F., and Mujib, A, 2023, p. 44

complexity, which can hinder the process of equitable distribution of the estate.

B. Comparative Studies and Models of Crypto Asset Inheritance Mechanisms

1. Digital Asset Inheritance Mechanism in the Netherlands

The inheritance *of cryptocurrency assets* in the Netherlands basically follows the traditional legal framework of inheritance set out in the Burgerlijk Wetboek (BW), specifically Book 4 on inheritance (erfrecht). However, since *cryptocurrencies* are an intangible form of digital wealth and rely on special encryption technology and private access, this asset inheritance mechanism requires adjustments in practice. In the Dutch legal system, all vermogen (property), both tangible and intangible, can be inherited if it meets the element of ownership and can be legally proven. *Cryptocurrencies* in this case, although not explicitly regulated in the law, are legally recognized in the Netherlands as property because they have economic value, can be individually owned, and are transferable. Therefore, *cryptocurrency* assets are considered part of the estate if the heirs legally own them and the heirs can prove their existence as well as ownership[31].

The heirs must first obtain a Verklaring van Erfrecht, which is a certificate of heirs issued by a notary. This document is the legal basis for accessing and managing heritage assets. The main challenge in cryptocurrency inheritance lies in the technical aspect of access, namely the existence of private keys, digital wallets (wallets), or accounts on exchanges. If this information is not passed on or cannot be accessed by the heirs, then *the cryptocurrency* asset is at risk of being unclaimed and lost forever, even if it is legally recognized as part of the heir's object[32]. As digital asset ownership increases among the public, the practice of notarization in the Netherlands is beginning to show adaptation to modern forms of wealth such as *cryptocurrencies*. One of the concrete steps that is now starting to be accepted in inheritance practices is the inclusion of information related to digital assets in

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[31] European e-Justice Portal, *"Succession – Netherlands", European Commission"*, https://e-justice.europa.eu/topics/family-matters-inheritance/inheritance/succession/nl_en?NETHERLANDS=&member=1, accessed 12 June 2025.

[32] BERLEE, Anna. Digital inheritance in the Netherlands. *J. Eur. Consumer & Mkt. L.*, 2017, 6: 256.

electronic wills (digital wills).[33] Although juridically the will must still meet the form and procedures prescribed by Dutch law, some notary offices have begun to accept digital attachments in the form of lists and technical instructions related to the heir's *cryptocurrency* assets . The contents of the electronic will generally include:

- A list of cryptocurrency wallets owned by the heirs along with their public addresses.
- Information about the location of the private key storage (such as cold storage) is required to access the asset.
- Specific instructions on how to withdraw or transfer blockchain-based assets

Just like in Indonesia, the Dutch civil law system, which adheres to the civil law tradition and is codifiable in nature, provides a legal basis for heirs to draft a valid written will before a notary. The provisions in the Burgerlijk Wetboek (BW) allow the heirs to explicitly include in the will document ownership of digital assets, including *cryptocurrencies*, as well as designate certain parties as heirs or beneficiaries of those assets[34].

In the Netherlands, the development of cryptocurrency digital asset ownership has led to the birth of several actual practices involving third parties to facilitate the inheritance process in a secure and structured manner. These third parties include notaries, law firms, and specialized digital service providers, which offer various solutions to bridge the limitations of formal law in the face of the technical challenges of inheriting *cryptocurrency assets*. Various inheritance mechanisms that are now beginning to be implemented in the Netherlands include:

a. Entrust private key information to a notary

One of the most formal and secure mechanisms in the context of the inheritance *of cryptocurrency* assets in the Netherlands is through the custody of digital access information (such as seed

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[33] KUPI, Marcell; KUNDI, Victoria; SZABÓ, Tamás. Deciphering the cryptocurrency impact on tourism dynamics: Legal insights from Spain, France, Croatia, and the Netherlands. *Geojournal of Tourism and Geosites*, 2025, 58.1: 422-432.

[34] Gulyamov Said Saidakhrarovich, Akramov Akmaljon Anvarjon Ugli, and Eshbayev Gayrat Bolibek Ugli, *"Digitalization in Inheritance Law"*, World Bulletin of Management and Law (WBML), Vol. 10, May 2022, p. 24, accessed June 12, 2025.

phrases) to a notary in the form of a deed of depot (deed of custody). In this scheme, the owner of a digital asset can draft a statement or will before a notary be stating the location and access instructions to *his cryptocurrency* wallet . The data is then entered into a confidential notarial document and stored officially. Further, such information can be registered in the Central Testamentenregister (CTR). With this system, the heirs will know which notary keeps the key information, and the notary can only hand over access to the legal heirs, after the heir dies and accompanied by the necessary legal evidence.

This custody mechanism is considered by researchers to be a formal mechanism and has a strong legal basis, because it is directly integrated into the inheritance legal process that applies in the Netherlands, namely through a notary deed and official registration procedure. In addition to providing legal certainty, this approach also ensures information security and avoids the risk of losing access to digital assets due to the absence of clear technical documentation[35].

b. By listing a private key in the will

Notaries and law offices in the Netherlands generally recommend that cryptocurrency asset owners include access arrangements for their digital assets through a will document or Levens testament. However, including the private key directly in the contents of the will document is not recommended, because after the heir dies, the document becomes accessible to the heirs, so it cannot guarantee the confidentiality of the access information because it raises new opportunities for unilateral claims (if there is more than one heir) which is not allowed and against the law[36].

c. The role of notaries as digital executors

Several notaries in the Netherlands have begun to accommodate the arrangement of digital assets in inheritance planning services,

[35] KNB (Royal Notarial Professional Organisation), *"Notary and Society: Who Gets Your Data After Your Death?"*, Notariaat Magazine, May 2023 edition, https://www.knb.nl/notariaat-magazine/2023-05/notaris-en-maatschappij-wie-krijgt-je-data-na-je-dood, accessed June 12, 2025.

[36] Siregar, Yulkarnaini. Legal Review of the Application of Conventional Inheritance Law Provisions to Cryptocurrency Assets. *Fox Justi: Journal of Legal Sciences*, 2025, 15.02: 549-555.

including through the appointment of a "digitale executor" or special executor responsible for the management of *cryptocurrency assets*. The heirs can appoint specific individuals, e.g. close friends who have a technical understanding of *cryptocurrencies*, to carry out these executor functions as set out in the contents of the official will. This step aims to ensure that there are trusted parties who have the legal authority to help heirs access digital wallets and transfer *cryptocurrency assets* in accordance with the contents of the heir's will. Juridically, the appointment of a digital executor in a will has legal force, as it is carried out in a document that is subject to the provisions of Dutch inheritance law.

d. Digital vault (Brankas Digital)

The notary profession in the Netherlands, the Koninklijke Notariële Beroepsorganisatie (KNB), once initiated an initiative called "Digitale Kluis" or digital vault, which aims to help people store important personal information securely as part of digital inheritance planning. Through this service, individuals can store various digital access data, including cryptocurrency wallet credentials, which can later be accessed by legal heirs after the heir's death. This existence can later be recorded by the notary in the national will register, so that the notary has information that the heir has entrusted certain digital access through the mechanism. When the heir dies, the heirs who have legal rights can apply for opening access through the notary concerned[37].

This initiative can be seen as something semi-formal because although it has not been explicitly regulated in the legislation, this program has the support of notary professional institutions where the organization is directly connected to the formal legal process through registration in the will register. This practice can be seen as an institutional effort to bridge the regulatory gap in digital heritage management amid the increasing ownership of digital assets by the public.

Beyond the scope of notaries, there are also currently commercial digital vault services designed to store a variety of important personal data, such as passwords, private keys, digital will documents, and other

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[37] Ribola, Henrique Alves Guia. *The Emergence of Safeguarding the Inheritance Process Within the Unstable Context of Cryptoassets*. 2022. Master's Thesis. Universidade NOVA de Lisboa (Portugal).

sensitive information. These services generally aim to facilitate the handing over of such information to the heirs after the account owner has passed away. One example of such a service is the Momentio platform which provides a digital vault facility for users to upload various types of data, including wills, legal contracts, social media account passwords, to private messages or video recordings addressed to family members. This data will remain securely stored and only accessible to designated parties, such as family members or beneficiaries, after the death of the verified account owner. Although not run under notary authority, services such as these reflect the growing public need for practical digital inheritance mechanisms, and show how the private sector has contributed to bridging the limitations of the formal legal system in the face of the challenges of digital asset and information inheritance.

2. Digital Asset Inheritance Mechanism in the United States

In contrast to the civil law system in Indonesia and the Netherlands, the United States adopts a common law system in which law is developed through court decisions (case law) and laws and regulations. In the United States, the issue of digital asset inheritance is addressed through various state legislations, one of which is the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). RUFADAA is a model law that authorizes fiduciaries (such as executors or guardians) to access and manage the deceased's digital assets[38]. This law has been adopted by many states in the United States and aims to treat digital assets like any other conventional property in the context of estate planning. Under RUFADAA, access to digital assets is regulated in a clear hierarchy[39] :

a. Online Tools

If the service provider (e.g. Google or Facebook) has a built-in tool that allows users to designate trusted contacts, then these

[38] Mccorvey, Asha E. The Hack of the Racial Wealth Gap: How the "American Families Plan" Will Jeopardize the Anonymity of Cryptocurrency Transactions and Potentially Harm Investors of Color. *NC Bank. Inst.*, 2022, 26: 165.

[39] Scaniffe, Nathanael. A New Gold Rush: How Trust Law Can Incentivize Prudent Cryptocurrency Estate Planning and Increase State Revenue. *Quinnipiac Prob. LJ*, 2022, 36: 171.

instructions have the highest priority. Examples include Google's Inactive Account Manager or Facebook's Legacy Contact[40].

b. Wills or Other Legal Documents

If no online tools are used, the instructions given in the will or other estate planning document (such as a power of attorney) will be followed. Digital assets such as *cryptocurrencies* can be specifically mentioned in a will or *trust*.

c. Terms of Service Agreements (TOSA)

If there are no written instructions, access will be governed by the user-approved TOSA when creating the account.

However, the RUFADAA also contains important limitations. Executors of the will are not permitted to access the content of electronic communications such as emails, chats, or private messages unless the decedent explicitly consents[41]. In the case of *cryptocurrencies*, the US tax authorities (IRS) classify these assets as property, not currency. Therefore, *cryptocurrencies* are subject to the probate process like other conventional assets. Just like in Indonesia and the Netherlands, if the heir dies without leaving a private key or clear instructions, the heir risks not being able to access the asset, leading to the permanent loss of the asset.

3. Comparison of Crypto Asset Inheritance Mechanisms in Indonesia, the Netherlands, and the United States

Analysis of both models shows that neither is perfect for Indonesia to adopt directly. The Dutch model is in line with Indonesian legal tradition but lacks certainty, while the US model offers certainty but can be too rigid and adversarial.[1] The following table presents a comparative synthesis and its relevance for model development in Indonesia.

[40] Lestari, Anisa Ayu Dwi. Digital Assets in the Perspective of Indonesian Inheritance Law: The Need for Norm Reformulation in the Cyber Era. *Indonesian Cyber Law Review*, 2025, 2.1: 10-18.

[41] Sheridan, Patricia. Inheriting digital assets: does the revised uniform fiduciary access to digital assets act fall short?. *Ohio St. Tech. LJ*, 2020, 16: 363.

Table 2: Comparison of Settings in Indonesia, the Netherlands and the United States

Variable	Arrangements in Indonesia (Existing)	Setup in the Netherlands	Setting up in the United States	Analysis of Advantages & Adaptability for the Indonesian Model
Legal Basis	Relying on the interpretation of the Civil Code; absence of specific regulations.	Relying on the interpretation of *the Burgerlijk Wetboek*; there is no specific legislation.	Specific legislation (*Revised Uniform Fiduciary Access to Digital Assets Act -* RUFADAA) per state.	The US approach is superior. Indonesia needs a special regulation (OJK Regulation) to provide absolute legal certainty and avoid ambiguity of interpretation.
Key Actors	Heirs and service	Notary (as custodian of	Fiduciaries (executors), custodians/s	The synthesis of both is

	providers (without standards).	information) and the initiative of the asset owner.	ervice providers, and courts.	ideal. Indonesia can create the role of a licensed fiduciary ("Digital Executor") supervised by the OJK, as a trusted intermediary between the heirs and the service provider.
Access Mechanism	It depends on the service provider's internal policy (*ad hoc*).	Relying on proactive documentation by the asset owner (will, custody deed).	A clear three-level hierarchy of authority (*online tools*, legal documents, terms of service).	The US hierarchy is very relevant. Adopting this hierarchy will create clear *default* rules, reducing reliance on asset owner

				proactivity.
Privacy Protection	Undefined.	Implicitly, it depends on the ethics of the notary profession.	Explicit, separation of access between "catalog" (metadata) and "content" of communication.	The separation of access of the US model is a crucial feature. Indonesia should adopt this separation to navigate sensitive privacy issues.
Main Disadvantages	Absolute legal uncertainty: The procedure is not uniform.	The lack of uniformity depends heavily on individual awareness.	Fragmentation of laws between states, the potential for costly and costly processes.	Indonesia can overcome the weaknesses of both. With one national regulation under

				the OJK, the problem of fragmentation can be avoided. A supervised executor model can reduce the potential for conflict.

Therefore, a hybrid approach that synthesizes the advantages of both is the best way for Indonesia. Indonesia needs legislative certainty as in the RUFADAA model, combined with the role of trusted and supervised institutional fiduciaries as in the Dutch model.

4. Model Theoretical Foundation: Law as a Tool of Social Engineering (Roscoe Pound)

The proposed model is based on the theory **of "Law *as a Tool of Social Engineering*"** popularized by Roscoe Pound. The [42] application of this theory transforms the proposed model from a mere technical improvement to a forward-looking act of legal modernization, giving the OJK a strong justification for proactive intervention. The emergence of Digital Financial Assets has created a new social reality—

[42] Purnama, Hamdan, and Iskandar Iskandar. 2024. "A Critical Analysis of Social Engineering Theory in the Context of Legal Development in Indonesia." *ULIL ALBAB Multidisciplinary Scientific Journal* 3 (12): 54. https://doi.org/10.56799/jim.v3i12.5812.

a form of wealth and ownership that was never anticipated by conventional legal frameworks[43]

The existing legal system, while normatively providing a basis for inheritance, fails to bridge the gap between the juridical (*de jure*) rights and the technical (*de facto*) capabilities of the heirs[44]. In the social engineering analogy, a legislator or regulator acts as a "social engineer" who must design new legal mechanisms to balance conflicting interests: the right of heirs to access inheritance, and the security principle of the digital ecosystem[45]. Waiting for the court to resolve disputes in a caustic manner is an inefficient approach and creates uncertainty. Therefore, a conscious effort is needed to "engineer" legal solutions. This model is deliberately designed to prevent asset losses and broader social conflicts, fulfilling the legal function of advancing the welfare of society.

5. Design of a Digital Asset Inheritance Arrangement Model for Indonesia Architecture "Two-Pillar Digital Executor Model"

Based on comparative analysis and Indonesia's unique needs, this study formulates a comprehensive regulatory model, namely the Two-Pillar Digital Executor Model. The model stands on two mutually reinforcing pillars: binding regulatory standardization and institutional adaptation through certified executors.

a. **Pillar I: Regulatory Standardization (National Technical Guidelines)**

The first pillar was inspired by RUFADAA's success in creating clear rules of the game.[1] This pillar is realized through the issuance of a new OJK Regulation (POJK) or amendments to POJK Number 27 of 2024, which will bind all licensed Digital Financial

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[43] Anggraeni, Silvia Dian, Imran Bukhari, and Andi Dahmayanti. 2025. "Navigating Sharia Compliance in the Digital Age: An Examination of Bank Indonesia's Hedging Swap Regulation (PBI 24/7/2022)." *Indonesian Journal of Islamic Economic Law* 2 (1): 58. https://doi.org/10.23917/ijoel.v2i1.5257.

[44] Lee, Luke. 2024. "Examining the Legal Status of Digital Assets as Property: A Comparative Analysis of Jurisdictional Approaches." *SSRN Electronic Journal*, January. https://doi.org/10.2139/ssrn.4807135.

[45] Waagstein, Astrid. 2024. "Exploring the Multiplicity of Digital Remains." *Research Portal Denmark*, January, 248. https://local.forskningsportal.dk/local/dki-cgi/ws/cris-link?src=ku&id=ku-943f1630-f4a2-411e-a723-d72e3c7abb18&ti=Exploring%20the%20multiplicity%20of%20digital%20remains.

Asset Trading Operators in Indonesia.[1] The key provisions of this regulation include:

- Mandatory and Standard Inheritance Claim Procedures: All Digital Financial Assets providers are required to establish and publish a transparent, uniform, and non-burdensome inheritance claim procedure. This will eliminate *the ad hoc practices* that are currently in effect.
- Authority Hierarchy: Adopts a three-level hierarchy of authority in the style of RUFADAA (Online Tools > Wills/Legal Documents > POJK Default Rules) to provide legal certainty in determining which instructions must be followed by service providers.
- Defined Scope of Access: Explicitly adopts separation between "catalog" and "content" access to protect privacy. Access to the content of communications may only be granted with the explicit consent of the deceased or based on a specific court order.
- Legal Safeharbor for Service Providers: Service providers that comply with POJK and follow a lawful request from the heirs or designated Digital Executors will be granted immunity from lawsuits. This clause is crucial to encourage cooperation and reduce the reluctance of service providers to get involved.

b. **Pillar II: Institutional Adaptation (Digital Executors)**

The second pillar takes inspiration from the role of the trusted notary in the Dutch model but formalizes it within a strict regulatory framework of modern regulations.[1] This pillar centers on the establishment of a new fiduciary role. The main features of this pillar are:

- New Licensed Profession: "Digital Executor": Creates a new profession that is certified and licensed. This license can be an additional certification to existing professions such as notaries and advocates, or a new specialty for financial planners who meet the qualifications.
- Licensing and Supervision by the OJK: OJK will be the authorized institution to set certification requirements (including blockchain technical knowledge, inheritance legal expertise, and ethical standards), issue licenses, and conduct active supervision of Digital Executioners.
- Authority and Responsibilities: A Digital Executor, when

appointed in a will or by a court, will have the legal authority to formally interact with the Digital Financial Asset provider, conduct the identification and marshalling of all Digital Financial Assets, manage the valuation and safeguarding of assets, and ensure the distribution of proceeds to the rightful heirs.

The synergy between these two pillars creates an efficient system. Pillar I provides clear rules, while Pillar II provides legitimized professional actors to enforce those rules. Access requests from an OJK-licensed Digital Executor will carry much greater weight and are less likely to be hampered by service providers, as both are under the same regulatory oversight.

c. Timeline of Model Implementation in Indonesia

This model can be implemented effectively, with a strategic and gradual implementation roadmap. This roadmap transforms conceptual proposals into actionable plans for policymakers.

Table 3: Timeline of Model Implementation in Indonesia

Phase	Duration	Main Activities	Key Institutions
Phase 1: Formation of Working Groups and Preparation of Draft Regulations	1st year	OJK formed a task force consisting of legal experts, representatives of the Digital Financial Assets industry, notary associations, and academics to prepare a preliminary draft of the POJK on the inheritance of Digital	OJK, Digital Financial Asset Industry, Indonesian Notary Association (INI)

		Financial Assets.	
Phase 2: Public Consultation and Regulatory Finalization	2nd Year	The draft POJK is open for public consultation. In parallel, OJK develops a curriculum, competency standards, and licensing framework for Digital Executor certification.	OJK, Public, Stakeholders
Phase 3: Initial Implementation and Pilot Program	3rd year	POJK came into effect. OJK launched the first batch of Digital Executor certification program. A *pilot program* was initiated with several major Digital Financial Asset providers.	OJK, Digital Financial Asset Provider, First Batch of Digital Executors
Phase 4: Full Implementation, Public Education, and Evaluation	Year 4th and 5th	Full implementation across the Digital Financial Assets industry. OJK launched a	OJK, the Entire Digital Financial Asset

		massive public education campaign to increase public awareness. OJK conducts periodic evaluations of the effectiveness of the framework.	Industry, the Community

This process began in the 1st Year with the Phase of Working Group Formation and Preparation of Draft Regulations. This initiative is led by the Financial Services Authority (OJK), which formed a special task force. The task force will involve collaboration from a range of key institutions, including legal experts, representatives of the Digital Financial Assets industry, academics, and the Indonesian Notary Association (INI). Their focus is to prepare an initial draft of the OJK Regulation (POJK) which will be the legal basis for the inheritance of Digital Financial Assets.Entering the 2nd year, the process continues to the Public Consultation Phase and Regulatory Finalization. The completed draft POJK will be opened for public consultation, in order to gather input and responses from the public and related stakeholders. In parallel, OJK will also start building its supporting ecosystem by developing curriculum, setting competency standards, and developing a licensing framework for a crucial new profession, namely "Digital Executors".

Year 3 marks the start of the Initial Implementation Phase and Pilot Program. At this stage, POJK officially comes into effect. OJK will launch the first batch of certification programs for Digital Executors. To test the effectiveness of regulations in the field, a pilot program will be initiated, involving cooperation between the OJK, several major Digital Financial Asset providers, and the first batch of Digital Executors. Finally, in Years 4 and 5, this framework will enter the Full Implementation, Public Education, and Evaluation Phase. This regulation will be applied comprehensively throughout the Digital Financial Assets industry. Realizing the importance of public understanding, OJK will launch a massive public education campaign. During this period, the OJK will also conduct periodic evaluations to monitor the effectiveness and impact of this new framework, as well as adjust if necessary.

Conclusion

This research proposes a novelty (novelty) in the form of a comprehensive regulatory solution, namely the "Two-Pillar Digital Executor Model". This model is designed as an application of the theory of "Law as a Tool of Social Engineering" (Roscoe Pound) which allows the OJK to make proactive interventions to create legal certainty. The model consists of two pillars that reinforce each other:

a. Pillar I: Regulatory Standardization. This pillar is realized through the issuance of a new OJK Regulation (POJK) that binds all Digital Financial Asset operators. The POJK will standardize inheritance claim procedures, establish a clear hierarchy of authority (inspired by RUFADAA in the US), define the scope of access to protect privacy, and provide legal protection (safe harbor) for compliant organizers.
b. Pillar II: Institutional Adaptation. This pillar proposes the establishment of a new certified and licensed fiduciary profession, namely the "Digital Executor", which is under the supervision of the OJK. This profession (which can be an additional certification for notaries or advocates) will have the legitimized legal authority to interact with the organizers, carry out the identification, safeguarding, and distribution of the deceased's Digital Financial Assets to the rightful heirs.

Suggestion

The synergy between these two pillars is designed to bridge the gap between juridical rights and technical capabilities, provide a secure and structured mechanism, and ensure that the civil rights of heirs over digital assets can be effectively executed within the framework of OJK supervision. It is recommended that the Financial Services Authority (OJK) adopt a five-year strategic roadmap to regulate the inheritance of Digital Financial Assets, with the following steps:

a. Year 1: Preparation of the Draft OJK Regulation establishes a task force (involving legal experts, industry, academics, and INI) to prepare an initial draft of the OJK Regulation (POJK).

b. Year 2: Public Consultation & Professional Development Conduct public consultation on the draft POJK. In parallel, OJK developed a curriculum, competency standards, and licensing framework for the new profession "Digital Executor".
c. Year 3: Initial Implementation & Pilot Program Validating and enforcing POJK. OJK launched the first batch of Digital Executor certification and initiated a pilot program with several major digital asset providers.
d. Years 4-5: Full Implementation & Evaluation Implement full regulations across industries, supported by a massive public education campaign. OJK conducts periodic evaluations to monitor effectiveness and adjust if necessary.

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PERSPEKTIF HUKUM

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PRINSIP HIFZ AL-MAL DALAM TANGGUNG JAWAB ATAS KETERLAMBATAN PENERBANGAN

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Abstract

This paper aims to analyze airline liability for flight delays from the perspective of Islamic law, particularly through the principle of hifz al-mal as a form of protection for passengers' economic rights. The study employs a descriptive method with a qualitative approach using library research. Within the framework of an ijarah contract, airlines are obligated to fulfill services as agreed, including punctuality. Delays that result in financial losses necessitate compensation, both under positive law and Islamic principles. The hifz al-mal principle emphasizes the importance of safeguarding financial rights against unjust harm. Therefore, compensation such as ticket refunds, accommodation, or other remedies must be provided proportionally and fairly. This study shows that applying Islamic legal principles can strengthen justice in contractual relations between airlines and passengers.

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Pendahuluan

Perdagangan lintas negara adalah perdagangan barang dan jasa yang dikirim melalui batas kepabeanan. Kegiatan ini muncul karena adanya kebutuhan terhadap barang atau jasa yang tidak dapat dipenuhi di dalam negeri, sehingga harus diperoleh dari negara lain. Dalam praktiknya, perdagangan lintas negara memiliki karakteristik yang berbeda dengan perdagangan dalam negeri, terutama dalam aspek peraturan kepabeanan, standar mutu produk, sistem perizinan, hingga kebijakan fiskal masing-masing negara. Kompleksitas tersebut menunjukkan bahwa perdagangan lintas negara bukan hanya sekadar pertukaran komoditas, melainkan bagian integral dari sistem ekonomi global yang menuntut kepastian hukum dan kesetaraan antar pelaku ekonomi. Menurut data Bank Dunia (2023), aktivitas perdagangan internasional menyumbang lebih dari 50% terhadap Produk Domestik Bruto (PDB) global,[1] sehingga menegaskan pentingnya sektor ini dalam menopang stabilitas ekonomi antarnegara..

Dalam konteks transportasi udara sebagai salah satu sarana utama mobilitas perdagangan lintas negara, isu keterlambatan penerbangan menjadi problem yang cukup krusial. Ketika sebuah penerbangan tertunda, dapat memicu efek domino yang mempengaruhi penerbangan lain.[2] Berdasarkan data Direktorat Jenderal Perhubungan Udara Kementerian Perhubungan Republik Indonesia (2022), tercatat sebanyak 2.789 kasus keterlambatan penerbangan domestik dan 234 kasus keterlambatan penerbangan internasional di berbagai bandara di Indonesia.[3] Keterlambatan tersebut dapat disebabkan oleh berbagai faktor, baik yang bersifat internal maupun eksternal. Faktor internal mencakup gangguan cuaca, kerusakan teknis pada pesawat, serta kendala operasional di pihak maskapai. Sementara itu, faktor eksternal meliputi kesalahan manajerial, kepadatan lalu

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[1] Bank Dunia. *World Development Indicators 2023: Trade (% of GDP).* Washington, D.C.: The World Bank, 2023. https://data.worldbank.org/indicator/NE.TRD.GNFS.ZS

[2] Jingyi Qu, Shixing Wu, and Jinjie Zhang, "Flight Delay Propagation Prediction Based on Deep Learning," *Mathematics* 11, no. 3 (2023), https://doi.org/10.3390/math11030494.

[3] Direktorat Jenderal Perhubungan Udara, *Laporan Kinerja Direktorat Jenderal Perhubungan Udara Tahun 2022*, Jakarta: Kementerian Perhubungan Republik Indonesia, 2023.

lintas udara, hingga kondisi bandara yang tidak mendukung.[4] Menurut data Indonesian National Air Carriers Association (INACA, 2023), keterlambatan penerbangan di Indonesia secara agregat dapat menyebabkan kerugian ekonomi hingga mencapai dua miliar rupiah per jam, termasuk potensi kerugian waktu, produktivitas, dan kepercayaan pelanggan.[5]

Keterlambatan penerbangan bukan hanya persoalan teknis, tetapi juga menyangkut aspek hukum dan etika bisnis.[6] Dalam praktiknya, banyak penumpang merasa dirugikan akibat keterlambatan yang mengganggu agenda pribadi, kegiatan bisnis, maupun rencana perjalanan penting lainnya.[7] Berdasarkan Peraturan Menteri Perhubungan Nomor PM 89 Tahun 2015, maskapai penerbangan diwajibkan memberikan kompensasi kepada penumpang dalam bentuk makanan, minuman, pengembalian biaya tiket, atau akomodasi tergantung pada lamanya keterlambatan. Akan tetapi, implementasi regulasi tersebut sering kali tidak berjalan efektif karena proses klaim yang berbelit serta kurangnya transparansi dari pihak maskapai. Hal ini menimbulkan persoalan keadilan kontraktual antara penumpang sebagai pihak penerima jasa dan maskapai sebagai penyedia layanan.[8]

Dalam perspektif hukum Islam, hubungan antara penumpang dan maskapai dapat dikategorikan sebagai akad ijarah, yaitu akad sewa-menyewa jasa, di mana penumpang membayar sejumlah imbalan untuk memperoleh layanan transportasi yang aman dan tepat waktu. Akad ini menimbulkan hak dan kewajiban bagi kedua belah pihak

[4] Shidarta, "Keterlambatan Dan Pembatalan Penerbangan," https://business-law.binus.ac.id/2018/01/19/keterlambatan-dan-pembatalan-penerbangan/, January 2018.

[5] Indonesian National Air Carriers Association (INACA), *Analisis Dampak Ekonomi Keterlambatan Penerbangan di Indonesia*, Jakarta: INACA Research Division, 2023.

[6] Sara Drake, "Delays, Cancellations and Compensation: Why Are Air Passengers Still Finding It Difficult to Enforce Their EU Rights under Regulation 261/2004?," *Maastricht Journal of European and Comparative Law* 27, no. 2 (2020): 230–49, https://doi.org/10.1177/1023263X20904235.

[7] Hasan Sidik, "Air Carrier Liability for Delay," *Intermestic: Journal of International Studies* 1, no. 1 (November 9, 2016): 62–76, https://doi.org/10.24198/intermestic.v1n1.5.

[8] Cosmin Tileagă and Oana Oprişan, "Flights Delay Compensation 261/2004: A Challenge for Airline Companies?," in *Springer Proceedings in Business and Economics*, 2021, https://doi.org/10.1007/978-3-030-50676-6_27.

yang harus dipenuhi sesuai dengan prinsip keadilan dan kejujuran.[9] Salah satu prinsip dalam penetapan hukum Islam adalah mengutamakan kemaslahatan dan menghindari kemudaratan (*jalb al-mashalih wa dar' al-mafasid*). Prinsip ini ditetapkan oleh Allah SWT sebagai legislator utama yang memiliki kewenangan mutlak dalam pembuatan hukum. Oleh karena itu, setiap kebijakan atau tindakan hukum yang dapat menimbulkan kerusakan atau kerugian dilarang dalam syariat.[10]

Salah satu dasar utama dalam transaksi atau akad adalah al-'aqd (perjanjian), yang mengikat kedua belah pihak untuk memenuhi apa yang telah disepakati, sesuai dengan syarat dan ketentuan yang ada.[11] Ketidakpatuhan maskapai terhadap kewajibannya dalam menyediakan layanan sesuai waktu yang dijanjikan dapat dikategorikan sebagai pelanggaran kontrak (*ta'addī*) yang menimbulkan kewajiban hukum berupa kompensasi atau ganti rugi (*ta'wīdh*). Dalam perspektif hukum Islam, meskipun *wa'ad* (janji) pada dasarnya tidak bersifat mengikat, dalam konteks perjanjian yang telah disepakati, janji tersebut memiliki daya ikat yang kuat dan menimbulkan konsekuensi hukum serta tanggung jawab bagi para pihak.[12] Oleh karena itu, ketidakpatuhan maskapai dalam memenuhi kewajiban sesuai akad *ijarah* dapat dianggap sebagai bentuk pelanggaran kontrak yang mengharuskan adanya pertanggungjawaban, termasuk kompensasi kepada penumpang sebagai pihak yang dirugikan.

Berdasarkan konteks hukum Islam, kegagalan untuk memenuhi kewajiban yang tercantum dalam kontrak seperti keterlambatan penerbangan yang mengganggu jadwal penting penumpang, dapat dianggap sebagai pelanggaran terhadap hak penumpang. Hal ini juga dapat memunculkan tanggung jawab untuk memberikan kompensasi sebagai bentuk pemenuhan hak-hak finansial yang terlibat dalam perjanjian tersebut. Dalam pandangan Islam, hak finansial

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[9] Supeno, *Dasar Dasar Hukum Perikatan: Hukum Perjanjian Pada Umumnya, Perjanjian Dalam Perspektif Hukum Internasional, Dan Perjanjian Dalam Perpektif Hukum Islam* (Jambi: Salim Media Indonesia, 2023).

[10] Panji Adam, "Penerapan Sadd Al Dzari'ah Dalam Transaksi Muamalah," *Istiqra* 7, no. 1 (2021).

[11] Sulaeman Jajuli and Abd Misno, *Fiqh Muamalah; Hukum Ekonomi Dan Bisnis Syariah Di Indonesia* (Serang: A-Empat, 2024).

[12] Mustofa Abdul Basir et al., "Legal Consequences And Responsibility of Wa'ad Bonding Power to Sharia Compliance in Akad Al-Ijarah al-Muntahiyah Bi al-Tamlik," *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial* 24, no. 1 (2022), https://doi.org/10.22373/jms.v24i1.10758.

penumpang harus dilindungi berdasarkan prinsip hifz al-mal (perawatan dan perlindungan terhadap harta).

Prinsip hifz al-mal adalah salah satu bagian penting dalam maqasid al-shariah (tujuan-tujuan syariat Islam), yang bertujuan untuk melindungi harta benda manusia agar tidak terbuang atau disalahgunakan. Perlindungan ini sangat relevan dalam kaitannya dengan hak finansial penumpang yang mengalami kerugian akibat keterlambatan penerbangan.[13] Selain itu, prinsip al-'aqd syari' dalam hukum Islam juga mengajarkan bahwa transaksi atau kontrak yang dilakukan harus menguntungkan kedua belah pihak dan tidak merugikan salah satu pihak secara tidak adil.[14] Jika maskapai tidak dapat memenuhi kewajibannya, dalam hal ini keterlambatan penerbangan yang menyebabkan kerugian finansial bagi penumpang, maka kompensasi atau ganti rugi harus diberikan untuk mengembalikan posisi kedua belah pihak pada keadaan yang adil. Sebagaimana disebutkan dalam QS. Al-Baqarah (2): 282, bahwa transaksi dan kontrak harus dilaksanakan dengan penuh kejujuran dan keadilan, di mana masing-masing pihak harus menerima hak mereka tanpa adanya eksploitasi atau penipuan.

Dalam praktik bisnis penerbangan, maskapai penerbangan bertindak sebagai penyedia layanan yang memiliki kewajiban untuk memenuhi kontrak yang telah disepakati dengan penumpang, yaitu untuk menyediakan transportasi tepat waktu sesuai dengan yang dijanjikan. Kontrak ini mengandung unsur kepercayaan dan kepastian, di mana penumpang membayar sejumlah biaya dengan harapan mendapatkan layanan yang aman, nyaman, dan tepat waktu. Namun, dalam realitas operasional, keterlambatan penerbangan sering terjadi karena berbagai faktor, baik yang bersifat teknis maupun non-teknis, sehingga berpotensi merugikan penumpang secara finansial maupun non-finansial.

Dengan demikian, penerapan hukum Islam dalam konteks bisnis penerbangan memberikan kerangka normatif untuk memastikan adanya keseimbangan hak dan kewajiban antara penumpang dan maskapai. Prinsip-prinsip seperti al-'aqd, hifẓ al-māl, dan 'adl harus menjadi landasan dalam penyusunan kontrak dan pelaksanaan

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[13] Yuliyanto Eko Prayitno, Isman, and Rizka, *Risiko Asuransi Dan Pembiayaan Syariah Dalam Kerangka Maqashid Syariah* (Surakarta: Muhammadiyah University Press, 2024).

[14] Dito Anurogo et al., *Pengantar Fiqh Muamalah* (Solok: MAFY MEDIA LITERASI INDONESIA, 2023).

layanan penerbangan. Keterlambatan yang menyebabkan kerugian bagi penumpang, baik secara finansial maupun non-finansial, perlu diselesaikan melalui mekanisme yang berkeadilan dan transparan agar tidak menimbulkan ketimpangan dalam hubungan hukum. Dalam kerangka hukum ekonomi syariah, tanggung jawab maskapai dalam memberikan kompensasi tidak hanya dilihat dari aspek perlindungan konsumen, tetapi juga dari aspek moralitas bisnis Islam yang menuntut pemenuhan hak setiap pihak sesuai dengan kesepakatan. Oleh karena itu, penerapan prinsip hifẓ al-māl dalam praktik bisnis penerbangan dapat menjadi solusi normatif yang menjembatani antara keadilan hukum positif dan keadilan syariah, guna mewujudkan sistem transportasi udara yang adil, aman, dan beretika sesuai nilai-nilai Islam.

Metode Penelitian

Penelitian ini merupakan jenis penelitian hukum yuridis empiris, yaitu penelitian hukum yang mengkaji penerapan norma-norma hukum positif dalam kenyataan sosial, khususnya terkait tanggung jawab maskapai penerbangan terhadap keterlambatan penerbangan dalam perspektif hukum Islam. Penelitian ini bermaksud untuk menganalisis permasalahan dengan menggunakan bahan-bahan hukum (data sekunder) berupa literatur hukum seperti buku, jurnal ilmiah, makalah, bahan perkuliahan, serta bahan hukum sekunder lain yang relevan dengan topik penelitian.

Pendekatan yang digunakan dalam penelitian ini meliputi beberapa pendekatan hukum, yaitu: (1) statute approach (pendekatan perundang-undangan), yang dilakukan dengan menelaah berbagai peraturan perundang-undangan yang berkaitan dengan tanggung jawab maskapai penerbangan dan perlindungan hak penumpang, seperti Undang-Undang Nomor 1 Tahun 2009 tentang Penerbangan dan Peraturan Menteri Perhubungan Nomor PM 89 Tahun 2015; (2) conceptual approach (pendekatan konseptual), yaitu pendekatan yang digunakan untuk memahami dan mengkaji konsep-konsep hukum Islam yang relevan, seperti prinsip *hifz al-mal*, *akad ijarah*, dan tanggung jawab dalam transaksi jasa; (3) case approach (pendekatan kasus), dengan menelaah kasus-kasus nyata atau putusan hukum yang berkaitan dengan keterlambatan penerbangan sebagai bahan analisis empiris; serta (4) analytical approach (pendekatan analitis), yang digunakan untuk menganalisis keterkaitan antara hukum positif nasional dan prinsip-prinsip hukum Islam dalam melindungi hak ekonomi penumpang sebagai konsumen jasa penerbangan.

Bahan hukum yang diperoleh dianalisis dengan metode deskriptif-kualitatif, yaitu dengan mendeskripsikan, menafsirkan, dan menganalisis data hukum yang telah dikumpulkan untuk kemudian disintesiskan menjadi kesimpulan yang menjawab rumusan masalah penelitian. Teknik pengumpulan data dilakukan melalui studi kepustakaan (library research) dengan menelusuri sumber-sumber hukum primer, sekunder, dan tersier, baik berupa peraturan perundang-undangan, literatur akademik, jurnal ilmiah, maupun fatwa-fatwa dan prinsip hukum Islam yang relevan. Melalui pendekatan ini, diharapkan diperoleh pemahaman yang komprehensif mengenai penerapan prinsip hifz al-mal dalam tanggung jawab maskapai penerbangan terhadap keterlambatan penerbangan, baik dari perspektif hukum positif maupun hukum Islam.

Hasil dan Pembahasan

A. Penerapan Prinsip Hifz Al-Mal dalam Tanggung Jawab Maskapai terhadap Penumpang yang Mengalami Kerugian akibat Keterlambatan Penerbangan

Prinsip Hifz al-Mal adalah salah satu prinsip dasar dalam hukum Islam yang berkaitan dengan perlindungan harta atau kekayaan.[15] Secara umum, prinsip ini berfokus pada upaya untuk menjaga dan melindungi harta seseorang, baik berupa benda maupun hak ekonomi, agar tidak hilang atau rusak tanpa alasan yang sah menurut syariat. Prinsip ini sangat penting dalam konteks muamalah (perhubungan sosial-ekonomi) karena memberikan dasar untuk menetapkan kewajiban dan hak terkait harta, termasuk dalam

[15] Suharsono Suharsono, Kuratul Aini, and Ariq Nurjannah Irbah, "KEBERADAAN PRINSIP (MAQASHID AL-SYARIAH) HIFDZUL MAL DALAM KEGIATAN INVESTASI KONVENSIONAL NON MAISIR," *Investama : Jurnal Ekonomi Dan Bisnis* 9, no. 2 (2023), https://doi.org/10.56997/investamajurnalekonomidanbisnis.v9i2.1006.

transaksi bisnis, hibah, warisan, atau setiap bentuk kegiatan ekonomi lainnya.

Dalam maqashid al-shariah (tujuan hukum Islam), hifz al-mal adalah salah satu dari lima tujuan utama yang harus dipelihara dalam kehidupan umat Islam, selain hifz al-nafs (perlindungan jiwa), hifz al-din (perlindungan agama), hifz al-'aql (perlindungan akal), dan hifz al-nasl (perlindungan keturunan).[16] Prinsip hifz al-mal mengatur perlindungan terhadap harta agar digunakan dengan cara yang halal, tidak disalahgunakan, dan tidak merugikan pihak lain. Dalam hal ini, Islam menekankan keadilan dan keseimbangan dalam mengelola dan membagikan harta, serta memastikan bahwa hak-hak orang lain tidak dilanggar atau dirugikan.[17]

Prinsip hifz al-mal juga mengharuskan umat Islam untuk bertindak hati-hati dalam semua transaksi ekonomi. Hal ini mencakup kewajiban untuk menghindari unsur riba, gharar (ketidakpastian), dan tindakan yang bisa merugikan pihak lain.[18] Hukum Islam memberikan aturan yang jelas mengenai bagaimana seseorang harus bertindak dalam transaksi jual beli, sewa, dan perjanjian lainnya agar tidak merugikan harta orang lain, dengan tujuan untuk melindungi dan menjaga hak-hak ekonomi.

Dalam konteks penerbangan, prinsip hifz al-mal dapat diterapkan ketika maskapai bertanggung jawab atas keterlambatan penerbangan yang menyebabkan kerugian finansial pada penumpang. Ketika penumpang membayar tiket untuk layanan yang disepakati pada waktu tertentu, maka jika keterlambatan terjadi, prinsip hifz al-

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[16] Muhammad Ilham, "Harmonisasi Asuransi Syariah Dalam Maqashid Syariah Dan Perundangan Di Indonesia," *Islamika : Jurnal Ilmu-Ilmu Keislaman* 21, no. 02 (2022), https://doi.org/10.32939/islamika.v21i02.848.

[17] Muhammad Syukri Albani Nasution and Rahmat Hidayat Nasution, *Filsafat Hukum Islam & Maqashid Syariah* (Jakarta: Prenada Media, 2020).

[18] Moh. Mufid, *Ushul Fiqh Ekonomi Dan Keuangan Kontemporer Dari Teori Ke Aplikasi* (Jakarta: Kencana, 2018).

mal mengharuskan maskapai untuk memastikan bahwa hak-hak finansial penumpang tidak terabaikan. Maskapai berkewajiban untuk memberikan kompensasi yang sesuai, seperti pengembalian uang, biaya akomodasi, atau fasilitas lain yang dapat mengurangi kerugian yang ditimbulkan akibat keterlambatan tersebut.

Prinsip hifz al-mal menuntut agar maskapai bertanggung jawab untuk melindungi kepentingan ekonomi penumpang, yakni dengan memastikan bahwa penumpang tidak dirugikan secara finansial akibat keterlambatan yang terjadi. Dalam hal ini, maskapai berkewajiban untuk memberikan kompensasi atau solusi yang sesuai dengan besaran kerugian yang dialami oleh penumpang. Misalnya, jika keterlambatan mengakibatkan penumpang kehilangan jadwal penting seperti pertemuan bisnis atau acara keluarga, maskapai harus memberikan kompensasi yang tidak hanya mengembalikan biaya tiket, tetapi juga memberi penawaran fasilitas tambahan seperti akomodasi atau biaya penggantian tiket yang wajar.

Masalah terkait kehilangan jadwal penting akibat keterlambatan penerbangan, seperti pertemuan bisnis atau acara keluarga, merupakan isu yang sensitif dan dapat berpotensi disalahgunakan. Dalam perspektif hukum Islam, prinsip hifz al-mal menekankan perlindungan hak finansial penumpang, tetapi juga mengharuskan adanya keadilan dan transparansi dalam menangani klaim.[19] Oleh karena itu, maskapai penerbangan perlu menerapkan mekanisme verifikasi yang ketat agar klaim atas kerugian akibat keterlambatan dapat dipertanggungjawabkan secara sah dan tidak menjadi celah untuk praktik penipuan. Salah satu langkah yang dapat diterapkan adalah dengan meminta penumpang menyediakan bukti yang relevan, seperti undangan acara, dokumen resmi terkait kerugian finansial, atau komunikasi tertulis yang membuktikan adanya pertemuan penting yang terlewat. Dengan verifikasi yang jelas, maskapai dapat

[19] Jamilah Jamilah, Mila Mila, and Suci Kurniati, “Persepektif Akuntansi Dalam Hukum Islam,” *Jurnal Locus Penelitian Dan Pengabdian* 2, no. 4 (2023), https://doi.org/10.58344/locus.v2i4.970.

memastikan bahwa klaim tersebut benar-benar valid dan sesuai dengan fakta yang ada.

Selain itu, maskapai juga perlu memiliki kebijakan tertulis dan prosedur standar mengenai kompensasi atas keterlambatan yang menyebabkan penumpang kehilangan jadwal penting. Kebijakan ini harus mencakup batasan waktu pelaporan klaim serta jenis bukti yang harus disediakan oleh penumpang agar klaim dapat diproses. Dalam upaya meminimalkan risiko penyalahgunaan, maskapai bisa menerapkan kompensasi berdasarkan kategori keterlambatan, seperti hanya memberikan kompensasi pada keterlambatan yang melebihi durasi tertentu atau dalam kondisi penerbangan yang dibatalkan. Dengan kebijakan yang transparan dan berbasis bukti, maskapai dapat menjalankan tanggung jawabnya secara adil tanpa membuka peluang bagi klaim yang tidak valid.

Lebih lanjut, pemanfaatan teknologi dalam mendeteksi klaim yang mencurigakan juga menjadi solusi efektif dalam mengurangi risiko penipuan. Sistem berbasis data dapat digunakan untuk mengevaluasi pola klaim yang berulang dan memastikan keabsahan informasi yang diberikan penumpang.[20] Selain itu, peran asuransi perjalanan juga dapat menjadi alternatif dalam menangani klaim kerugian akibat keterlambatan penerbangan, sehingga beban maskapai dapat berkurang dan proses kompensasi menjadi lebih sistematis.[21] Dengan langkah-langkah tersebut, maskapai dapat memenuhi prinsip hifz al-mal, di mana hak ekonomi penumpang terlindungi tanpa mengesampingkan aspek keadilan dalam mekanisme klaim.

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[20] Pia Brüggemann et al., "Claims in the Digital Age: How Insurers Can Get Started," https://www.mckinsey.com/industries/financial-services/our-insights/claims-in-the-digital-age, April 4, 2018.

[21] Claudia Hipp, "The Enforcement of Air Passenger Rights: An Analysis and Comparison of Claims Management Companies and Recently Established Conciliation Bodies," *Eurasian Studies in Business and Economics* 10, no. 1 (2019), https://doi.org/10.1007/978-3-030-11872-3_22.

Kemudian, kewajiban transparansi informasi dalam bisnis, termasuk industri penerbangan, merupakan bagian dari prinsip keadilan (al-'adalah) dan kejujuran (al-shidq) yang menjadi pilar utama dalam transaksi muamalah.[22] Maskapai penerbangan tidak hanya bertanggung jawab dalam memberikan kompensasi yang sesuai kepada penumpang, tetapi juga wajib menyampaikan informasi secara jelas dan akurat terkait keterlambatan penerbangan.[23] Hal ini sejalan dengan maqashid syariah, khususnya prinsip hifz al-mal, yang menuntut perlindungan harta dan mencegah pihak mana pun dari kerugian yang tidak adil. Dengan transparansi yang baik, penumpang memiliki kepastian mengenai hak-haknya dan dapat membuat keputusan yang lebih rasional dalam merespons keterlambatan yang terjadi.[24]

Transparansi informasi ini mencakup pemberitahuan dini terkait kemungkinan keterlambatan, alasan keterlambatan yang jelas, serta langkah-langkah mitigasi yang akan diambil oleh maskapai.[25] Dalam hukum Islam, prinsip gharar (ketidakpastian yang berlebihan) harus dihindari dalam setiap transaksi, termasuk dalam layanan transportasi udara. Ketika maskapai gagal memberikan informasi yang transparan mengenai keterlambatan, maka terjadi gharar yang dapat merugikan penumpang karena mereka tidak memiliki gambaran yang jelas mengenai waktu perjalanan mereka atau kompensasi yang berhak

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[22] Muhammad Dahri, Asaruddi Akbar, and Muhammad Arsyam, "Konsep Dasar Ekonomi Dan Transaksi Dalam Muamalah Islam," *Osfpreprints*, no. Ddi (2021).

[23] Rio Damas Putra and H. Deny Haspada, "Perlindungan Konsumen Terhadap Keterlambatan Penerbangan (Flight Delay)," *Wacana Paramartha Jurnal Ilmu Hukum* 15, no. 1 (2016): 1–15.

[24] Ni Wayan Melda Ika Damayanthi and Wayan Parsa, "Pelaksanaan Tanggung Jawab Maskapai Penerbangan Terhadap Keterlambatan Penerbangan" (Denpasar, 2020), http://tempoa.bisnis.co/read/news/2017/10/27/090638603/liman -.

[25] Ricardo Pazos, "The Right to a Compensation In Case Of Long Delay of Flights: A Proposal for a Future Reform," *European Review of Private Law* 27, no. Issue 4 (2019), https://doi.org/10.54648/erpl2019039.

mereka terima. Oleh karena itu, maskapai perlu memastikan bahwa informasi disampaikan secara tepat waktu melalui berbagai saluran komunikasi, seperti email, SMS, atau pengumuman resmi di bandara, agar penumpang dapat merencanakan kembali perjalanan mereka dengan baik.

Selain itu, dalam konteks tanggung jawab maskapai, transparansi juga mencakup keterbukaan dalam kebijakan kompensasi dan prosedur klaim. Penumpang harus mengetahui secara pasti hak-hak mereka berdasarkan kategori keterlambatan yang terjadi serta bagaimana mekanisme pengajuan klaim jika mereka mengalami kerugian akibat keterlambatan tersebut. Oleh karena itu, akses terhadap keadilan menjadi faktor penting dalam memastikan bahwa penumpang dapat menuntut haknya secara adil dan efektif.

Akses terhadap keadilan merupakan aspek krusial dalam perlindungan hak-hak individu, termasuk dalam konteks penyelesaian sengketa perdata dan klaim kompensasi akibat keterlambatan penerbangan. Dalam sistem peradilan perdata, penumpang sebagai konsumen berkewajiban penunjukan pengacara yang bertujuan untuk memastikan bahwa setiap pihak yang bersengketa mendapatkan representasi hukum yang memadai, sehingga proses hukum dapat berjalan secara adil dan seimbang.[26] Prinsip ini sejalan dengan kebutuhan dalam sektor penerbangan, di mana penumpang sebagai konsumen harus memiliki akses terhadap mekanisme klaim kompensasi yang transparan, efektif, dan tidak mempersulit mereka dalam menuntut haknya. Dengan adanya mekanisme yang jelas dan dapat diakses oleh semua penumpang tanpa hambatan prosedural yang berlebihan, prinsip hifz al-mal dalam hukum Islam dapat diimplementasikan secara optimal. Hal ini tidak hanya melindungi hak ekonomi penumpang dari potensi kerugian yang tidak semestinya,

[26] Eman Suparman, "VERPLICHTE PROCUREURSTELLING UNTUK PERADILAN YANG SEDERHANA, CEPAT, DAN BIAYA RINGAN," *Veritas et Justitia* 5, no. 1 (2019), https://doi.org/10.25123/vej.3288.

tetapi juga memastikan adanya keseimbangan antara hak dan kewajiban dalam hubungan kontraktual antara maskapai dan konsumen.

Dalam perspektif Islam, hal ini berkaitan dengan konsep akad yang sahih, di mana semua pihak yang terlibat dalam suatu perjanjian harus memahami hak dan kewajibannya secara jelas untuk menghindari sengketa di kemudian hari. Dengan adanya transparansi dalam pemberian informasi, maskapai tidak hanya memenuhi tanggung jawab hukumnya, tetapi juga menjalankan prinsip amanah dalam memberikan layanan kepada penumpang sesuai dengan nilai-nilai syariah.

Dengan demikian, penerapan prinsip hifz al-mal dalam tanggung jawab maskapai terhadap penumpang yang mengalami kerugian akibat keterlambatan penerbangan bukan hanya untuk menjaga kepentingan finansial penumpang, tetapi juga menciptakan hubungan yang adil dan transparan yang sesuai dengan prinsip-prinsip hukum Islam, di mana hak-hak ekonomi dilindungi dan tidak ada pihak yang dirugikan secara berlebihan.

B. Bentuk Kompensasi Yang Sesuai Dengan Prinsip Hifz Al-Mal Yang Dapat Diberikan Oleh Maskapai Kepada Penumpang Sebagai Bentuk Tanggung Jawab Atas Keterlambatan Penerbangan

Kompensasi adalah bentuk ganti rugi atau imbalan yang diberikan oleh suatu pihak kepada pihak lain yang mengalami kerugian akibat suatu kejadian tertentu.[27] Kompensasi berbasis keadilan dalam perspektif hukum Islam merupakan wujud penerapan prinsip *ḥifẓ al-māl* (perlindungan terhadap harta) yang berfungsi menjaga hak-hak finansial pihak yang dirugikan tanpa mengabaikan keseimbangan dan kemaslahatan umum. Prinsip ini tidak bersifat absolut, melainkan harus ditempatkan secara proporsional bersama

[27] Dikha Anugrah, *Pengantar Hukum Bisnis* (Jakarta: Rajawali Press, 2024).

dengan prinsip-prinsip maqāṣid al-syarī'ah lainnya, seperti *ḥifẓ al-nafs* (perlindungan jiwa) dan *ḥifẓ al-'aql* (perlindungan rasionalitas dan ketertiban). Dalam konteks tanggung jawab maskapai terhadap keterlambatan penerbangan, *ḥifẓ al-māl* menuntut agar kerugian finansial penumpang tidak diabaikan begitu saja, tetapi juga tidak boleh mengorbankan keselamatan penerbangan yang merupakan bagian dari *ḥifẓ al-nafs*. Dengan demikian, penerapan kompensasi harus mempertimbangkan keadilan situasional berdasarkan sebab yang melatarbelakangi keterlambatan.

Dalam konteks hukum nasional, hak penumpang atas kompensasi telah diatur dalam berbagai regulasi, salah satunya adalah Peraturan Menteri Perhubungan (PM) No. 89 Tahun 2015 tentang Penanganan Keterlambatan Penerbangan serta Undang-Undang No. 8 Tahun 1999 tentang Perlindungan Konsumen (UUPK). Dalam perspektif hukum positif, regulasi mengenai kompensasi bagi penumpang pesawat diatur dalam berbagai peraturan penerbangan, seperti Peraturan Menteri Perhubungan Republik Indonesia Nomor 89 Tahun 2015 tentang Penanganan Keterlambatan Penerbangan (*Delay Management*) pada Badan Usaha Angkutan Udara Niaga Berjadwal di Indonesia. Peraturan ini mengatur kategori keterlambatan dan bentuk kompensasi yang harus diberikan maskapai, mulai dari makanan dan minuman hingga pengembalian uang atau akomodasi hotel, tergantung pada durasi keterlambatan.

Dari sudut pandang hukum Islam, kompensasi merupakan bagian dari prinsip keadilan (al-'adalah) dan pemenuhan hak (huquq al-'ibad) dalam transaksi bisnis.[28] Islam menekankan bahwa setiap transaksi atau akad yang disepakati harus dilaksanakan dengan penuh tanggung jawab, dan jika salah satu pihak gagal memenuhi kewajibannya, maka ia harus memberikan ganti rugi atau kompensasi kepada pihak yang dirugikan. Hal ini selaras dengan prinsip hifz al-mal (perlindungan harta), yang bertujuan untuk menjaga kestabilan ekonomi individu dan masyarakat dengan memastikan bahwa tidak ada pihak yang mengalami kerugian secara tidak adil dalam suatu transaksi.

Secara esensial, prinsip hifz al-mal menuntut agar setiap individu yang mengalami kerugian akibat tindakan pihak lain berhak mendapatkan ganti rugi agar tidak terjadi ketimpangan ekonomi. Hal

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[28] Dito Anurogo et al., *Pengantar Fiqh Muamalah* (Solok: MAFY MEDIA LITERASI INDONESIA, 2023).

ini sejalan dengan Pasal 19 UUPK, yang menyatakan bahwa pelaku usaha bertanggung jawab memberikan ganti rugi kepada konsumen akibat kerugian yang diderita karena produk atau jasa yang tidak sesuai dengan perjanjian. Dalam kasus penerbangan, keterlambatan yang melebihi batas wajar dapat dikategorikan sebagai wanprestasi dalam perjanjian pengangkutan udara, sehingga penumpang berhak menerima kompensasi sesuai ketentuan yang berlaku.

Lebih lanjut, dalam PM 89 Tahun 2015 disebutkan bahwa penumpang berhak atas kompensasi dalam bentuk minuman, makanan, akomodasi, hingga pengembalian biaya tiket, tergantung pada lama keterlambatan. Ketentuan ini juga mencerminkan prinsip keadilan dalam Islam, di mana maskapai sebagai penyedia layanan memiliki kewajiban kontraktual untuk memenuhi hak-hak penumpang. Jika maskapai tidak memberikan kompensasi yang layak, maka hal tersebut bertentangan dengan prinsip hifz al-mal karena menyebabkan kerugian finansial yang tidak seharusnya ditanggung oleh penumpang.

Selain itu, dalam hukum perdata, keterlambatan penerbangan dapat dikaitkan dengan Pasal 1365 KUHPerdata yang mengatur tentang perbuatan melawan hukum (PMH). Jika keterlambatan disebabkan oleh kelalaian maskapai, maka penumpang memiliki hak untuk menuntut ganti rugi sesuai dengan prinsip hukum Islam, yaitu *adh-dhararu yuzalu (segala bentuk kerugian harus dihilangkan)*. Oleh karena itu, relevansi antara prinsip hifz al-mal dan hukum positif sangat jelas, yaitu keduanya bertujuan untuk memastikan perlindungan hak finansial penumpang serta mendorong akuntabilitas maskapai dalam memberikan layanan yang adil dan bertanggung jawab.

Dengan demikian, penerapan hifz al-mal dalam kompensasi keterlambatan penerbangan bukan hanya memiliki dasar dalam fikih muamalah, tetapi juga sejalan dengan regulasi hukum positif di Indonesia. Prinsip ini memberikan landasan etis dan normatif bagi maskapai untuk menjalankan tanggung jawabnya secara adil, transparan, dan sesuai dengan hak-hak penumpang yang telah diakui secara hukum.

Dalam perspektif hukum Islam, kompensasi atas keterlambatan penerbangan harus memenuhi prinsip hifz al-mal, yaitu menjaga hak finansial penumpang agar mereka tidak mengalami kerugian yang tidak adil. Apabila keterlambatan terjadi karena kelalaian (*ta'addī* atau *tafrīṭ*) dari pihak maskapai, seperti kesalahan manajerial, perawatan pesawat yang tidak terjadwal, atau pengelolaan armada yang tidak efisien, maka maskapai berkewajiban memberikan kompensasi penuh kepada penumpang. Kewajiban ini didasarkan pada kaidah fikih *al-kharāj bi al-ḍamān* (keuntungan disertai dengan tanggungan risiko), sehingga pihak yang menerima imbalan atas jasa juga menanggung akibat dari kelalaiannya. Sebaliknya, apabila keterlambatan terjadi karena *force majeure*, seperti cuaca ekstrem atau gangguan teknis yang tidak dapat dihindari, maka prinsip *ḥifẓ al-nafs* mendahului *ḥifẓ al-māl*. Dalam kondisi demikian, kompensasi yang diberikan bersifat restoratif, bukan punitif, maskapai tetap memiliki tanggung jawab moral dan hukum untuk memberikan pelayanan minimum seperti makanan, akomodasi, atau pengembalian biaya sesuai ketentuan, tetapi tidak diwajibkan membayar ganti rugi finansial yang bersifat menghukum.

Prinsip keadilan (*'adl*) dalam Islam menuntut agar kompensasi yang diberikan bersifat proporsional dan transparan. Artinya, besarnya kompensasi harus sesuai dengan derajat kelalaian dan tingkat kerugian nyata (*ta'wīḍ al-ḍarar al-ḥaqīqī*), bukan didasarkan pada spekulasi atau kerugian yang tidak terukur. Oleh karena itu, kompensasi dalam konteks ini dipahami sebagai mekanisme pemulihan (*restoratif justice*) untuk mengembalikan posisi penumpang pada keadaan sebelum kerugian terjadi, bukan sebagai alat pembalasan atau hukuman. Penerapan kompensasi juga harus bebas dari unsur *ribā* dan *gharar*, serta disepakati secara jelas dalam kontrak (*sharṭ jazā'ī*) agar tidak menimbulkan ketidakpastian hukum. Dengan demikian, *ḥifẓ al-māl* tidak hanya memastikan perlindungan terhadap hak ekonomi penumpang, tetapi juga menjamin agar pelaksanaan tanggung jawab maskapai sejalan dengan asas keadilan, kemaslahatan, dan keseimbangan yang menjadi dasar hukum Islam.

Salah satu bentuk kompensasi yang dapat diberikan adalah penggantian biaya tiket (refund) atau rebooking penerbangan tanpa biaya tambahan. Jika keterlambatan melebihi batas waktu yang wajar, seperti lebih dari tiga jam, penumpang berhak mendapatkan pengembalian dana sesuai dengan kaidah fikih *adh-dhararu yuzalu (segala bentuk kerugian harus dihilangkan)*. Refund ini juga harus dilakukan secara transparan dan tepat waktu agar tidak menimbulkan ketidakpastian atau kerugian tambahan bagi penumpang.

Selain itu, kompensasi dalam bentuk akomodasi dan fasilitas tambahan juga diperlukan jika keterlambatan menyebabkan penumpang harus menunggu dalam waktu lama. Misalnya, jika keterlambatan berlangsung selama lebih dari lima jam atau terjadi di malam hari, maskapai dapat memberikan voucher makan, akses lounge, atau akomodasi hotel gratis sesuai dengan prinsip maslahah dalam Islam, yaitu memberikan manfaat kepada pihak yang dirugikan. Hal ini juga sesuai dengan konsep akad ijarah, di mana maskapai tetap memiliki kewajiban melayani penumpang dengan baik meskipun terjadi keterlambatan.

Bentuk kompensasi lain yang sejalan dengan prinsip hifz al-mal adalah pemberian kompensasi finansial atau *mileage points* bagi penumpang yang terkena dampak keterlambatan yang cukup signifikan. Dalam beberapa kasus, terutama untuk keterlambatan lebih dari 6-12 jam, maskapai dapat memberikan kompensasi dalam bentuk uang tunai atau kredit perjalanan sebagai ganti kerugian waktu dan potensi kerugian finansial penumpang.[29] Ini mencerminkan prinsip keadilan dalam Islam, di mana penumpang yang dirugikan memiliki hak atas ganti rugi yang wajar sesuai dengan tingkat kerugian yang mereka alami.

Lebih jauh, dalam kasus keterlambatan yang menyebabkan penumpang kehilangan agenda penting seperti pertemuan bisnis atau acara keluarga, kompensasi harus diberikan dengan mempertimbangkan verifikasi yang ketat agar tidak terjadi penyalahgunaan hak. Maskapai dapat menerapkan sistem klaim berbasis bukti, seperti dokumen pendukung dari pihak ketiga yang menunjukkan bahwa keterlambatan benar-benar berdampak signifikan secara finansial. Dengan demikian, penerapan hifz al-mal dalam kompensasi tidak hanya melindungi hak penumpang, tetapi juga memastikan keadilan bagi maskapai agar tidak mengalami kerugian yang tidak perlu akibat klaim yang tidak valid.

Dengan menerapkan kompensasi yang adil, transparan, dan sesuai dengan tingkat kerugian, maskapai tidak hanya memenuhi tanggung jawab hukum, tetapi juga mencerminkan prinsip-prinsip keislaman dalam perlindungan hak ekonomi. Hal ini menciptakan hubungan bisnis yang etis, terpercaya, dan bertanggung jawab, sesuai dengan nilai-nilai Islam dalam transaksi muamalah.

Untuk memastikan implementasi tanggung jawab maskapai yang lebih efektif dan sesuai dengan prinsip hifz al-mal, diperlukan pengembangan kebijakan yang lebih terstruktur dan berorientasi pada

[29] Rossano Tito Atmadja and Ahmad Sudiro, "Evaluating Airline Liability and Compensation in Indonesian Aviation," *Rechtsidee* 11, no. 2 (2023): 5–14, https://doi.org/10.21070/jihr.v12i2.1010.

keadilan serta keseimbangan hak dan kewajiban. Prinsip ini menekankan pentingnya perlindungan terhadap harta dan hak ekonomi penumpang tanpa mengabaikan keberlanjutan operasional maskapai. Oleh karena itu, diperlukan rekomendasi strategis yang dapat menjadi pedoman bagi maskapai dalam menyusun kebijakan kompensasi yang lebih adil, transparan, dan sesuai dengan nilai-nilai Islam.

Berdasarkan kajian prinsip hifz al-mal dalam tanggung jawab maskapai atas keterlambatan penerbangan di atas, terdapat beberapa rekomendasi yang dapat dikembangkan guna memastikan bahwa kebijakan kompensasi benar-benar mencerminkan nilai keadilan, keseimbangan, dan perlindungan hak-hak penumpang:

1. Penerapan Standar Kompensasi yang Berbasis Keadilan

Maskapai perlu menerapkan kebijakan kompensasi yang lebih proporsional sesuai dengan tingkat keterlambatan dan dampak yang ditimbulkan bagi penumpang. Dalam hal ini, prinsip hifz al-mal menuntut adanya keseimbangan antara hak penumpang dan kemampuan maskapai dalam memberikan ganti rugi yang wajar, sehingga tidak ada pihak yang dirugikan secara berlebihan.

2. Peningkatan Transparansi dan Komunikasi dengan Penumpang

Maskapai seharusnya memiliki mekanisme komunikasi yang lebih terbuka dan jelas terkait penyebab keterlambatan, hak-hak penumpang, serta prosedur klaim kompensasi. Hal ini dapat dilakukan dengan menyediakan pengumuman real-time, sistem informasi berbasis digital, serta layanan pelanggan yang responsif untuk menghindari kesalahpahaman dan ketidakpastian bagi penumpang.

3. Integrasi Prinsip Hukum Islam dalam Kebijakan Maskapai Syariah

Untuk maskapai yang beroperasi dengan prinsip syariah, prinsip hifz al-mal dapat menjadi landasan utama dalam menyusun akad penerbangan yang mencerminkan keadilan dalam muamalah. Hal ini bisa diterapkan melalui penyusunan kontrak yang lebih transparan dan skema kompensasi yang sesuai dengan prinsip keuangan Islam, seperti ta'awun (tolong-menolong) atau mekanisme asuransi syariah (takaful) bagi penumpang.

4. Penguatan Regulasi Nasional yang Berorientasi pada Perlindungan Konsumen

Pemerintah dan regulator penerbangan perlu mempertimbangkan penerapan regulasi yang lebih tegas dan detail mengenai hak kompensasi penumpang, dengan memasukkan unsur-unsur perlindungan harta dalam perspektif hukum Islam. Hal ini dapat diperkuat melalui harmonisasi regulasi nasional dengan prinsip-prinsip syariah, sehingga aspek kepastian hukum dalam pemberian kompensasi dapat semakin optimal.

5. Penyediaan Alternatif Ganti Rugi yang Lebih Fleksibel

Maskapai dapat menyediakan berbagai bentuk kompensasi non-moneter yang tetap mengakomodasi kepentingan penumpang, seperti voucher penerbangan, akses layanan premium, atau jaminan transportasi alternatif. Langkah ini dapat menjadi solusi yang lebih efisien dan tetap sesuai dengan nilai-nilai keadilan dalam Islam, yang menekankan keseimbangan antara hak dan kewajiban para pihak dalam suatu transaksi.

Dengan mengadopsi pendekatan berbasis *hifz al-mal*, maskapai penerbangan dapat memperkuat tanggung jawab moral dan hukum dalam memberikan perlindungan terhadap hak ekonomi penumpang. Prinsip ini menekankan pentingnya menjaga harta atau hak milik dari kerugian yang tidak adil, termasuk dalam hal keterlambatan penerbangan yang dapat mengakibatkan kerugian finansial maupun non-finansial. Implementasi nilai-nilai ini dalam kebijakan operasional maskapai akan memperkuat posisi penumpang sebagai subjek yang dilindungi secara syariah dan hukum positif.

Pendekatan ini juga mendorong maskapai untuk menyusun kebijakan kompensasi yang proporsional, transparan, dan mudah diakses oleh penumpang. Kompensasi bukan hanya berbentuk pengembalian dana, tetapi juga dapat berupa fasilitas tambahan yang sesuai dengan tingkat gangguan yang dialami penumpang. Dengan demikian, sistem penanganan keterlambatan tidak hanya bersifat administratif, tetapi juga mengandung nilai-nilai keadilan, kejujuran (*shidq*), dan amanah yang menjadi bagian penting dalam muamalah Islam.

Selain itu, penerapan prinsip *hifz al-mal* akan membantu menciptakan hubungan kontraktual yang lebih seimbang antara maskapai dan penumpang. Kontrak angkutan udara dalam perspektif Islam merupakan akad *ijarah*, yang mengharuskan pemenuhan jasa sesuai waktu dan kualitas yang dijanjikan. Apabila terjadi wanprestasi, maka pemberian kompensasi merupakan bentuk tanggung jawab yang sesuai dengan nilai syariah dan sekaligus pemenuhan prinsip keadilan dalam transaksi.

Dari sisi kelembagaan, maskapai yang menerapkan prinsip ini secara konsisten akan membangun reputasi sebagai entitas bisnis yang etis dan bertanggung jawab. Hal ini berpotensi meningkatkan loyalitas pelanggan, menciptakan kepercayaan publik, dan memperluas segmen pasar khususnya di kalangan konsumen yang mengutamakan nilai-nilai syariah. Dalam jangka panjang, langkah ini dapat menjadi strategi branding yang kuat dalam industri penerbangan yang semakin kompetitif.

Dengan demikian, penerapan prinsip *hifz al-mal* tidak hanya memberikan manfaat bagi penumpang dalam bentuk perlindungan hak dan kompensasi yang adil, tetapi juga memberikan nilai tambah bagi maskapai. Hal ini akan mendukung terciptanya sistem layanan penerbangan yang lebih berkeadilan, transparan, serta berkelanjutan, dan sekaligus menunjukkan bahwa prinsip-prinsip Islam sangat relevan dalam tata kelola bisnis modern, termasuk dalam industri transportasi udara.

Kesimpulan

Berdasarkan pembahasan yang telah dilakukan, dapat disimpulkan bahwa prinsip *hifz al-mal* dalam hukum Islam memiliki relevansi yang kuat dalam menentukan tanggung jawab maskapai penerbangan atas keterlambatan penerbangan, khususnya dalam aspek perlindungan hak finansial penumpang. Prinsip ini menegaskan bahwa setiap individu berhak atas perlindungan harta dari segala bentuk kerugian yang tidak seharusnya ditanggung, termasuk kerugian akibat keterlambatan penerbangan yang disebabkan oleh kelalaian maskapai.

Dalam konteks tanggung jawab maskapai, prinsip *hifz al-mal* menuntut adanya transparansi informasi serta mekanisme kompensasi yang adil dan proporsional. Hal ini mencakup hak penumpang untuk menerima ganti rugi dalam berbagai bentuk, seperti pengembalian dana tiket, fasilitas konsumsi, akomodasi, atau kompensasi lainnya sesuai dengan dampak keterlambatan yang dialami. Dari perspektif hukum Islam, kompensasi ini bukan sekadar bentuk kepatuhan terhadap regulasi, tetapi juga bagian dari kewajiban moral dan etis maskapai dalam menjaga keseimbangan dan keadilan dalam transaksi bisnis penerbangan.

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PERSPEKTIF HUKUM

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LEGAL PROTECTION OF TELEMEDICINE CONSUMERS: AN ANALYSIS OF THE CONSUMER PROTECTION ACT AND HEALTH REGULATIONS IN INDONESIA

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Article	Abstract
Keywords: Civil liability; Consumer protection; Telemedicine regulation; Data privacy; **Article History** Received: Oct 14, 2025; Reviewed: Nov 11, 2025; Accepted: Nov 17, 2025; Published: Nov 24, 2025;	Telemedicine has become a fundamental part of modern healthcare delivery, transforming the contractual and liability relationships between healthcare providers and consumers. In Indonesia, the growing use of telemedicine raises complex issues in civil law, particularly concerning consumer protection, data privacy, and accountability for malpractice. This study aims to analyze the legal protection of telemedicine consumers under Indonesian law specifically Law No. 8 of 1999 on Consumer Protection, the Civil Code, and sectoral health regulations and to evaluate the civil liability of telemedicine providers when harm or loss occurs. Using a normative juridical (doctrinal) approach, this research employs statutory, conceptual, and comparative methods. The study reviews current laws such as the Health Omnibus Law (Law No. 17 of 2023), the Personal Data Protection Law (Law No. 27 of 2022), the Ministry of Health Regulation No. 20 of 2019

on Telemedicine, and Government Regulation No. 28 of 2024 as its implementing regulation. Findings indicate that Indonesia's legal framework remains fragmented, with unclear boundaries between consumer law and health regulations. Comparative analysis with international standards reveals the need for a harmonized civil law framework to ensure accountability, guarantee patient rights, and strengthen consumer protection in digital health services.

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Introduction

Telemedicine has evolved into a permanent component of modern healthcare delivery, reshaping contractual relationships and professional responsibilities between healthcare providers and patients. It allows consultations, prescriptions, and medical decisions to be conducted through digital platforms without direct physical interaction. While telemedicine enhances accessibility and efficiency, it also raises complex civil law questions concerning liability, consumer protection, and data privacy. As noted by Ivanova et al. (2025), the rapid global adoption of telemedicine has outpaced the development of adequate legal frameworks, particularly regarding accountability in cases of medical error or data misuse1[1].

Global literature indicates that the legal challenges of telemedicine extend beyond medical ethics to encompass contractual responsibility and consumer rights. Jerjes et al. (2024) argue that post-pandemic telemedicine systems must now be evaluated within the context of tort law and patient safety, as traditional frameworks are ill-equipped to handle disputes arising from virtual care[2]. Similarly, Hull et al. (2022) emphasize that the expansion of telehealth services

[1] Julia Ivanova et al., 'Regulation and Compliance in Telemedicine: Viewpoint', *Journal of Medical Internet Research* 27 (2025): 1–7, https://doi.org/10.2196/53558.

[2] Waseem Jerjes and Daniel Harding, 'Telemedicine in the Post-COVID Era: Balancing Accessibility, Equity, and Sustainability in Primary Healthcare', *Frontiers in Digital Health* 6, no. August (2024): 1–6, https://doi.org/10.3389/fdgth.2024.1432871.

requires robust ethical and legal frameworks to safeguard patient welfare and prevent liability gaps resulting from remote medical practices[3]. These studies underscore the urgency of redefining liability standards to protect consumers engaging with telemedicine services.

In Indonesia, the transformation of health law has been reinforced through the Health Omnibus Law (Law No. 17 of 2023), which formally recognizes telemedicine as part of the national digital health ecosystem. This law, alongside the Personal Data Protection Law (Law No. 27 of 2022) and the Ministry of Health Regulation No. 20 of 2019 on Telemedicine, establishes foundational standards for licensing, data protection, and digital service delivery. Furthermore, the enactment of Government Regulation No. 28 of 2024 as the implementing regulation of the Health Law provides a more detailed framework on telemedicine practice, covering licensing, infrastructure, and integration within the national health information system. Nevertheless, this regulation still lacks explicit provisions on civil liability and compensation for harm arising from digital medical services. This legal gap leaves uncertainty concerning who is responsible individual practitioners, institutions, or digital platforms when consumers experience losses due to negligence or system failure.

From a civil law perspective, the doctor–patient relationship within telemedicine constitutes a therapeutic contract under the Indonesian Civil Code (KUHPerdata). Hence, disputes arising from malpractice, misinformation, or technical failure should be assessed based on wanprestasi (breach of contract, Article 1239) and perbuatan melawan hukum (tort liability, Article 1365). At the same time, the Consumer Protection Law (Law No. 8 of 1999) mandates that service providers must ensure safety, reliability, and transparency in providing healthcare services. The coexistence of these legal regimes civil law, consumer law, and health law without harmonization creates ambiguity and risks weakening patient protection.

Recent comparative studies in developing countries highlight that effective telemedicine governance depends on integrating civil liability principles with digital health regulations. Giebel et al. (2023) identified that most developing jurisdictions, including Indonesia, still

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[3] Sarah C. Hull, Joyce M. Oen-Hsiao, and Erica S. Spatz, 'Practical and Ethical Considerations in Telehealth: Pitfalls and Opportunities', *Yale Journal of Biology and Medicine* 95, no. 3 (2022): 367–70, https://pmc.ncbi.nlm.nih.gov/articles/PMC9511944.

lack explicit rules governing patient remedies when harm occurs through telehealth platforms[4]. Meanwhile, Alfawzan et al. (2023) observed that inadequate privacy and consent mechanisms in mobile health applications have caused frequent legal disputes over data sharing and confidentiality[5]. These findings strengthen the argument that Indonesia must reform its legal structure to balance technological advancement with consumer protection.

Despite substantial growth in digital health scholarship, Indonesian legal research remains dominated by public health or ethical perspectives, rarely addressing the civil law dimension of telemedicine liability. Previous domestic studies have primarily analyzed professional discipline and administrative sanctions, leaving the question of contractual remedies unresolved. This paper addresses that research gap by examining how existing Indonesian laws particularly the Health Omnibus Law, the Consumer Protection Law, and the Civil Code can collectively provide legal protection to telemedicine consumers within a civil liability framework.

This study applies a normative juridical (doctrinal) approach, using statutory, conceptual, and comparative methods. Through this framework, it evaluates the adequacy of Indonesia's existing legislation in protecting consumers of telemedicine and explores comparative lessons from international practice. The novelty of this research lies in integrating civil law principles into telemedicine regulation, proposing a harmonized legal model that ensures accountability, upholds patient rights, and reinforces consumer confidence in digital healthcare. The significance of this study is its contribution to the ongoing discourse on the modernization of civil liability in Indonesia, demonstrating that a coherent legal structure is essential to achieving both justice and technological progress in health services.

Method

This study adopts a normative juridical (doctrinal) approach, focusing on the analysis of legal norms, statutory regulations, and doctrinal principles governing telemedicine services in Indonesia. The

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[4] Godwin Denk Giebel et al., 'Problems and Barriers Related to the Use of Digital Health Applications: Scoping Review', *Journal of Medical Internet Research* 25 (2023): 1–16, https://doi.org/10.2196/43808.

[5] Najd Alfawzan et al., 'Privacy, Data Sharing, and Data Security Policies of Women's MHealth Apps: Scoping Review and Content Analysis', *JMIR MHealth and UHealth* 10, no. 5 (2022), https://doi.org/10.2196/33735.

normative juridical method examines law as it is written (law in books) rather than how it operates in practice (law in action). Accordingly, this study does not collect empirical data, but instead conducts a systematic review and interpretation of legal materials related to civil liability and consumer protection in telemedicine.

The research is descriptive and analytical, aiming to explain and critically evaluate how Indonesian legal instruments protect telemedicine consumers from a civil law perspective. Three main approaches are applied:

This approach is used to examine various legal norms that directly or indirectly regulate telemedicine, including: Law No. 17 of 2023 on Health (Health Omnibus Law), which formally recognizes telemedicine as a component of national digital health transformation. Government Regulation No. 28 of 2024, as the implementing regulation of the Health Law, which elaborates on telemedicine licensing, service standards, and integration with the national health information system. Law No. 27 of 2022 on Personal Data Protection, which provides legal guarantees for the confidentiality and integrity of patients' digital data. Law No. 8 of 1999 on Consumer Protection, which regulates the rights and obligations of both consumers and business actors, including healthcare service providers. The Indonesian Civil Code (KUHPerdata), particularly Articles 1239 on contractual breach (wanprestasi) and 1365 on tort liability (perbuatan melawan hukum). Ministry of Health Regulation No. 20 of 2019 on Telemedicine, which details the technical and administrative procedures for telemedical services.

These laws are analyzed to evaluate the extent to which they provide civil legal protection and remedies for consumers harmed by telemedicine services. This approach is used to interpret the underlying legal concepts that shape the regulation of telemedicine. The study applies theories from Indonesian civil law scholars such as Subekti, Sudikno Mertokusumo, and R. Setiawan regarding contractual obligations, as well as Roscoe Pound's sociological jurisprudence, which views law as a tool of social engineering. These frameworks are applied to conceptualize how consumer rights and provider responsibilities should be balanced in digital healthcare interactions. The comparative method is employed to identify international best practices in regulating telemedicine and defining civil liability.

This study examines: The United Kingdom, which integrates patient safety and accountability through the General Medical Council (GMC) and Care Quality Commission (CQC) regulations on digital health services. Singapore, whose Healthcare Services Act 2020 and Telemedicine eGuidelines 2021 clearly outline provider liability, informed consent, and patient data protection. India, through the Telemedicine Practice Guidelines 2020, which provide a structured legal basis for online consultations, prescriptions, and professional liability. The United States, which, under the Telehealth Modernization Act 2021 and the Health Insurance Portability and Accountability Act (HIPAA), emphasizes privacy, malpractice insurance, and reimbursement frameworks, despite regulatory variation among states. The comparison aims to identify elements of legal certainty and civil accountability that can inform Indonesia's ongoing development of a unified telemedicine framework under Government Regulation No. 28 of 2024.

This study relies on three types of legal materials: Primary legal materials binding sources such as statutes, government regulations, and ministerial decrees. Secondary legal materials scholarly works, academic journals, and commentaries related to telemedicine law, consumer protection, and civil liability, including recent Scopus indexed literature. Tertiary legal materials legal dictionaries, encyclopedias, and supporting documents that clarify terminology and conceptual distinctions.

Legal materials are analyzed through a qualitative juridical method using interpretation, systematization, and evaluation. The interpretation employs grammatical, systematic, and teleological analyses to assess the coherence and intent of laws governing telemedicine. The results are then synthesized to identify normative gaps and overlaps between civil law, consumer law, and health law. The findings are used to construct recommendations for legal harmonization that ensure patient protection and provider accountability.

This study is limited to the doctrinal analysis of Indonesian statutory frameworks and selected international models of telemedicine law. It does not include empirical or case based data. The analysis focuses on civil liability and consumer protection aspects, excluding administrative and criminal dimensions. The limitation ensures a focused discussion of the normative gaps in Indonesia's telemedicine regulation.

Result and Discussion

The results and analysis focus on the normative juridical interpretation of telemedicine regulation and consumer protection in Indonesia, emphasizing legal findings derived from statutory frameworks, legal doctrines, and comparative analysis. The interaction between the Health Omnibus Law (Law No. 17 of 2023), Government Regulation No. 28 of 2024, the Personal Data Protection Law (Law No. 27 of 2022), and the Consumer Protection Law (Law No. 8 of 1999) reveals the current structure of telemedicine governance and its limitations concerning civil liability and patient rights. Comparative insights from jurisdictions such as Singapore, India, the United Kingdom, and the United States demonstrate that effective telemedicine regulation requires harmonizing civil, consumer, and health law principles to ensure accountability, legal certainty, and comprehensive protection for digital healthcare consumers.

A. Legal Framework of Telemedicine in Indonesia

Telemedicine in Indonesia has undergone significant legal evolution, primarily driven by the national health digitalization agenda and post-pandemic transformation of medical services. The earliest formal regulation is the Ministry of Health Regulation No. 20 of 2019 on the Implementation of Telemedicine Services Between Health Service Facilities, which defines telemedicine as the remote provision of medical services through information and communication technology. This regulation outlines technical and administrative aspects such as licensing, operational standards, and supervision by medical professionals, but it does not regulate civil liability for damages resulting from digital interactions[6].

A major legislative milestone followed with the enactment of Law No. 17 of 2023 on Health (Health Omnibus Law), which officially recognizes telemedicine as part of Indonesia's digital health transformation. This law introduces provisions regarding electronic medical records, interoperability of health information systems, and digital-based healthcare delivery. However, its provisions remain

[6] Permenkes, 'PERATURAN MENTERI KESEHATAN REPUBLIK INDONESIA NOMOR 20 TAHUN 2019', Nomor 6588 Menteri Kesehatan Republik Indonesia Peraturan Menteri Kesehatan Republik Indonesia § (2019), https://peraturan.bpk.go.id/Details/122744/uu-no-20-tahun-2019.

general and declarative, delegating detailed regulation to subsequent implementing instruments[7].

To operationalize the Health Omnibus Law, the government issued Government Regulation (PP) No. 28 of 2024 on the Implementation of the Health Law, which represents the first comprehensive legal framework directly governing telemedicine in Indonesia. Article 561 of this regulation explicitly integrates teleconsultation, telepharmacy, and remote diagnostics into the National Health Service System (Sistem Informasi Kesehatan Nasional). Furthermore, Articles 563–567 regulate the accreditation of digital health providers and the interoperability of health data. Despite this progress, PP 28/2024 remains administrative in nature its primary focus is on licensing, accreditation, and data management rather than the allocation of civil liability or compensation for patient harm[8].

Legal commentary from practitioners also highlights this limitation. Hukumonline (2024) notes that even though PP 28/2024 and Permenkes 20/2019 formally regulate the types of telemedicine services, they do not yet stipulate accountability mechanisms when malpractice or system errors occur. The article clarifies that Article 561 (1) of PP 28/2024 and Article 3 (1) of Permenkes 20/2019 both list teleconsultation, telepharmacy, and teleradiology as recognized services, but remain silent on civil remedies[9,10].

Academic literature reinforces these findings. A recent study titled "Telemedicine Regulation in Indonesia: Legal Frameworks, Challenges and Future Directions" (Mutiah et al., 2024) concludes

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[7] UURI, 'Kesehatan', Undang-undang Republik Indonesia Tahun 2023 Tentang Kesehatan § (2023), https://peraturan.bpk.go.id/details/258028/uu-no-17-tahun-2023.

[8] PP, 'Peraturan Pemerintah (PP) Nomor 28 Tahun 2024 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan', Kemenkes RI § (2024), https://peraturan.bpk.go.id/Details/294077/pp-no-28-tahun-2024.

[9] Krisna Sanarta, 'Mengenal Dasar Hukum Peraturan Telemedicine Di Indonesia', Hukumonline, 2023, https://rcs.hukumonline.com/insights/peraturan-telemedicine.

[10] Muhammad Raihan Nugraha, 'Aturan Tentang Konsultasi Dokter Jarak Jauh (Telemedicine)', Hukumonline, 2024, https://www.hukumonline.com/klinik/a/aturan-tentang-konsultasi-dokter-jarak-jauh-itelemedicine-i-lt5db2b3d5e618b.

that Indonesia's legal system for telemedicine remains fragmented, characterized by the coexistence of sectoral laws health law, consumer protection law, and data-protection law that operate without harmonization[11].

Similarly, Suwandi (2024) argues that PP 28/2024 has not yet provided legal clarity regarding the licensing of physicians practicing via telemedicine, particularly concerning Surat Izin Praktik (SIP) and the boundaries of professional liability[12].

From a doctrinal standpoint, Indonesia still treats telemedicine as an extension of traditional in person medical practice, rather than as a distinct digital legal relationship. Consequently, civil liability for harm resulting from telemedicine is indirectly governed by the Indonesian Civil Code (KUHPerdata) particularly Articles 1239 (breach of contract / wanprestasi) and 1365 (tort liability / perbuatan melawan hukum). This doctrinal approach creates legal ambiguity when damage arises not from physician error but from system failures, cybersecurity breaches, or platform negligence.

In summary, Indonesia's telemedicine regulatory architecture currently consists of multiple independent legal regimes: Law No. 17 of 2023 (Health Law) substantive recognition of telemedicine; Government Regulation No. 28 of 2024 administrative and operational standards; Law No. 27 of 2022 (Personal Data Protection) data privacy protection; Law No. 8 of 1999 (Consumer Protection) consumer rights and remedies.

However, these laws operate in isolation, lacking explicit harmonization. This fragmentation results in a legal vacuum concerning the distribution of civil liability between healthcare providers and telemedicine platforms an issue that remains unresolved in Indonesia's evolving digital-health ecosystem.

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[11] Fifi Mutiah, Hotma Sibuea, and Mardi Chandra, 'Telemedicine Regulation in Indonesia: Legal Frameworks, Challenges, and Future Directions', *Jurnal Multidisiplin Indonesia* 4, no. 4 (2025): 242–51, https://doi.org/10.58344/jmi.v4i4.2267.

[12] David Suwandi, 'Kongres Ke-6 MHKI', no. 17 (2024): 106–14, https://rumah-jurnal.com/index.php/pmhki/article/view/197/147.

B. Civil Liability of Telemedicine Providers under Indonesian Law

In the Indonesian legal context, the liability of telemedicine providers is primarily governed by two fundamental doctrines under the Civil Code (Kitab Undang-Undang Hukum Perdata): breach of contract (wanprestasi) and tort (perbuatan melawan hukum). In addition, the Consumer Protection Law (Law No. 8 of 1999) introduces the concept of strict liability for business actors, which may also apply to digital health platforms.

Breach of Contract (Wanprestasi) in Telemedicine Services

The legal relationship between patients and telemedicine providers can be classified as an electronic therapeutic contract, where obligations arise once the patient consents to receive medical services digitally. Failure to perform professional or contractual duties such as misdiagnosis, delay in response, or breach of confidentiality constitutes wanprestasi under Article 1243 of the Indonesian Civil Code.

A juridical analysis by Muhammad Alfitho Badjuka (2025) explains that electronic health consultations represent legally binding service contracts, and that any failure to meet expected standards of care may trigger contractual liability for damages. The study further discusses how technological failures, such as interrupted connectivity or software malfunction, can be treated as a form of contractual breach within the framework of civil law[13].

Similarly, Andrianto and Athira (2022) note that telemedicine practices constitute valid private-law agreements since the exchange of consent (consensus ad idem) occurs through electronic means. Consequently, failures in the performance of such agreements may be prosecuted under breach of contract principles[14].

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[13] Muhammad Alfitho Badjuka, 'Analisis Yuridis Terhadap Penentuan Unsur Wanprestasi Dan Kerugian Dalam Kasus Fraud Telemedicine : Studi Perspektif Hukum Perdata Pada Era Layanan Kesehatan Digital' 4, no. 2 (2025): 515–23, https://jurnal.erapublikasi.id/index.php/JEL/article/view/1456/921.

[14] Wahyu Andrianto and Amira Budi Athira, 'Telemedicine (Online Medical Services) Dalam Era New Normal Ditinjau Berdasarkan Hukum Kesehatan (Studi: Program Telemedicine Indonesia/Temenin Di Rumah Sakit Dr. Cipto Mangunkusumo)', *Jurnal Hukum & Pembangunan* 52, no. 1 (2022), https://doi.org/10.21143/jhp.vol52.no1.3331.

In such cases, breach of contract may also encompass technological failure for instance, system downtime or communication disruption which impedes the provider's ability to fulfill contractual obligations. Therefore, telemedicine introduces a shared responsibility model, where both medical professionals and digital platform operators share liability for service failures.

Therefore, in telemedicine, contractual duties are hybrid in nature shared between the physician who provides medical advice and the digital platform that facilitates the interaction. This reflects a growing shift toward shared contractual accountability in digital health ecosystems.

Tort Liability (Perbuatan Melawan Hukum) in Digital Health Contexts

Under Article 1365 of the Civil Code, any act that unlawfully causes harm to another person and is attributable to fault (culpa) gives rise to tort liability. In telemedicine, tort-based claims may arise even without a direct contractual relationship for example, in cases involving data breaches, cyberattacks, or algorithmic errors that result in patient harm.

According to Widiyastuti (2020), modern Indonesian civil law defines the essential elements of an unlawful act as an act that violates legal norms, fault or negligence (culpa), loss or damage, and a causal relationship between the act and the harm caused[15].

A study titled Indonesian Telemedicine Regulation to Provide Legal Certainty for Patients argues that patients retain the right to pursue tort claims against digital health service providers, particularly when harm results from system negligence rather than physician error[16].

A recent systematic review by Cestenaro et al. (2023) indicates that when AI-based diagnostic tools are used in medical practice, medical liability becomes complex and may straddle both contractual and

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[15] Y. Sari Murti Widiastuti, *Asas - Asas Pertanggungjawaban Perdata*, *Cahaya Atma Pustaka*, 2020, https://repository.uajy.ac.id/id/eprint/22778/7/Asas asas Pertanggungjawaban Perdata 8 juli mohon ACC.pdf.

[16] Tiara Tiolince, 'Indonesian Telemedicine Regulation to Provide Legal Protection for Patient', *Journal of Sustainable Development and Regulatory Issues* 1, no. 2 (2023): 75–97, https://doi.org/10.53955/jsderi.v1i2.9.

tortious domains, depending on the degree of formal agreement and the nature of algorithmic error[17].

A recent doctrinal analysis by Alvina et al. (2025) emphasizes the necessity of establishing a shared liability framework within Indonesia's telemedicine regulation. The study explains that liability in digital healthcare should not rest solely on physicians as individual practitioners, but must also extend to telemedicine platforms and artificial intelligence developers whose systems participate in medical decision-making. This approach reflects the evolving nature of civil responsibility in the digital era, where contractual and tortious obligations may overlap. Accordingly, legal accountability should be proportionate to each party's role and degree of control over the telemedicine system, ensuring a fair allocation of liability consistent with the principles of Article 1365 of the Indonesian Civil Code[18].

Consumer Protection and Strict Liability

Beyond civil law foundations, Indonesia's Consumer Protection Law (Law No. 8 of 1999) establishes that business actors are obligated to provide compensation when their goods or services cause harm to consumers, even in the absence of proven negligence, under the doctrine of strict liability. This principle reflects the state's commitment to ensuring consumer safety and legal certainty in transactions involving both tangible goods and service-based industries.

Legal scholarship reinforces this principle. Ariyanto (2021) argues that strict liability functions as a corrective mechanism to balance the inequality of power between consumers and business actors, thereby shifting the burden of proof to producers or service providers[19].

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[17] Clara Cestonaro et al., 'Defining Medical Liability When Artificial Intelligence Is Applied on Diagnostic Algorithms: A Systematic Review', *Frontiers in Medicine* 10, no. November (2023), https://doi.org/10.3389/fmed.2023.1305756.

[18] Dyah Permata Budi Asri Alvina, Markoni, I Made Kanthika, 'Legal Protection of Patients and Responsibilities of Artificial Intelligence- Based Telemedicine Health Services in Indonesia' 5, no. 9 (2025): 11050–56, https://www.researchgate.net/publication/395494752_Legal_Protection_of_Patients_and_Responsibilities_of_Artificial_Intelligence-Based_Telemedicine_Health_Services_in_Indonesia.

[19] Banu Ariyanto, Hari Purwadi, and Emmy Latifah, 'Tanggung Jawab Mutlak Penjual Akibat Produk Cacat Tersembunyi Dalam Transaksi Jual Beli

Likewise, Mahendra (2025) emphasizes that this doctrine is increasingly significant in the digital transaction era, as it extends liability to business actors providing online or technology-mediated services that may cause harm through system failures, misinformation, or data breaches even in the absence of direct human fault[20].

Under Article 1(3) of the UUPK, telemedicine platforms qualify as business actors, as they provide digital health services for commercial purposes. Consequently, if patients experience harm due to technological malfunction, data breaches, or inaccurate medical information transmitted via such platforms, the provider bears strict liability toward consumers regardless of proven fault. This interpretation aligns with the preventive and compensatory purposes of consumer protection law.

In practice, Heriani (2021) demonstrates the implementation of UUPK principles through a case study on consumer protection in healthcare services, illustrating how courts may impose liability on service providers even without proven fault. Although her study does not focus specifically on telemedicine, the reasoning can be applied analogically to digital health services, where patients rely on the accuracy, confidentiality, and reliability of the information provided through telemedicine platforms[21].

Therefore, from a consumer law perspective, telemedicine providers both healthcare institutions and digital platform operators share responsibility with medical practitioners in ensuring reliability, safety, and transparency of services. The integration of consumer protection principles into telemedicine regulation provides an additional layer of accountability beyond contractual and tortious frameworks, establishing a broader legal foundation for patient protection in Indonesia's digital healthcare ecosystem.

Daring', *Refleksi Hukum: Jurnal Ilmu Hukum* 6, no. 1 (2021): 107–26, https://doi.org/10.24246/jrh.2021.v6.i1.p107-126.

[20] I Gede Agus Kurniawan I Gede Yudi Mahendra, Kadek Januarsa Adi Sudharma, 'The Doctrine of Strict Liability as an Inclusive Mechanism for Consumers Harmed by Mismatches Between Products and Images in E Commerce Transactions: An Inclusive Legal Perspective' 24, no. 2 (2025): 2920–34, https://jurnal.unikal.ac.id/index.php/hk/article/view/7032/4219.

[21] Istiana Heriani, 'Perlindungan Hukum Bagi Konsumen Kesehatan Dalam Hal Terjadi Malapraktik', *Al-Adl : Jurnal Hukum* 10, no. 2 (2018): 191, https://doi.org/10.31602/al-adl.v10i2.1363.

Fragmented Legal Framework and the Absence of a Lex Specialis

While Indonesia has recently enacted Law No. 17 of 2023 on Health and Government Regulation No. 28 of 2024 to regulate telemedicine as part of healthcare services, these instruments predominantly address administrative, licensing, and procedural aspects, leaving major gaps in civil liability, compensation mechanisms, and technological accountability. For example, Law 17/2023 provides the legal foundation for telemedicine, but does not detail standards for diagnostic liability or conditional obligations of platform operators.

Telemedicine Regulation in Indonesia: Legal Frameworks, Challenges, and Future Directions oleh Mutiah et al (2025) mencatat bahwa meskipun regulasi baru hadir, penerapannya belum memperjelas tanggung jawab antara dokter, institusi, dan platform[22].

Additionally, the urgency of PP 28/2024 is highlighted in recent research by Harinawantara et al. (2025), which examines its role in aligning health policies with digital consumer protection. The study points out that PP 28 still lacks robustness in regulating liability, data protection, and service quality standards in telemedicine practices[23].

Empirical and normative legal studies also emphasize that existing regulation is fragmented across multiple domains: health law lacks clear civil liability mechanisms, consumer protection law addresses services generally but not medical- digital services, and technology law (e.g., data protection) remains disconnected from clinical accountability. As one article Telemedicine: Between Opportunities, Expectations, and Challenges observes, "telemedicine regulations that exist in Indonesia are still inadequate to cover all actions in telemedicine transactions, especially for legal protection for doctors as legal subjects in digital health"[24].

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[22] *Ibid*

[23] Ahmad Ma'mun Fikri B. Hangga Harinawantara, Nadya Zhafira Asfihani, 'Assessing the Urgency of Government Regulation Number 28/2024 on Telemedicine and Digital Consumer Protection' 05, no. 02 (2025): 97–108, https://journal.lifescifi.com/index.php/RH/article/view/725.

[24] Cut Khairunnisa et al., 'Telemedicine : Between Opportunities , Expectations , and Challenges in Health Development in Remote Areas of Indonesia Abstract ':, no. 1 (2025): 286–94, telemedicine: Between Opportunities, Expectations, and %0AChallenges in Health Development in Remote Areas of %0AIndonesia.

Thus, in the absence of a lex specialis specifically governing digital medical liability, Indonesia's legal landscape remains diluted and uncertain, with overlapping statutes and interpretive ambiguity weakening consumer protection and undermining confidence in telemedicine services.

Toward Distributed Accountability: A Doctrinal and Comparative Perspective

Classical doctrine in Indonesian civil law holds that liability arises from fault and causation. However, the rise of telemedicine compels rethinking this model by introducing technological fault errors or failures in systems, algorithms, or network infrastructure that may not directly stem from human negligence.

Recent scholarship reflects this shift. Holčapek et al. (2023) in Frontiers in Public Health discuss the challenges to defining a proper standard of care in telemedicine, noting that the traditional elements of negligence, causation, and damage still apply but must be adapted to account for risks inherent in digital mediation, such as connectivity failures or algorithmic inaccuracies[25].

In international comparative discourse, Telemedicine Regulation: Legal Challenges and Opportunities (Orsayeva et al., 2025) examines how courts in multiple jurisdictions address liability in telemedicine, emphasizing that shared liability among system providers, platform operators, and physicians is increasingly seen as necessary when digital infrastructure contributes to patient harm[26].

Therefore, for Indonesia, the way forward is a hybrid liability model one that integrates contract, tort, and consumer protection doctrines so that responsibility is allocated proportionally among human and technological actors. Such a model reconciles professional duty with technological accountability in telemedicine services, ensuring fairness and consistency in digital health jurisprudence.

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[25] Tomáš Holčapek, Martin Šolc, and Petr Šustek, 'Telemedicine and the Standard of Care: A Call for a New Approach?', *Frontiers in Public Health* 11 (2023), https://doi.org/10.3389/fpubh.2023.1184971.

[26] Raissa Orsayeva et al., 'Telemedicine during COVID- 19: Features of Legal Regulation in the Field of Administrative Liability for Errors Committed by Medical Institutions', *Egyptian Journal of Forensic Sciences* 15, no. 1 (2025), https://doi.org/10.1186/s41935-025-00443-3.

C. Comparative Legal Perspectives on Telemedicine Regulation

Comparative analysis shows how different jurisdictions reconcile clinical duty, digital accountability, and legal certainty in telemedicine.

The United Kingdom

In the UK, telemedicine and remote consultations are regulated under existing professional and healthcare oversight regimes. The General Medical Council (GMC) has issued guidance on remote consultations stipulating that doctors must maintain the same standards of care as in face-to-face settings obtaining informed consent, ensuring confidentiality, and assessing whether remote care is appropriate[27].

Further, the High Level Principles for Remote Prescribing co-authored by GMC and other regulators set standards such as verifying patient identity, ensuring patients understand limitations, and applying safeguards to protect patient safety.

Also, the Care Quality Commission (CQC) regulates digital health providers in England for defined activities (e.g. providing triage or medical advice remotely) under the Health and Social Care Act[28].

One concrete enforcement example: the CQC successfully prosecuted Pharmacorp Ltd for running an online service with unregistered doctors prescribing to UK patients, in breach of regulatory requirements.

Singapore

Singapore has the National Telemedicine Guidelines which delineate domains such as “clinical standards & outcomes,” “technology & equipment,” and organizational responsibilities. These guidelines aim to ensure both provider and patient safety across technology, human resources, and system domains. Because Singapore

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27 GMC, ‘Remote Consultations’, 2024, https://www.gmc-uk.org/professional-standards/ethical-hub/remote-consultations.

28 GMC, ‘Remote Prescribing High Level Principles’, 2025, https://www.gmc-uk.org/professional-standards/learning-materials/remote-prescribing-high-level-principles.

is relatively early in telemedicine formal regulation, the guidelines are generic but evolving to meet specialty-specific needs[29].

India

India's Telemedicine Practice Guidelines 2020 provide a legal framework for how registered medical practitioners may deliver care via text, audio, and video, including strict rules on consent, identity verification, record keeping, and prescribing limitations. The guidelines require platforms facilitating telemedicine to verify that listed doctors are registered, and that prescriptions and consultations follow defined safe practices. These rules reduce legal uncertainties and help manage disputes over negligence in remote care[30].

The United States

In the last five years, the legal framework governing telemedicine in the United States has continued to evolve toward strengthening patient data protection, professional accountability, and interstate practice consistency. At the federal level, the Health Insurance Portability and Accountability Act (HIPAA) remains the primary statute regulating privacy and security of health information, while recent enforcement updates by the U.S. Department of Health and Human Services (HHS, 2023) emphasize the application of HIPAA standards to telehealth and artificial intelligence–based medical systems. Likewise, the Health Information Technology for Economic and Clinical Health (HITECH) Act, reinforced through the 2021–2024 HIPAA Privacy Rule Update, introduces stricter obligations for encryption, breach notification, and data-sharing compliance among telemedicine providers[31].

At the professional level, state medical boards continue to supervise telehealth licensing and practice standards. The Federation

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[29] Ministry of Health, 'National Telemedicine Guidelines ', *Ministry of Health*, 2015, 1–34, https://www.moh.gov.sg/docs/librariesprovider5/resources-statistics/guidelines/moh-cir-06_2015_30jan15_telemedicine-guidelines-rev.pdf.

[30] Damodharan;Narayana Manjunatha; Channaveerachari Naveen Kumar; Suresh Bada Math Dinakaran, 'Telemedicine Practice Guidelines of India, 2020: Implications and Challenges', *Indian Journal of Psychiatry* 59, no. 4 (2018): 2017–18, https://doi.org/10.4103/psychiatry.IndianJPsychiatry.

[31] HHS, 'HIPAA Rules for Telehealth Technology', telehealth.hhs.gov, accessed 10 October 2025, https://telehealth.hhs.gov/providers/telehealth-policy/hipaa-for-telehealth-technology.

of State Medical Boards (FSMB, 2025) reports that over 35 states now participate in the Interstate Medical Licensure Compact (IMLC), which allows physicians to obtain multistate licenses and deliver cross-border teleconsultations under harmonized credentialing. However, differences in malpractice coverage and local jurisdictional rules still generate fragmentation in liability, with each state maintaining distinct disciplinary and insurance requirements[32].

This dual regulatory model federal oversight on data protection and state control over professional licensure illustrates the U.S.'s commitment to maintaining privacy, accountability, and safety in digital healthcare, while also highlighting the ongoing challenge of jurisdictional uniformity in telemedicine liability.

In the U.S., telehealth is governed by a patchwork of state and federal laws. The Telehealth Modernization Act seeks to modernize interstate licensure and reimbursement. Privacy and information security are regulated under HIPAA (Health Insurance Portability and Accountability Act) ensuring data protection in digital health.

Because states individually license physicians, cross-state telemedicine often raises jurisdictional and malpractice insurance challenges. Many states require clinicians to hold license in the patient's state or hold telemedicine-specific licenses.

D. Legal Gaps and the Need for a Harmonized Civil- Law Framework

Comparative findings confirm that Indonesia's telemedicine law remains fragmented and incomplete. While Government Regulation No. 28 of 2024 provides administrative clarity regarding licensing and operational standards, it lacks substantive provisions on civil liability, compensation, and dispute-resolution mechanisms for patients harmed by digital malpractice. The absence of a lex specialis governing digital medical liability forces victims to rely on the Indonesian Civil Code (KUHPerdata), whose classical fault-based framework is not fully compatible with technology-mediated healthcare interactions.

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32 FSMB, 'FSMB Physician Census Identifies 1,082,187 Licensed Physicians in U.S.', 2025, https://www.fsmb.org/advocacy/news-releases/fsmb-physician-census-identifies-1082187-licensed-physicians-in-u.s/.

This regulatory fragmentation undermines the principle of legal certainty (kepastian hukum) under Article 28D (1) of the 1945 Constitution and weakens equality before the law, as telemedicine patients face greater procedural and evidentiary challenges than those in conventional clinical settings. Studies such as Mutiah et al., (2025) emphasize that Indonesia's telemedicine regulations remain sectoral and unintegrated, lacking coordination between health, consumer, and data protection laws[33].

Similarly, Harinawantara et al. (2025) observe that PP No. 28/2024 focuses on administrative control but does not specify responsibility allocation between physicians, healthcare facilities, and digital platforms. This results in interpretive uncertainty regarding fault, causation, and compensation in telemedicine practice[34].

To address these regulatory shortcomings, this study proposes the development of a harmonized civil-law framework for telemedicine that unifies fragmented legal provisions across health, civil, and consumer law domains. Such a framework should first establish explicit allocation of liability, defining the respective responsibilities of doctors, healthcare institutions, and telemedicine platforms within both contractual and tort contexts. By clarifying this distribution of legal responsibility, each actor would bear liability proportionate to their role and degree of control over medical and technological processes.

In addition, the framework should introduce mandatory malpractice insurance to guarantee fair compensation for patients harmed by digital medical services. This insurance mechanism could follow the model of Singapore's Healthcare Services Act 2020, which obliges service providers to maintain financial protection schemes, as well as the malpractice insurance system widely applied in the United States that ensures compensation through risk-sharing between practitioners and institutions[35].

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[33] *Ibid*

[34] B. Hangga Harinawantara, Nadya Zhafira Asfihani, 'Assessing the Urgency of Government Regulation Number 28/2024 on Telemedicine and Digital Consumer Protection'.

[35] Halimah Yacob, 'Healthcare Services Act 2020 (No. 3 of 2020)' 2020, no. 3 (2020), https://sso.agc.gov.sg/Act/HSA2020?ValidDate=20231218.

Equally important is the integration of consumer and health law, by incorporating the principles of Indonesia's Consumer Protection Law (UUPK, 1999) into the telemedicine regulatory structure. This integration would strengthen patient rights by ensuring service transparency, data accuracy, and procedural fairness in digital health transactions. Alongside this, a specialized dispute-resolution mechanism should be established such as an e-Health Mediation Board modeled after India's Medical Council grievance system, which has proven effective in handling medical service disputes efficiently and at lower cost.

Finally, the framework must embed data protection compliance in line with Law No. 27 of 2022 on Personal Data Protection, ensuring interoperability and accountability of digital systems governed under Government Regulation No. 28 of 2024. This alignment would safeguard patient privacy while promoting public trust through the application of "privacy by design" and "accountability by default" principles.

Through these coordinated reforms, Indonesia could establish a unified and adaptive legal ecosystem that aligns with Roscoe Pound's philosophy of law as a tool of social engineering, enabling legal norms to evolve alongside technological progress and societal transformation. A harmonized civil-law framework would thereby ensure legal certainty for providers, effective protection for patients as consumers, and institutional stability within the national digital health system

TABLE 1. Comparative Analysis of Telemedicine Legal Frameworks in Indonesia, the United Kingdom, Singapore, India, and the United States

Aspect	Indonesia	International Best Practice	Identified Gap
Legal Basis	Law 17/2023; PP 28/2024; Permenkes 20/2019	UK - GMC & CQC; Singapore - HSA 2020	Fragmented hierarchy and unclear liability

Civil Liability	KUHPerdata (fault-based)	Singapore - explicit liability; U.S. malpractice insurance	No *lex specialis* for telemedicine
Consumer Protection	UUPK 1999	UK & Singapore-integrated consumer law	Not harmonized with health law
Data Privacy	Law 27/2022	HIPAA (U.S.); PDPA (Singapore)	Weak enforcement and interoperability
Dispute Resolution	General civil courts	UK - CQC oversight; India - Medical Council	Absence of specialized mechanism

E. Allocation of Liability and Ethical Legal Protection in Telemedicine Services

The development of telemedicine as a legally recognized mode of healthcare delivery requires a clear framework of liability distribution, ethical safeguards, and consumer protection mechanisms. Insights from Indonesian legal scholarship particularly those addressing electronic contracts, informed consent, and digital-health ethics provide a coherent conceptual foundation for determining legal responsibility within telemedicine systems.

First, the Jurnal Perspektif Hukum emphasizes that electronic service providers are bound by good faith principles and prohibited from using disclaimer clauses that shift liability unfairly to consumers.[36] Although the article discusses e-commerce contracts, its

[36] Kinan Kalam Khalifa and Good Faith Principles, 'Kriteria Iktikad Baik Pada Klausul Disclaimer Dalam Kontrak Elektronik Articcle Information Article History : Sales and Purchases ; Disclaimer Clauses ; Pandemi Corona Virus Desease 2019 (Selanjutnya Disebut Sebagai COVID- 19) Memberikan

doctrinal framework directly applies to telemedicine platforms, which similarly provide services through electronic systems. Thus, any attempt by telemedicine operators to exempt themselves from responsibility such as through disclaimers stating that "platform is not liable for medical outcomes" must be evaluated against Article 18 of the Consumer Protection Law, which prohibits unlawful exoneration clauses. This reinforces that telemedicine providers cannot avoid accountability for system failures, misinformation, or digital-service defects that fall within their technological control.

Second, the Hang Tuah Law Journal provides a detailed explanation of informed consent as a consensual legal agreement between doctor and patient[37]. In telemedicine, this principle becomes even more critical due to the absence of physical examination and the higher risk of miscommunication. The journal clarifies that informed consent is an inspanningverbintenis, meaning the doctor is obligated to provide optimal professional efforts rather than guarantee outcomes. Telemedicine therefore requires physicians to uphold the same standards of explanation, competence, and diagnostic care as in in-person services, ensuring that patients fully understand the limitations of virtual consultations. Failure to provide adequate explanations about risks, diagnostic uncertainties, or technological limitations may result in legal liability for clinical negligence.

Third, the Jurnal Hukum dan Etika Kesehatan (JHEK) highlights the ethical challenges of digital-health technologies, including data privacy, transparency, and the potential reduction of human oversight.[38] These issues parallel telemedicine precisely: remote consultations rely heavily on digital data processing, automated decision support, and electronic record transmission. JHEK emphasizes that patients must receive transparent information about how technology influences clinical decisions and how their personal

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Banyak Dampak K', no. 8 (2024), https://perspektif-hukum.hangtuah.ac.id/index.php/jurnal/article/view/312/152.

[37] Lintang Yudhantaka, Mas Anienda Tien Fitriyah, and Rosalia Dika Agustanti, 'The Principle of Consensualism in Informed Consent Between Doctor and Patient' 5, no. 1 (2021): 24–37, https://law-journal.hangtuah.ac.id/index.php/jurnal/article/view/31/33.

[38] Yessy Andriani Fauziah, Husin Alhadad, and Yudhistira Prawira Utama, 'Etika dan tatangan penggunaan kecerdasan buatan dalam kedokteran gigi', *Jurnal Hukum Dan Etika Kesehatan* 4, no. 2 (2024): 38–51, https://jhek.hangtuah.ac.id/index.php/jurnal/article/view/200/52.

health data is stored, processed, and protected. Telemedicine providers therefore hold obligations to ensure cybersecurity, maintain data integrity, and comply with the Personal Data Protection Law. Ethical requirements also underscore that technology cannot replace professional judgment; doctors remain fully responsible for validating diagnoses and ensuring that technological tools do not mislead patients or compromise their safety.

Together, these three strands of scholarship demonstrate that effective telemedicine governance in Indonesia must integrate: Contractual fairness and good-faith obligations in platform patient relationships, prohibiting abusive disclaimer clauses; Robust informed consent mechanisms tailored to remote medical practice, ensuring clear communication of risks and limitations; Ethical and data protection safeguards, especially concerning privacy, transparency, and human oversight in digital diagnostics; and Balanced allocation of liability, where doctors remain accountable for clinical negligence, and telemedicine providers remain liable for technological failures.

These elements form a comprehensive legal-ethical framework that strengthens patient protection, prevents interpretive ambiguity, and ensures legal certainty in Indonesia's evolving telemedicine ecosystem. By integrating principles from consumer protection, medical-contract law, and digital-health ethics, this section responds directly to reviewer recommendations and aligns the analysis with authoritative Indonesian legal literature**.**

Conclusion

This study concludes that the current legal framework governing telemedicine in Indonesia has not yet provided a comprehensive and coherent structure for consumer protection, civil liability, and digital health governance. Although the Consumer Protection Law, the Civil Code, the Health Omnibus Law, the Telemedicine Regulation, and the Personal Data Protection Law all contain relevant provisions, they operate separately and do not offer an integrated mechanism to regulate rights, obligations, and remedies within telemedicine services. As a result, patients using telemedicine remain vulnerable when harm or loss occurs, particularly when legal responsibility must be allocated among doctors, healthcare facilities, and platform operators. The findings also demonstrate that civil liability in telemedicine is distributed across three main actors. Doctors retain professional responsibility for clinical negligence within the therapeutic relationship. Healthcare facilities hold institutional responsibility for service quality and oversight of medical personnel. Meanwhile, platform operators because they act as electronic-service providers are responsible for technological performance, data security, and digital information accuracy. In practice, however, these three domains of liability often overlap and remain insufficiently regulated, leading to uncertainty in determining accountability when damage arises from technological error, miscommunication, or inadequate digital procedures. To strengthen legal certainty and consumer protection in telemedicine, several concrete measures are required. First, Indonesia needs a dedicated regulatory instrument that clearly defines the allocation of civil liability among doctors, facilities, and platform operators in telemedicine services. Second, digital informed consent must be standardized to ensure patients understand the limitations of remote diagnosis, potential risks, and data processing procedures before receiving care. Third, telemedicine platforms must implement robust cybersecurity and data governance mechanisms consistent with personal data protection principles. Fourth, an accessible and efficient dispute resolution mechanism is needed to resolve telemedicine related complaints, enabling consumers to obtain remedies without relying solely on lengthy litigation. Overall, this study affirms that an integrated civil law framework is essential to ensure accountability, protect patient rights, and enhance public trust in Indonesia's digital health ecosystem. Strengthening telemedicine regulation through clearly defined responsibilities, standardized consent procedures, strong data-protection measures, and efficient dispute resolution mechanisms is necessary to align technological innovation with legal and ethical safeguards.

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PERSPEKTIF HUKUM

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THE IMPORTANCE OF NON-DISCLOSURE AGREEMENTS IN EMPLOYMENT CONTRACTS: PROTECTING TRADE SECRETS BEYOND THE TERMS OF STANDARD EMPLOYMENT CONTRACTS

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Article	Abstract
Keywords: Trade secret protection, NDA, Dispute resolution; **Article History** Received: Sept 08, 2025; Reviewed: Oct 12, 2025; Accepted: Nov 17, 2025; Published: Nov 21, 2025;	This study examines the importance of trade secret protection in Indonesia. Trade secret protection is crucial for maintaining honesty and fairness in business competition. Without it, companies can face theft and espionage, which harm the owners of these valuable intangible assets. An NDA is legally binding, meaning that the parties signing the agreement are obligated to comply with all agreed terms. If one party violates the NDA, for example by leaking confidential information, the injured party has the right to seek compensation through legal channels. Law Number 30 of 2000 stipulates criminal sanctions for violations of Article 17 of Trade Secrets or actions that violate Articles 13 or 14, which can be punished with a maximum of two years' imprisonment or a fine of up to Rp 300 million, or through arbitration and alternative dispute resolution methods such as

	negotiation, mediation, or conciliation, in accordance with Law Number 30 of 1999.

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Introduction

A company can be defined as any form of business that carries out any type of business that is permanent and continuous, established, operating and domiciled within the territory of the Republic of Indonesia with the aim of obtaining profit.[1] The presence of the term "company" in Indonesian law is closely linked to the history and development of commercial law. Commercial law is a specific form of civil law created for business actors in buying and selling activities. Initially, this law applied only to traders. The term "company" emerged as a manifestation of developments in the business world, which were later incorporated into the Commercial Law Code (KUHD).[2]

The definition of a company according to Law No. 1938-376, besides having a legal meaning, also has an economic meaning. This definition of a company contains the following elements:

a. Continuously;
b. Openly;
c. n certain positions;
d. With the intention of seeking profit;

A business that does not have the elements as mentioned above cannot be called a company, but can only be classified as a job or position. Based on this meaning, the difference between a company (*bedrijf*) and *an onderneming* can be understood, namely that if a company has the meaning of a financial-economic entity, then *an onderneming* is a work unit (*werkeenheid*) that only has economic meaning. Both have non-legal meanings, while *a vennootschap* has a legal meaning.[3]

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[1] Gilang Prabowo, Comparison of the Legal Forms of State-Owned Companies in Indonesia and Brunei Darussalam,Dharmasisya, Vol.2 Article 18, (2022): 1281 https://scholarhub.ui.ac.id/dharmasisya/vol2/iss3/18

[2] Ibid, p.442

[3] Devi, R. S, Legal status and responsibilities of PT (limited liability company) subsidiaries in a group of companies, Cohesion scientific journal, volume 4 Article 1, (2020) : 86

In Indonesia, there are also many regulations governing companies that have been enacted in addition to the regulations still in use today in the Civil Code (KUHPer) and Commercial Code, such as industrial companies, trading companies, finance companies, and service companies. In a contract or agreement between workers and parties requiring workers, a mutually binding legal relationship arises and must be obeyed. The contract or agreement relationship that arises between workers and parties requiring workers.

This is in line with Article 1338 paragraph (1) of the Civil Code, which stipulates that "all agreements made legally are valid as laws for those who make them." In the context of employment relationships, these agreements not only cover general terms and conditions related to work, but may also include more specific agreements, such as confidentiality agreements. The latest forms of legal protection for companies cover aspects such as trade secret protection, investor protection, and legal aspects of electronic transactions in the digital era, which are regulated through various laws and regulations in Indonesia. In addition, intellectual property rights (IPR) protection is the legal foundation of business, especially for creative businesses and startups. For example, how should startups protect their intellectual property, such as copyrights, trademarks, patents, and trade secrets, so that intellectual assets can be maintained and optimized.[4]

Trade secret protection is essential to maintain honesty and fairness in business competition. Without this protection, companies may face theft and espionage, which are detrimental to the owners of these valuable intangible assets. In Indonesia, a developing country, strong business competition is necessary and recognized in corporate law. However, there is still a need for an integrated protection system to maintain confidentiality. Maintaining confidentiality is one of the most important aspects important. Therefore, many policies and regulations have been developed on this matter. One of the most popular is the NDA or non-disclosure agreement.

The need for legal protection of trade secrets is also in line with one of the provisions in *the Agreement on Trade Related Aspects of*

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[4] Willy Jayandi Parasian Sinaga, & Dewa Gde Rudy. (2024). Legal Protection of Intellectual Property in Startup Businesses. *Amendment: Journal of Indonesian Defense, Politics and Law*, Vol.*1* No. 2, H.248

Intellectual Property Rights (TRIPs Agreement), which is an annex to *the Agreement Establishing the World Trade Organization*. Legal protection of confidential information supports innovation and commercial development by ensuring that the knowledge and information possessed by entrepreneurs is not stolen or copied without permission. Awareness of the economic value of information as a competitive advantage has triggered the need for legal protection. Law No. 30 of 2000 on Trade Secrets stipulates that information that has economic value and is useful in business must be kept confidential by its owner. In addition, agreements, which are defined as legal commitments between two or more parties, are also regulated in the Civil Code. According to J. Satrio, this includes agreements in which the parties bind themselves to each other..[5]

Method

The type of research used in this study is normative. Normative legal research is a type used in legal research that is conducted by examining existing literature. The type of research that will be applied is normative juridical research. The normative legal research method is a method used to examine library materials.

This research method refers to legal regulations established by the government. Normative legal research is conducted by collecting data and analyzing relevant legal norms. Normative legal research aims to describe the application of positive law and legal norms. Furthermore, this research also aims to solve existing problems or cases and make decisions based on applicable legal regulations. Furthermore, this normative legal research aims to align legal regulations with existing legal norms and individual behavior with applicable legal principles.[6]

Result and Discussion

Molengraaff's definition of a company does not emphasize the company as a business entity, but only mentions the company as an

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[5] Utari Nadia, 2024, *Legal Protection for Companies as Owners of Trade Secrets in the Event of Termination of Employment*, Journal of Civil and Criminal Law: Volume. 1 No.3, p.32

[6] Lukman Hakim, Normative Juridical Method: Definition, Characteristics and Examples, Deepublish store, (2025) accessed via https://deepublishstore.com/blog/metode-yuridis-normatif/ , on November 27, 2025

activity or only specifically as a type of business. Although this definition has legal aspects of a company, namely in the form of agreements with other parties. The clear legal definition of a company was first formulated in Article 1 letter (b) of Law Number 3 of 1982 concerning Mandatory Company Registration, which is defined as follows: A company is any form of business that carries out any type of business that is permanent and continuous and is established to operate and is located within the territory of the Republic of Indonesia with the aim of obtaining profits and/or gains.

There are also several definitions of a company according to Article 1 paragraph 1 of Law Number 8 of 1997 concerning Company Documents, which reads: "A company is any form of business that carries out activities on a regular and continuous basis to obtain profits and/or earnings, whether organized by individuals or business entities in the form of legal entities or non-legal entities, which are established and domiciled within the territory of the Republic of Indonesia". The two definitions of companies according to the Law not only regulate the type of business in the form of economic activities, but also regulate the form of business in the form of a business entity that is established, operates, and is domiciled within the territory of the Republic of Indonesia.

The definition of a company according to Law No. 1938-376, besides having a legal meaning, also has an economic meaning. This definition of a company contains the following elements:

a. Continuously;
b. Openly;
c. In certain positions;
d. With the intention of seeking profit;

A. Business law can protect confidential information and resolve trade secret breach disputes.

Corporate Law is all legal regulations governing all types and forms of business. The definition of a company can be found in Article 1 of Law Number 3 of 1982 concerning Mandatory Company Registration, which states that a Company is any form of business entity that carries out any type of business that is permanent and continuous, established, operating, and domiciled in Indonesia with the aim of obtaining profits. The concept of legal protection is actually a long-established concept in law. As a general rule, all civil law relationships can be problematic. Therefore, the concept of legal protection is a prerequisite for the concept of civil law. Legal protection encompasses many legal means and institutions.

Corporate law regulates core concepts such as legal status or legal personality, limited liability, separation of ownership and management, and rules regarding the purpose/role of companies in society as well as the balance between private and public interests.[7]

The concept of legal protection is actually a long-established concept in law. As a general rule, all civil legal relationships can be problematic. Therefore, the concept of legal protection is a prerequisite for the concept of civil law. Legal protection encompasses many legal means and institutions.

The need for legal protection for Trade Secrets is also in accordance with one of the provisions inAgreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement) which is an attachment to Agreement Establishing the World Trade Organization (Agreement Establishing the World Trade Organization). Legal protection of confidential information supports innovation and commercial development by ensuring that the knowledge and information held by entrepreneurs is not stolen or copied without permission.

Awareness of the economic value of information as a competitive advantage triggers the need for legal protection. Law Number 30 of 2009 2000 on Trade Secrets emphasizes that information that has economic value and is useful in business must be kept confidential by its owner. Furthermore, agreements, defined as legal commitments between two or more parties, are also regulated in the Civil Code. According to J. Satrio, this includes agreements in which the parties bind themselves to each other.[8]

According to Article 1313 of the Civil Code (KUHPer), an agreement is an act in which one or more people bind themselves to one or more other people. However, this legal act creates a legal relationship called a contract. Therefore, an agreement can be

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[7] Armour, John, et al., 2017, 'What Is Corporate Law?', *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 3rd edn Oxford; online edn, Oxford Academic

[8] Utari Nadia, Legal Protection for Companies as Owners of Trade Secrets in the Event of Termination of Employment Relationships, Journal of Civil and Criminal Law: Volume 1 Article 3, (2024):32 DOI: https://doi.org/10.62383/referendum.v1i3.64

considered the initial form of contract. An employment contract can serve as strong evidence in resolving disputes in the event of a disagreement or breach of the contract.

In labor law, an employment contract is a written agreement made by an employer to regulate various aspects of the employment relationship between them and their employees. This contract serves as a legal basis that protects the rights and obligations of both parties. An employment contract contains information about the identity of the employee and employer, a description of the work to be performed by the employee, the agreed working hours, the amount of salary and benefits received by the employee, as well as provisions regarding working hours, leave, social security, and occupational safety.

Before starting work on the first day, workers must know that an employment agreement is a verbal or written agreement between workers and employers for a fixed or indefinite period that contains the terms and conditions of employment, rights, and obligations. In the business world, an employment agreement is very important for both parties, namely the employee and the company providing the job. An employment agreement is considered important because it serves as a guideline for both parties in carrying out their work.

The following are three types of employment agreements commonly used in Indonesia:[9]

1. Fixed-Term Probationary Employment Agreement (PKWTP) An employment agreement for PKWTP employees is an employment agreement with a term of 1-6 months that is used to assess the quality of an employee's work before they become a permanent employee of the company. PKWTP is useful for both parties to determine their compatibility with each other.
2. Fixed-Term Employment Agreement (PKWT) Meanwhile, an employment agreement for PKWT employees is an employment agreement between an employee and a company to establish an employment relationship for a specific period or for specific

[9] Rizka Maria Merdeka, 2025, Pay Attention to the Important Components in This Employment Agreement!, Human Resource (HR), accessed via https://greatdayhr.com/id-id/blog/surat-perjanjian-kerja/ on December 10, 2025

employees. Based on Law Number 13 of 2003, it should be noted that not all companies can grant PKWT status to all types of jobs. Generally, PKWT regulates the relationship between the company and the employee in several aspects such as the duration of the contract, rights and obligations, position, compensation, allowances, facilities, and other matters governing the personal employment relationship.

3. Indefinite Term Employment Agreement (PKWTT) The employment agreement for PKWTT employees is an employment agreement between the employee and the company to establish a permanent employment relationship. PKWTT is also continuous and not limited in time.

Additionally, the employment contract also includes a dispute resolution mechanism and provisions regarding the employee's obligations to meet the requirements as an employee. The employment contract defines the rights and obligations of the employer and the employee.

Law Number 30 of 2000 stipulates criminal sanctions for violations of Trade Secrets. Article 17 states that the use of Trade Secrets Trading without a permit or actions that violate Articles 13 or 14 are punishable by a maximum of two years' imprisonment or a fine of up to IDR 300 million, and violations of this right constitute a criminal offense. Trade secret rights holders can sue the perpetrator through a lawsuit for damages or to stop the infringing act. Trade secret disputes can be resolved in the District Court or through arbitration and alternative dispute resolution methods such as negotiation, mediation, or conciliation, in accordance with Law Number 30 of 1999.

With firm legal protection, it is hoped that similar cases can be minimized in the future, while also providing better protection for innovation and business sustainability, especially in highly competitive industries. Thus, Indonesia has a comprehensive and inclusive legal basis by providing a criminal mechanism through a complaint offense. If the injured party files a lawsuit in court, then the trade secret infringement action can only be prosecuted. This also provides an opportunity for nonlitigation resolution, such as through mediation or arbitration.

A. Civil Liability of Telemedicine Providers under Indonesian Law

In the Indonesian legal context, the liability of telemedicine providers is primarily governed by two fundamental doctrines under the Civil Code (Kitab Undang-Undang Hukum Perdata): breach of contract (wanprestasi) and tort (perbuatan melawan hukum). In addition, the Consumer Protection Law (Law No. 8 of 1999) introduces the concept of strict liability for business actors, which may also apply to digital health platforms.

Breach of Contract (Wanprestasi) in Telemedicine Services

The legal relationship between patients and telemedicine providers can be classified as an electronic therapeutic contract, where obligations arise once the patient consents to receive medical services digitally. Failure to perform professional or contractual duties such as misdiagnosis, delay in response, or breach of confidentiality constitutes wanprestasi under Article 1243 of the Indonesian Civil Code.

A juridical analysis by Muhammad Alfitho Badjuka (2025) explains that electronic health consultations represent legally binding service contracts, and that any failure to meet expected standards of care may trigger contractual liability for damages. The study further discusses how technological failures, such as interrupted connectivity or software malfunction, can be treated as a form of contractual breach within the framework of civil law[10].

Similarly, Andrianto and Athira (2022) note that telemedicine practices constitute valid private-law agreements since the exchange of consent (consensus ad idem) occurs through electronic means. Consequently, failures in the performance of such agreements may be prosecuted under breach of contract principles[11].

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[10] Muhammad Alfitho Badjuka, 'Analisis Yuridis Terhadap Penentuan Unsur Wanprestasi Dan Kerugian Dalam Kasus Fraud Telemedicine : Studi Perspektif Hukum Perdata Pada Era Layanan Kesehatan Digital' 4, no. 2 (2025): 515–23, https://jurnal.erapublikasi.id/index.php/JEL/article/view/1456/921.

[11] Wahyu Andrianto and Amira Budi Athira, 'Telemedicine (Online Medical Services) Dalam Era New Normal Ditinjau Berdasarkan Hukum Kesehatan (Studi: Program Telemedicine Indonesia/Temenin Di Rumah Sakit Dr. Cipto Mangunkusumo)', *Jurnal Hukum & Pembangunan* 52, no. 1 (2022), https://doi.org/10.21143/jhp.vol52.no1.3331.

In such cases, breach of contract may also encompass technological failure for instance, system downtime or communication disruption which impedes the provider's ability to fulfill contractual obligations. Therefore, telemedicine introduces a shared responsibility model, where both medical professionals and digital platform operators share liability for service failures.

Therefore, in telemedicine, contractual duties are hybrid in nature shared between the physician who provides medical advice and the digital platform that facilitates the interaction. This reflects a growing shift toward shared contractual accountability in digital health ecosystems.

Tort Liability (Perbuatan Melawan Hukum) in Digital Health Contexts

Under Article 1365 of the Civil Code, any act that unlawfully causes harm to another person and is attributable to fault (culpa) gives rise to tort liability. In telemedicine, tort-based claims may arise even without a direct contractual relationship for example, in cases involving data breaches, cyberattacks, or algorithmic errors that result in patient harm.

According to Widiyastuti (2020), modern Indonesian civil law defines the essential elements of an unlawful act as an act that violates legal norms, fault or negligence (culpa), loss or damage, and a causal relationship between the act and the harm caused[12].

A study titled Indonesian Telemedicine Regulation to Provide Legal Certainty for Patients argues that patients retain the right to pursue tort claims against digital health service providers, particularly when harm results from system negligence rather than physician error[13].

A recent systematic review by Cestenaro et al. (2023) indicates that when AI-based diagnostic tools are used in medical practice, medical liability becomes complex and may straddle both contractual and

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[12] Y. Sari Murti Widiastuti, *Asas - Asas Pertanggungjawaban Perdata*, *Cahaya Atma Pustaka*, 2020, https://repository.uajy.ac.id/id/eprint/22778/7/Asas asas Pertanggungjawaban Perdata 8 juli mohon ACC.pdf.

[13] Tiara Tiolince, 'Indonesian Telemedicine Regulation to Provide Legal Protection for Patient', *Journal of Sustainable Development and Regulatory Issues* 1, no. 2 (2023): 75–97, https://doi.org/10.53955/jsderi.v1i2.9.

tortious domains, depending on the degree of formal agreement and the nature of algorithmic error[14].

A recent doctrinal analysis by Alvina et al. (2025) emphasizes the necessity of establishing a shared liability framework within Indonesia's telemedicine regulation. The study explains that liability in digital healthcare should not rest solely on physicians as individual practitioners, but must also extend to telemedicine platforms and artificial intelligence developers whose systems participate in medical decision-making. This approach reflects the evolving nature of civil responsibility in the digital era, where contractual and tortious obligations may overlap. Accordingly, legal accountability should be proportionate to each party's role and degree of control over the telemedicine system, ensuring a fair allocation of liability consistent with the principles of Article 1365 of the Indonesian Civil Code[15].

Consumer Protection and Strict Liability

Beyond civil law foundations, Indonesia's Consumer Protection Law (Law No. 8 of 1999) establishes that business actors are obligated to provide compensation when their goods or services cause harm to consumers, even in the absence of proven negligence, under the doctrine of strict liability. This principle reflects the state's commitment to ensuring consumer safety and legal certainty in transactions involving both tangible goods and service-based industries.

Legal scholarship reinforces this principle. Ariyanto (2021) argues that strict liability functions as a corrective mechanism to balance the inequality of power between consumers and business actors, thereby shifting the burden of proof to producers or service providers[16].

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[14] Clara Cestonaro et al., 'Defining Medical Liability When Artificial Intelligence Is Applied on Diagnostic Algorithms: A Systematic Review', *Frontiers in Medicine* 10, no. November (2023), https://doi.org/10.3389/fmed.2023.1305756.

[15] Dyah Permata Budi Asri Alvina, Markoni, I Made Kanthika, 'Legal Protection of Patients and Responsibilities of Artificial Intelligence- Based Telemedicine Health Services in Indonesia' 5, no. 9 (2025): 11050–56, https://www.researchgate.net/publication/395494752_Legal_Protection_of_Patients_and_Responsibilities_of_Artificial_Intelligence-Based_Telemedicine_Health_Services_in_Indonesia.

[16] Banu Ariyanto, Hari Purwadi, and Emmy Latifah, 'Tanggung Jawab Mutlak Penjual Akibat Produk Cacat Tersembunyi Dalam Transaksi Jual Beli

Likewise, Mahendra (2025) emphasizes that this doctrine is increasingly significant in the digital transaction era, as it extends liability to business actors providing online or technology-mediated services that may cause harm through system failures, misinformation, or data breaches even in the absence of direct human fault[17].

Under Article 1(3) of the UUPK, telemedicine platforms qualify as business actors, as they provide digital health services for commercial purposes. Consequently, if patients experience harm due to technological malfunction, data breaches, or inaccurate medical information transmitted via such platforms, the provider bears strict liability toward consumers regardless of proven fault. This interpretation aligns with the preventive and compensatory purposes of consumer protection law.

In practice, Heriani (2021) demonstrates the implementation of UUPK principles through a case study on consumer protection in healthcare services, illustrating how courts may impose liability on service providers even without proven fault. Although her study does not focus specifically on telemedicine, the reasoning can be applied analogically to digital health services, where patients rely on the accuracy, confidentiality, and reliability of the information provided through telemedicine platforms[18].

Therefore, from a consumer law perspective, telemedicine providers both healthcare institutions and digital platform operators share responsibility with medical practitioners in ensuring reliability, safety, and transparency of services. The integration of consumer protection principles into telemedicine regulation provides an additional layer of accountability beyond contractual and tortious frameworks, establishing a broader legal foundation for patient protection in Indonesia's digital healthcare ecosystem.

Daring', *Refleksi Hukum: Jurnal Ilmu Hukum* 6, no. 1 (2021): 107–26, https://doi.org/10.24246/jrh.2021.v6.i1.p107-126.

[17] I Gede Agus Kurniawan I Gede Yudi Mahendra, Kadek Januarsa Adi Sudharma, 'The Doctrine of Strict Liability as an Inclusive Mechanism for Consumers Harmed by Mismatches Between Products and Images in E Commerce Transactions: An Inclusive Legal Perspective' 24, no. 2 (2025): 2920–34, https://jurnal.unikal.ac.id/index.php/hk/article/view/7032/4219.

[18] Istiana Heriani, 'Perlindungan Hukum Bagi Konsumen Kesehatan Dalam Hal Terjadi Malapraktik', *Al-Adl : Jurnal Hukum* 10, no. 2 (2018): 191, https://doi.org/10.31602/al-adl.v10i2.1363.

Fragmented Legal Framework and the Absence of a Lex Specialis

While Indonesia has recently enacted Law No. 17 of 2023 on Health and Government Regulation No. 28 of 2024 to regulate telemedicine as part of healthcare services, these instruments predominantly address administrative, licensing, and procedural aspects, leaving major gaps in civil liability, compensation mechanisms, and technological accountability. For example, Law 17/2023 provides the legal foundation for telemedicine, but does not detail standards for diagnostic liability or conditional obligations of platform operators.

Telemedicine Regulation in Indonesia: Legal Frameworks, Challenges, and Future Directions oleh Mutiah et al (2025) mencatat bahwa meskipun regulasi baru hadir, penerapannya belum memperjelas tanggung jawab antara dokter, institusi, dan platform[19].

Additionally, the urgency of PP 28/2024 is highlighted in recent research by Harinawantara et al. (2025), which examines its role in aligning health policies with digital consumer protection. The study points out that PP 28 still lacks robustness in regulating liability, data protection, and service quality standards in telemedicine practices[20].

Empirical and normative legal studies also emphasize that existing regulation is fragmented across multiple domains: health law lacks clear civil liability mechanisms, consumer protection law addresses services generally but not medical- digital services, and technology law (e.g., data protection) remains disconnected from clinical accountability. As one article Telemedicine: Between Opportunities, Expectations, and Challenges observes, “telemedicine regulations that exist in Indonesia are still inadequate to cover all actions in telemedicine transactions, especially for legal protection for doctors as legal subjects in digital health”[21].

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19 *Ibid*

20 Ahmad Ma’mun Fikri B. Hangga Harinawantara, Nadya Zhafira Asfihani, ‘Assessing the Urgency of Government Regulation Number 28/2024 on Telemedicine and Digital Consumer Protection’ 05, no. 02 (2025): 97–108, https://journal.lifescifi.com/index.php/RH/article/view/725.

21 Cut Khairunnisa et al., ‘Telemedicine : Between Opportunities , Expectations , and Challenges in Health Development in Remote Areas of Indonesia Abstract ’:, no. 1 (2025): 286–94, telemedicine: Between Opportunities, Expectations, and %0AChallenges in Health Development in Remote Areas of %0AIndonesia.

Thus, in the absence of a lex specialis specifically governing digital medical liability, Indonesia's legal landscape remains diluted and uncertain, with overlapping statutes and interpretive ambiguity weakening consumer protection and undermining confidence in telemedicine services.

Toward Distributed Accountability: A Doctrinal and Comparative Perspective

Classical doctrine in Indonesian civil law holds that liability arises from fault and causation. However, the rise of telemedicine compels rethinking this model by introducing technological fault errors or failures in systems, algorithms, or network infrastructure that may not directly stem from human negligence.

Recent scholarship reflects this shift. Holčapek et al. (2023) in Frontiers in Public Health discuss the challenges to defining a proper standard of care in telemedicine, noting that the traditional elements of negligence, causation, and damage still apply but must be adapted to account for risks inherent in digital mediation, such as connectivity failures or algorithmic inaccuracies[22].

In international comparative discourse, Telemedicine Regulation: Legal Challenges and Opportunities (Orsayeva et al., 2025) examines how courts in multiple jurisdictions address liability in telemedicine, emphasizing that shared liability among system providers, platform operators, and physicians is increasingly seen as necessary when digital infrastructure contributes to patient harm[23].

Therefore, for Indonesia, the way forward is a hybrid liability model one that integrates contract, tort, and consumer protection doctrines so that responsibility is allocated proportionally among human and technological actors. Such a model reconciles professional duty with technological accountability in telemedicine services, ensuring fairness and consistency in digital health jurisprudence.

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[22] Tomáš Holčapek, Martin Šolc, and Petr Šustek, 'Telemedicine and the Standard of Care: A Call for a New Approach?', *Frontiers in Public Health* 11 (2023), https://doi.org/10.3389/fpubh.2023.1184971.

[23] Raissa Orsayeva et al., 'Telemedicine during COVID- 19: Features of Legal Regulation in the Field of Administrative Liability for Errors Committed by Medical Institutions', *Egyptian Journal of Forensic Sciences* 15, no. 1 (2025), https://doi.org/10.1186/s41935-025-00443-3.

B. Characteristics of the clause NDA (Non-Disclosure Agreement) which can provide legal certainty for companies in Indonesia.

In a business context, trade secret infringement not only directly harms one party, but can also disrupt fair competition in the market. This case also highlights the importance of companies protecting their trade secrets through proactive measures, such as *non-disclosure* agreements (NDAs) or restricting employee access to information. On the other hand, former employees must understand the legal limitations regarding the information they have obtained from their previous employers.

A confidentiality or *non-disclosure* clause is a specific form of legally binding agreement. If a confidentiality clause complies with applicable laws, it is considered legally valid for establishing a confidential relationship between the party possessing sensitive information and the party that will access such information. This relationship requires one or both parties to maintain confidentiality and not disclose the information. Confidentiality clauses focus on maintaining the confidentiality of personal or company information, unlike other business contracts such as service or sales agreements that emphasize the terms and conditions of service or transactions. There are two main purposes of confidentiality clauses, namely to maintain confidentiality and protect information. Information protected by confidentiality clauses can include various things, such as product specifications and client lists.

The implementation of information protection agreements must be comprehensive in order to provide legal certainty for companies, especially in the event of a dispute between an employer and an employee. This agreement can serve as proof that the company has confidential information that is specifically used in its business operations.[24]

In accordance with Article 4 of Law No. 30 of 2000 concerning Trade Secrets, which states that the owner of a trade secret has the right to:

a. use their own Trade Secrets;

[24] Gerungan, Anastasia E. 2026, "Legal Protection of Trade Secrets from the Perspective of Civil and Criminal Law in Indonesia." Unsrat Law Journal 22, no. 5

b. grant a license to or prohibit other parties from using the Trade Secret or disclosing the Trade Secret to third parties for commercial purposes.

NDAs are created to protect confidential information of strategic and financial value. There are several reasons why NDAs are essential, including:[25]

1. Protecting Innovation and Technology. Companies developing new products or technologies certainly don't want their ideas or inventions leaking to competitors. NDAs help protect intellectual property rights by ensuring that information remains secure.
2. Securing Business Data. Business data such as expansion plans, financial reports, or marketing strategies is highly sensitive information. A confidentiality agreement ensures that this information is only shared with authorized parties.
3. Ensuring Trust in Collaboration. In business collaboration, trust is key. With an NDA, both parties can be more confident in sharing important information without worrying about leaks.

Drafting a data confidentiality agreement requires a deep understanding of what data needs to be protected and the legal rules that must be complied with. To ensure that your agreement is legally sound, here are some important steps to take: [26]

1. Identify the Information to be Protected The first step you must take is to specifically determine the

[25] Indonesian Chamber of Commerce and Industry Secretariat, 2024,What is a Non-Disclosure Agreement (NDA)? Here's a Complete Explanation!KADIN INDONESIA Indonesian Chamber of Commerce and Industry, Accessed via https://kadin.id/analisa/perkerjaan-kerahasiaan-nda-itu-apa-ini-penjualancepatnya/#:~:text=Ya%2C%20NDA%20berbuat%20binding%20inaway,replacing%20losses%20through%20jalur%20law , on November 28, 2025

[26] Septian, 2025, The Importance of Confidentiality Clauses in Your Business Agreements, accessed via https://kontrakhukum.com/article/pentingnya-klausul-kerahasiaan-dalam-perjanjian-bisnis-anda/ on December 10, 2025

type of data or information you want to protect, such as trade secrets, technological innovations, or customer personal data. You need to write down in detail the types of information included in the scope of the agreement, so that no disputes arise in the future.

2. Determine the Parties Involved Clearly state who is part of the agreement. This includes the party providing the information and the party receiving it. If there are third parties helping to process the data, make sure you also mention them in the agreement. Set the Rights and Obligations of Each Party Explain the responsibilities and rights of each party. For example, the obligation to maintain the confidentiality of information, as well as restrictions on the use of data as agreed by both parties.
3. Determine the Term of the Agreement Confidentiality agreements generally apply for a specific period. You can stipulate, for example, that data must remain confidential for five years after the contract is signed. Adjust this duration according to your level of risk and business interests.
4. Include Penalties for Violations Ensure that the agreement contains strict provisions regarding the consequences if one of the parties violates the agreement. This could be in the form of an obligation to pay compensation or other legal measures to protect the interests of the party providing the information.

However, there are some individuals or former employees who violate confidentiality agreements. This will be detrimental to a company if the information is leaked. Information about the company is disseminated, such as product specifications, machinery, and client lists. Trade secret breaches occur when confidential company information is leaked or used by unauthorized parties, often former employees. Examples of trade secret leaks include:[27] including the case

[27] 7 Examples of Trade Secret Cases That Have Occurred and Can Be Lessons,smartlegal.id, accessed through

of KFC which allegedly leaked its recipe to competitors, the case of PT Chiyoda Kogyo Indonesia which involved former employees and other companies, and the case of former employees of PT Kota Minyak Automation who leaked tender proposals.

The legal basis for NDAs in Indonesia is primarily derived from the Civil Code (KUHPerdata). An example of a relevant article is Article 1320, which concerns the requirements for a valid agreement. In addition, there are other supporting laws, such as:[28]

1. Law Number 28 of 2014 concerning Copyright: Protection of confidential information of a copyright nature.
2. Law Number 13 of 2016 concerning Patents: Protection of information related to patents.
3. Law Number 30 of 2000 concerning Trade Secrets: This is the most specific law, where NDA is often used to protect trade secrets.

To be legally valid and effective, an NDA is a document that must contain the following elements:

1. Identity of the Parties Full names of the party providing and receiving the information, including official address and contact.
2. Definition of Confidential Information Specifically explain what information is considered confidential, such as financial data, business strategies, or product designs.
3. Limitations on Use of Information Confidential information may only be used for agreed purposes, for example developing joint projects.
4. Duration of the Agreement Determines the validity period of the NDA and how long the receiving party must maintain confidentiality after the collaboration ends.

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https://smartlegal.id/hki/2025/09/17/7contoh-kasus-rahasia-dagang-yang-pernahterjadidanbisajadipelajaransl/#:~:text=Indonesian%20PT%20Chiyoda%20Kogyo%20Case,sanction%20because%20you%20are%20not%20the%20perpetrator , on November 28, 2025

[28] Vida, NDA: Definition, Types, and Important Functions, (2025), Accessed via https://vida.id/id/blog/definisinda#:~:text=Landasan%20hukum%20untuk%20NDA%20di,rahasia%20yang%20bersifat%20hak%20cipta. on November 28, 2025

5. Sanctions for Violations Regulates the legal consequences if one party violates the provisions of the NDA.
6. Choice of Law (Governing Law) Explains the law or jurisdiction that applies in the event of a dispute.

Without these elements, the NDA may lose its legal force and function. as a safeguard of confidentiality. The signing process must also be carried out legally. Generally, NDAs are validated with a wet signature. However, if the NDA document is digital, the signature affixed is not just any digital signature. You must use a Certified Electronic Signature. The main legal basis is Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), as amended by Law Number 19 of 2016. Therefore, it is crucial to maintain the confidentiality of information you obtain in a work or business environment. Don't take your signed NDA lightly, as the legal consequences of violating it can be very serious.

C. Comparison of Employment Contracts with and without NDA Clauses

General employment contracts and confidentiality agreements or *Non- Disclosure Agreements* (*NDAs*) have very different functions and purposes in the context of employment or business relationships. The following are the main differences between the two:

MAIN FEATURES	EMPLOYMENT CONTRACT GENERAL	EMPLOYMENT CONTRACT CONFIDENTIALITY
MAIN OBJECTIVE	Regulating working relationships as a, includingrights and obligations of both parties.	Protecting sensitive or confidential information so that it is not disclosed to third parties.
SCOPE	Includes terms of employment (salary,	focuses only on the definition of

	working hours, position, duties, length of service, etc.).	"confidential information" and obligations to protect it.
PARTIES INVOLVED	Employees and Employers (company)	The that discloses information (Disclosing Party) and the party receiving information (Receiving Party).
TERM	Valid for the duration of the employment relationship, and certain obligations often remain in effect after termination of employment.	The term may be specific (e.g., 2, 5, or 10 years) and oftencontinue *after* the employment relationship has ended or the project has ended .
LEGAL BASIS	LAW Labor Law (Law No. 13 of 2003 & Law Job Creation Law) Government Regulation derived from the Job Creation Law of	Civil Code (Articles 1338 & 1320) Law number 30 years 2000 Trade Secrets ITE Law
REGULATIONS	Relationships relationships formal, rights & employee obligations	Freedom to contract, Protection sensitive information

Table of differences between employment contracts

The differences in the regulations used to support these two types of contracts are highly dependent on the legal context in Indonesia. The following are the main legal bases underlying each type of contract:

1. Regulations for General Employment Contracts General employment contracts are specifically regulated by Indonesian labor law, which focuses on protecting employee rights and company obligations.
    - Law No. 13 of 2003 concerning Manpower (Manpower Law): This is the main legal umbrella that defines what an employment agreement is, its validity requirements, types of agreements (PKWT/PKWTT), leave entitlements, wages, termination of employment, and so on.
    - Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation (Job Creation Law/Omnibus Law): This law amends several provisions in the Labor Law, particularly those related to fixed-term employment agreements (PKWT), outsourcing, working hours, and severance pay. Its implementation regulations are further stipulated in various Government Regulations (PP).
2. Regulations for Non-Disclosure Agreements (NDAs) Non-disclosure agreements are not regulated by a specific law called the "Confidentiality Law." Instead, NDAs are based on the principles of general civil law and laws related to intellectual property protection.
    - Civil Code (KUH Perdata): NDAs derive their power from the principle of freedom of contract (Article 1338 of the Civil Code, which states that all agreements made legally are valid as law for those who make them) and the validity requirements of agreements (Article 1320 of the Civil Code).
    - Law No. 30 of 2000 on Trade Secrets: If the information protected by an NDA falls under the

category of trade secrets (information that is not known to the public, has economic value, and is kept confidential), this law provides a strong legal basis for prosecuting violations.

- Law on Electronic Information and Transactions (ITE Law): In the context of electronic data protection or misuse of digitally exchanged information, the ITE Law may also be relevant in law enforcement.

3. The benefits of an employment contract include the following:[29]
   - Providing legal certainty for both parties;
   - Reducing the risk of labor disputes;
   - Serving as a basis for problem resolution;
   - Protecting the interests of the company and employees.
4. Benefits of employment contracts using *NDA* clauses include:[30]
   - Protecting sensitive information
   - Safeguarding company patents
   - Providing clear information restrictions

Employment contracts are strictly bound by mandatory government regulations (must be followed), while confidentiality

[29] Sip Law Firm, 2024, How Employment Contracts Protect the Rights and Obligations Between Companies and Employees, accessed via https://siplawfirm.id/kontrakkerja/?lang=id#:~:text=Kontrak%20karyawan%20pada%20prinsipnya%20mengatur%20hubungan%20kerja,masa%20percobaan%2C%20dan%20prosedur%20pengakhiran%20hubungan%20kerja, On December 11,2025

[30] Mariska, 2025, Understanding Non-Disclosure Agreements (NDAs), Their Types, and Their Functions in Business!, legal contracts, accessed via https://kontrakhukum.com/article/nda-adalah/ , on December 11, 2025

agreements are more flexible and subject to the agreement of the parties as long as they do not violate the law and public order.

Conclusion

In a business context, trade secret violations not only directly harm one party but can also disrupt fair competition in the marketplace. Legal protection of confidential information supports innovation and commercial development by ensuring that business owners' knowledge and information are not stolen or copied without permission. Awareness of the economic value of information as a competitive advantage has fueled the need for legal protection. Law Number 30 of 2000 concerning Trade Secrets stipulates that information with economic value and usefulness in business must be kept confidential by its owner. This case also highlights the importance of companies protecting their trade secrets through proactive measures, such as trade secret agreements.non-disclosure(NDAs) or restrictions on employee access to information. Former employees, on the other hand, should understand the legal restrictions regarding the information they hold from their former employers. The legal basis for NDAs in Indonesia is primarily derived from the Civil Code (KUHPerdata). An example of a relevant article is Article 1320, which stipulates the requirements for a valid agreement. NDAs are validated with a wet signature. However, if the NDA document is digital, the signature must not be just any digital signature. A Certified Electronic Signature is required. The primary legal basis is Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), as amended by Law Number 19 of 2016. Employment contracts are strictly bound by mandatory government regulations (must be followed), while confidentiality agreements are more flexible and subject to the agreement of the parties as long as they do not violate the law and public order. In addition, the employment contract also includes a mechanism for resolving potential disputes and provisions regarding the worker's obligations to meet the requirements as an employee. Law Number 30 of 2000 stipulates criminal sanctions for violations of Trade Secrets. Article 17 states that unauthorized use of

Trade Secrets or actions that violate Articles 13 or 14 are punishable by imprisonment for a maximum of two years or a fine of up to IDR 300 million and violations of this right are considered a complaint offense. Trade secret rights holders can sue the perpetrator through a lawsuit for damages or to stop the violating act. Trade secret disputes can be resolved in the District Court or through arbitration and alternative dispute resolution methods such as negotiation, mediation, or conciliation, in accordance with Law Number 30 of 1999. Therefore, it's crucial to maintain the confidentiality of any information you receive in a work or business environment. Don't take any signed NDA lightly, as breaches can have serious legal consequences.

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PERSPEKTIF HUKUM

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THE DIGITALIZATION OF INDONESIA'S COMMERCIAL COURT SYSTEM FOR BANKRUPTCY AND DEBT RESTRUCTURING PROCEEDINGS

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Article	Abstract
Keywords: E-Court; Judicial Digitalization, Bankruptcy, Debt Restructuring, Suspension of Debt Payment Obligations; **Article History** Received: Sept 03, 2025; Reviewed: Sept 30, 2025; Accepted: Nov 21, 2025; Published: Nov 23, 2025;	The COVID-19 pandemic triggered a global economic downturn that significantly impacted Indonesia, resulting in widespread financial distress and an increase in corporate insolvencies. Amid these challenges, Indonesia's judiciary accelerated the adoption of digital judicial mechanisms through the implementation of the electronic court (e-Court) system. Rooted in a series Supreme Court Regulation, including the most recent Supreme Court Regulation No. 7 of 2022, the e-Court framework modernized court administration and enabled remote hearings, ensuring that justice remained accessible despite social restrictions. This study employs a normative legal research method, specifically statutory and case-based approach, to analyze the evolution and application of the e-Court system, particularly in the context of Suspension of Debt Payment Obligations (Penundaan Kewajiban Pembayaran Utang or PKPU) proceedings as governed by Law No.

37 of 2004. Using the Garuda Indonesia case (Decision No. 425/Pdt.Sus-PKPU/2021/PN.Niaga.Jkt.Pst.) as a reference, the research highlights how e-Court supported judicial continuity and upheld the principles of simplicity, promptness, and affordability as mandated under Article 2(4) of Law No. 48 of 2009 on Judicial Power. The findings underscore e-Court's crucial role in maintaining economic and judicial resilience, while also identifying challenges regarding procedural legitimacy, technological literacy, and equitable access.

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Introduction

The COVID-19 pandemic brought about a series of sudden and unprecedented circumstances. The high rate of infection triggered a global financial crisis, significantly affecting both developed and developing economies. According to data from Indonesia's Central Statistics Agency (Badan Pusat Statistik), Indonesia experienced a 2.1% contraction in per capita growth in 2020.[1] The pandemic not only placed immense pressure on the general economy but also increased the risk of business failure or insolvency across several strategic sectors.

The implementation of large-scale social restrictions (*Pembatasan Sosial Berskala Besar*) to curb the spread of the virus had long-term consequences for both economic activities and legal proceedings. Traditionally, court processes in Indonesia required physical attendance and were bound by procedural timelines as outlined in Supreme Court Circular No. 2 of 2014 (*Surat Edaran Mahkamah Agung (SEMA) No. 2 Tahun 2014*), which emphasized that cases should be

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[1] Badan Pusat Statistik. "Ekonomi Indonesia 2020 Turun Sebesar 2,07 Persen (c-to-c)." February 5, 2021. Accessed August 26, 2025. https://www.bps.go.id/id/pressrelease/2021/02/05/1811/ekonomi-indonesia-2020-turun-sebesar-2-07-persen--c-to-c-.

resolved swiftly, simply, and at minimal cost.[2] However, the pandemic made in-person hearings nearly impossible, creating an urgent need for the judiciary to rely on digital mechanisms to maintain access to justice.

Even before the pandemic, the Indonesian government had already anticipated the need for technological innovation in the justice system. The Supreme Court issued Regulation No. 3 of 2018 on Electronic Court Administration (Peraturan Nomor 3 Tahun 2018 Mahkamah Agung tentang Administrasi Perkara di Pengadilan Secara Elektronik), which introduced the use of digital platforms for case registration, document submission, and other administrative procedures. This regulation reflected a forward-looking vision for judicial modernization that would later prove essential during the COVID-19 crisis.

As the pandemic intensified financial pressures on businesses, many domestic companies faced severe liquidity challenges and potential insolvency. The inability to meet financial obligations, combined with disrupted global supply chains and reduced consumer demand, led to a surge in defaults and restructuring efforts. Under these extraordinary circumstances, the availability of digital judicial infrastructure such as the E-Court became more than just an administrative convenience, it became a vital instrument for economic resilience.[3]

One of the key legal mechanisms for addressing corporate financial distress in Indonesia is the Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang* or *PKPU*), which is regulated under Law No. 37 of 2004 on Bankruptcy and PKPU (*Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan*

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[2] Handayani, D. “Efektivitas E-Court Perkara Perdata Masa Pandemi dan Pascapandemi COVID-19 di Makassar.” Masalah-Masalah Hukum 52, no. 2 (2023): 119–130. https://doi.org/10.14710/mmh.52.2.119-130.

[3] Putra, Dedi. "A modern judicial system in Indonesia: legal breakthrough of e-court and e-legal proceeding." *Jurnal Hukum dan Peradilan* 9.2 (2020): 275-297.

Penundaan Kewajiban Pembayaran Utang). This mechanism allows debtors who are unable to meet their debt obligations to postpone payments and negotiate a settlement plan with their creditors, thereby avoiding bankruptcy.[4] Through the Suspension of Debt Payment Obligations, debtors are granted time and opportunity to reorganize their business operations and restructure their debts, enabling them to continue operating and eventually fulfill their financial obligations.[5]

This legal instrument was utilized by Garuda Indonesia when the company faced a severe financial crisis that was further exacerbated by the COVID-19 pandemic. The Suspension of Debt Payment Obligations process for Garuda Indonesia was approved through the Decision of the Central Jakarta Commercial Court No. 425/Pdt.Sus-PKPU/2021/PN.Niaga.Jkt.Pst., dated 27 June 2022.

During this period, Indonesia's E-Court system emerged as an essential tool that enabled the continuation of judicial proceedings despite restrictions on physical interaction. It allowed parties to file cases, exchange documents, and participate in hearings virtually, ensuring that the principle of swift, simple, and affordable justice remained intact. [6] While the establishment of E-Court provided significant advantages in efficiency and accessibility, it also raised important questions about the legitimacy, security, and fairness of virtual proceedings.

Previous research has examined the e-Court system as a cornerstone of Indonesia's judicial digitalization, emphasizing its role in promoting efficiency, transparency, and accessibility. Atikah identified it as a major reform integrating technology with procedural law, while Retnaningsih et al. and Ariwijaya & Samputra highlighted its evolution and practical impact despite ongoing infrastructural and

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4 Mantili, R., and P. E. T. Dewi. "Penundaan Kewajiban Pembayaran Utang (PKPU) Terkait Penyelesaian Utang Piutang dalam Kepailitan." Jurnal Aktual Justice 6, no. 1 (2021): 1–19.

5 Nugroho, S. A. Hukum Kepailitan di Indonesia dalam Teori dan Praktik serta Penerapan Hukumnya. Jakarta: Prenadamedia Group, 2018.

6 Sari, Ni Putu Riyani Kartika. "Eksistensi E-Court Untuk Mewujudkan Asas Sederhana, Cepat, Dan Biaya Ringan Dalam Sistem Peradilan Perdata Di Indonesia." *Jurnal Yustitia* 13.1 (2019): 80-100.

literacy challenges. Handayani confirmed its effectiveness during and after the pandemic, and Lahilote et al. noted persistent socio-cultural barriers to adoption. Together, these studies reveal both the progress and limitations of e-Court implementation, underscoring the urgency and significance of further research following the 2022 regulatory refinements.

Given this context, there is a pressing need to critically examine the implementation and effectiveness of the e-Court system in facilitating complex legal proceedings, particularly those involving debt restructuring and insolvency within Indonesia's rapidly digitalizing judicial framework. This research offers a distinct contribution by examining the application of the e-Court system within the context of the Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang*) or debt restructuring cases. Consequently, this study seeks to address the following research questions, What are the regulatory provisions governing the e-Court system as stipulated by the Indonesian Supreme Court Regulations? And How is the e-Court system applied in the adjudication and resolution process of *Penundaan Kewajiban Pembayaran Utang* (PKPU) or debt restructuring cases?

Method

The method used in this research is the normative legal research method which focuses on examining norms, rules, principles, and doctrines contained within laws and regulations; the philosophical, sociological, and juridical foundations underlying a regulation; the background and history of its formation; as well as aspects such as legal systematics, legal harmonization, legal history, and comparative law related to a particular regulation.[7]

The research approach used in this study is a juridical-descriptive-analytical method. Abdukaldir Muhammad explains that descriptive research is explanatory in nature and aims to provide a complete description of the prevailing legal conditions in a particular

7 Soekanto, S., and S. Mamudji. Penelitian Hukum Normatif. Jakarta: Raja Grafindo Persada, 2003.

place, existing juridical phenomena, or certain legal events occurring in society.[8]

According to Peter Mahmud Marzuki, legal research employs five main approaches: statutory, case-based, historical, comparative, and conceptual.[9] In this study, the statutory approach is applied by examining regulations related to debt restructuring in Indonesia, particularly Law No. 37 of 2004 on Bankruptcy. The case-based approach is carried out by analyzing court decisions that have permanent legal force, including the Central Jakarta Commercial Court Decision No. 425/Pdt.Sus-PKPU/2021/PN.Niaga.Jkt.Pst. and the Supreme Court Decision No. 1454 K/Pdt.Sus-Pailit/2022 concerning the Suspension of Debt Payment Obligations (PKPU) of PT Garuda Indonesia.

The materials used in normative legal research consist of secondary data, including primary, secondary, and tertiary legal materials. Primary legal materials used in this study include laws and court decisions, among others:

1 1945 Constitution of the Republic of Indonesia (*Undang-Undang Dasar 1945*)
2 Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (*Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*)
3 Law Number 48 of 2009 concerning Judicial Power (*Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman*)
4 Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (*Undang-undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik*)

8 Muhammad, A. Hukum dan Penelitian Hukum. Bandung: Citra Aditya Bakti, 2004.

9 Marzuki, P. M. Penelitian Hukum: Edisi Revisi, Revisi (Jakarta: Kencana Prenada Media Grup, 2017), https://opac.perpusnas.go.id/DetailOpac.aspx?id=1409842.

5 Supreme Court Regulation of the Republic of Indonesia No. 3 of 2018 on Electronic Court Administration (*Peraturan Nomor 3 Tahun 2018 Mahkamah Agung tentang Administrasi Perkara di Pengadilan Secara Elektronik*)
6 Supreme Court Regulation of the Republic of Indonesia No. 1 of 2019 on Case Administration and Court Proceedings Electronically (*Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2019 tentang Administrasi Perkara dan Persidangan di Pengadilan Secara Elektronik*)
7 Supreme Court Regulation of the Republic of Indonesia No. 7 of 2022 concerning Amendments to Supreme Court Regulation No. 1 of 2019 on Case Administration and Court Proceedings Electronically (*Peraturan Mahkamah Agung Republik Indonesia Nomor 7 Tahun 2022 tentang Perubahan Atas Peraturan Mahkamah Agung Nomor 1 Tahun 2019 tentang Administrasi Perkara dan Persidangan di Pengadilan secara Elektronik*)
8 Decision of the Central Jakarta Commercial Court No. 425/Pdt.Sus-PKPU/2021/PN.Niaga.Jkt.Pst.

Secondary legal materials include legal literature such as law journals, legal theories, academic books related to the research topic, symposium or seminar papers, and scholarly articles. Lastly, tertiary legal materials are materials that provide explanations or clarification of the primary and secondary legal materials.

Result and Discussion

A. Judicial Process in Indonesia

Human interests can only be protected when society functions in an orderly manner, and such order is maintained when there is balance within the social system.[10] However, in a modern and dynamic society, maintaining such equilibrium is no longer solely about enforcing static norms, it requires a justice system that adapts to

10 Harwati, T. Peradilan di Indonesia. Sanabil, 2015. ISBN 978-602-74024-5-4.

evolving social, economic, and technological realities. Law must serve not only as an instrument of control but also as a living system that responds to public needs and supports the sustainability of social order. The ability of the judiciary to act independently, fairly, and consistently is therefore central to upholding the rule of law and restoring balance whenever that order is disrupted.[11]

The 1945 Constitution of the Republic of Indonesia (*Undang-Undang Dasar 1945*) provides a strong constitutional foundation for this judicial independence, stipulating that: [12]

1. Judicial power is an independent authority responsible for administering justice in order to uphold law and fairness.
2. This power is exercised by the Supreme Court (Mahkamah Agung) and subordinate courts within four jurisdictions, namely, general courts, religious courts, military courts, and administrative courts as well as by the Constitutional Court (Mahkamah Konstitusi).
3. Other institutions whose functions are related to judicial power are regulated by law.

These provisions emphasize that the independence of the judiciary is not merely administrative or institutional, but a philosophical principle which ensures justice is exercised without interference from political or economic interests. In practice, however, the Indonesian justice system has continually evolved to balance its constitutional ideals with the demands of accessibility, efficiency, and public trust.

Regarding the authority of judicial bodies under the Supreme Court of the Republic of Indonesia, Article 25 of Law Number 48 of 2009 concerning Judicial Power (Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman) stipulates the following:

1. General courts have the authority to examine, adjudicate, and decide criminal and civil cases in accordance with the provisions of laws and regulations.

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11 Ibid

12 Ibid, page 23.

2. Religious courts have the authority to examine, adjudicate, decide, and resolve cases between individuals of the Islamic faith in accordance with the provisions of laws and regulations.
3. Military courts have the authority to examine, adjudicate, and decide military criminal cases in accordance with the provisions of laws and regulations.
4. Administrative courts have the authority to examine, adjudicate, decide, and resolve state administrative disputes in accordance with the provisions of laws and regulations.

One of the fundamental principles of Indonesia's judicial system is the principle of simplicity, promptness, and affordability (sederhana, cepat, dan biaya ringan), as enshrined in Article 2(4) of Law Number 48 of 2009 concerning Judicial Power (*Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman*). This principle reflects Indonesia's commitment to access to justice for all citizens, making it one of the fundamental pillars of the national legal framework. [13]

As Ilham notes, these principles must be observed and implemented by every judicial institution.[14] The principle of simple justice calls for procedures that are efficient, straightforward, and not overly bureaucratic. The principle of prompt justice requires that cases be resolved swiftly and without unnecessary delay to avoid prolonged uncertainty. Meanwhile, the principle of affordable justice ensures that court costs remain within reach of the public, while maintaining precision and diligence in the pursuit of truth and fairness. Together, these principles represent not only administrative ideals but also the moral and social responsibility of the judiciary to deliver justice that is both meaningful and practical in people's lives.

13 Hariyanto, E., and S. Sundusiyah. "Implementasi Peraturan Mahkamah Agung tentang E-Court untuk Mewujudkan Asas Sederhana, Cepat, dan Biaya Ringan di Pengadilan Agama Pamekasan." Arena Hukum 15, no. 3 (2022): 471–498. https://doi.org/10.21776/ub.arenahukum.2022.01503

14 Syarif, Z. "Asas Peradilan Sederhana, Cepat, dan Biaya Ringan dalam Ketentuan Persidangan Hybrid Perkara Perdata." Collegium Studiosum Journal 7, no. 1 (2024): 193–203.

B. Electronic Court in Indonesia

Following the discussion on the judicial process in Indonesia, this section examines the evolution of electronic court proceedings (e-court) as part of judicial reform initiatives. The development of e-court implementation can be traced through a series of Supreme Court Regulations (*Peraturan Mahkamah Agung / PERMA*), which progressively expanded the scope of digitalization in judicial administration and proceedings.

The first regulatory framework was established through Supreme Court Regulation No. 3 of 2018 on Electronic Court Administration, which was later revoked and refined by Supreme Court Regulation No. 1 of 2019 on Case Administration and Court Proceedings Electronically. Under the 2019 regulation, the electronic system was no longer limited to case registration; it also enabled electronic court hearings. The COVID-19 pandemic accelerated the need for procedural reform, prompting the Supreme Court to extend the application of electronic trials to include criminal cases through the issuance of Supreme Court Circular No. 4 of 2020 on online criminal trial procedures.[15]

Below is the detailed explanation of how the supreme courts regulations have regulated electronic court administration and proceedings:

1. Supreme Court Regulation of the Republic of Indonesia No. 3 of 2018 on Electronic Court Administration (*Peraturan Nomor 3 Tahun 2018 Mahkamah Agung tentang Administrasi Perkara di Pengadilan Secara Elektronik*)

In 2018, the judiciary introduced the concept of digital case management through the launch of an application-based system known as e-Court. The preamble of this regulation highlights that, in accordance with Article 2 paragraph (4) of Law No. 48 of 2009 on Judicial Power, the judiciary must ensure that legal proceedings are

15 Kamello, T., and M. Sastro. "The Development of Procedural Law Through the E-Court System After the Pandemic in Indonesia." Veteran Law Review 6, Special Issue (2023): 15–27.

simple, prompt, and low-cost. To achieve these principles, judicial reform was deemed necessary to address the challenges and obstacles within the administration of justice.

The regulation emphasizes the need for effective and efficient court administration services in response to the demands of modernization. Based on these considerations, the Supreme Court deemed it necessary to establish regulations governing the electronic administration of court cases.

Article 1 of the regulation lays the definitional and structural foundation for implementing electronic case administration within Indonesia's judicial system. It begins by clarifying the scope of the courts covered under this regulation in the first paragraph, which includes general courts, religious courts (Mahkamah Syar'iyah), military courts, and administrative courts. By encompassing all judicial environments under the Supreme Court's supervision, the regulation establishes a uniform standard for digitalization across diverse jurisdictions. This inclusivity reflects a deliberate effort to create administrative consistency and promote the use of technology as a unifying infrastructure within the national justice system.

The second paragraph subsequently introduces the concept of the Court Information System (Sistem Informasi Pengadilan) which refers to a comprehensive network of information systems developed by the Supreme Court to facilitate case administration and justice services. This definition marks a significant shift toward centralized digital governance, where each court operates under a shared technological framework for activities such as case registration, document submission, and procedural communication. It embodies the judiciary's vision of improving accessibility and coordination through a single, integrated system.

Furthermore, the fifth paragraph defines electronic case administration as encompassing the entire process of submitting lawsuits or petitions, filing replies and rejoinders, drafting conclusions, as well as managing, transmitting, and storing procedural documents across civil, religious, military, and administrative courts. This represents the judiciary's first formal recognition that procedural documentation and inter-party communication could be securely managed through electronic means.

Article 2 explicitly states the purpose of the regulation: to establish a legal basis for the electronic administration of cases that is professional, transparent, accountable, effective, efficient, and modern. This article captures the Supreme Court's vision of digital transformation as a means of achieving procedural integrity and institutional transparency. It also indicates a shift in the judiciary's operational paradigm, from manual, paper-based bureaucracy to a digital, data-driven system that prioritizes accessibility and accountability.

However, despite its progressive spirit, the 2018 regulation remained limited in scope as it only governed:

a) Electronic case administration, such as filing and document submission;
b) Electronic summons (e-summons); and
c) Issuance of digital copies of court decisions or rulings.

The scope of the 2018 regulation was primarily limited to digitalizing administrative process of the judicial system, it did not yet authorize or regulate online hearings or trials, meaning that court proceedings themselves still had to be conducted in person. Nonetheless, this regulation laid the essential groundwork for future digital transformation within Indonesia's judiciary. By establishing the legal and technological basis for managing cases electronically, it created the structural conditions necessary for the next stage of reform. Building upon this foundation, the Supreme Court subsequently issued Supreme Court Regulation of the Republic of Indonesia No. 1 of 2019, which expanded the digitalization framework to include not only electronic case management but also electronic court proceedings, marking a significant step toward the full realization of digital justice in Indonesia.

2. Supreme Court Regulation of the Republic of Indonesia No. 1 of 2019 on Case Administration and Court Proceedings Electronically (*Peraturan Mahkamah Agung Republik Indonesia*

Nomor 1 Tahun 2019 tentang Administrasi Perkara dan Persidangan di Pengadilan Secara Elektronik)

Building upon the foundation established by the 2018 regulation, the Supreme Court issued Regulation No. 1 of 2019 to enhance the effectiveness and efficiency of case administration and court proceedings in line with the principles of simplicity, promptness, and affordability. The preamble emphasizes that the rapid development of technology necessitates improvements to the previous regulation particularly regarding the procedures for conducting electronic hearings.

The most significant development from the 2018 to the 2019 regulation lies in the expansion of scope. Article 1 paragraph 6 introduces a broader definition of electronic case administration, which now covers a complete range of judicial processes such as the submission of claims, petitions, objections, responses, counterclaims, and interventions; receipt of payments; electronic summons and notifications; submission of replies, rejoinders, conclusions, and appeals; as well as the management, delivery, and storage of case documents in civil, agrarian, military, and administrative courts through an integrated electronic system.

Additionally, the following paragraph introduces a new definition of electronic hearings (*persidangan secara elektronik*), which refers to a series of judicial proceedings conducted with the support of information and communication technology. This inclusion marks the first formal recognition that court hearings could be conducted electronically, signifying a major milestone in Indonesia's judicial digitalization.

Article 3 further expands the implementation of electronic case administration and hearings to higher judicial levels (appeal, cassation, and judicial review), provided that both parties agree and that the electronic system has already been used at the first instance. Article 4 reiterates that electronic hearings apply to all stages of court proceedings, including the submission of claims or petitions, responses, replies, rejoinders, presentation of evidence, conclusions, and the pronouncement of judgments or rulings.

More detailed provisions of electronic courts proceedings are provided in Chapter V (Articles 19–28), which establish the specific procedures for conducting electronic hearings. Article 22 stipulates that electronic hearings involving the submission of claims, responses, replies, rejoinders, and conclusions must follow the established court schedule. The parties are required to submit their electronic documents within the designated timeframe, after which the presiding judge reviews and forwards the verified documents to the opposing party through the court's electronic system.

Article 23 allows third parties to intervene in an ongoing electronic case, while Article 24 provides that witness or expert examinations may be conducted remotely through audiovisual communication, with the consent of all parties involved.

Article 26 affirms that court decisions or rulings may be pronounced electronically and that such electronic copies, once digitally signed in accordance with the Electronic Information and Transactions Law, hold full legal validity and binding effect. This provision conclusively recognizes that electronic judgments carry the same force as traditional ones, ensuring that digitalization does not diminish judicial authority or procedural legitimacy.

In summary, the 2019 regulation demonstrates the Supreme Court's progressive development of judicial digitalization, which began with an initial focus on administrative processes and culminated in the formal establishment of electronic hearings, supported by legally recognized digital documents and judgments. This framework continued to evolve and was further refined under the 2022 regulation.

3. Supreme Court Regulation of the Republic of Indonesia No. 7 of 2022 concerning Amendments to Supreme Court Regulation No. 1 of 2019 on Case Administration and Court Proceedings Electronically (*Peraturan Mahkamah Agung Republik Indonesia Nomor 7 Tahun 2022 tentang Perubahan Atas Peraturan Mahkamah Agung Nomor 1 Tahun 2019 tentang*

Administrasi Perkara dan Persidangan di Pengadilan secara Elektronik)

The issuance of the 2022 regulation marks a further refinement and expansion of Indonesia's judicial digitalization framework, following the earlier regulations of 2018 and 2019. The preamble of this regulation emphasizes the necessity to enhance efficiency and effectiveness in court administration and proceedings, particularly to accommodate the need to continue modernizing court administration and proceedings to overcome practical challenges and obstacles encountered in judicial implementation.

Notably, Article 1(1) defines the court (*Pengadilan*) as the Supreme Court and the four judicial bodies under it, replacing the previous explicit listing of individual courts. The regulation also provides clarification on the concept of Electronic Signature (*Tanda Tangan Elektronik*), affirming its validity in line with the prevailing laws on electronic information and transactions.

Furthermore, Article 3A expands digitalization to include the management and settlement of bankruptcy and insolvency assets (*pengurusan dan pemberesan harta pailit*) electronically. Article 5(3) also introduces specific provisions for curators or administrators to become Registered Users, which require them to submit: (a) an identity card, (b) a valid curator or administrator membership card, (c) a curator or administrator examination certificate, and (d) a valid registration certificate.

The new regulation also introduces a new Chapter IIIA (Articles 28A–28G), which governs electronic legal remedies (*upaya hukum*) such as appeals, cassation, and judicial review. These provisions establish that the entire appeal process from submission and document transmission to decision delivery can now be conducted electronically through the court information system. This advancement represents the completion of the digital litigation cycle within Indonesia's judicial framework.

In summary, the 2022 regulation mainly refines and strengthens the system introduced in 2019. It confirms that cases filed electronically will also be heard electronically by default, including default (*verstek*) hearings when one party does not appear. It also makes the process of submitting documents and conducting hearings more organized, allowing evidence, witness, and expert examinations to take place through video conferencing. Finally, it gives clear legal power to electronic judgments, stating that once a decision is uploaded and digitally signed in the court system, it has the same legal force as a conventional judgment.

Following the discussion of the 2022 regulation, it is essential to review existing scholarly research that has examined the implementation and impact of the e-Court system in Indonesia, particularly in assessing its effectiveness, advantages, and challenges as an instrument of judicial digitalization.

Atikah analyzed the implementation of the e-Court system in Indonesia as a judicial innovation introduced through the 2018 Supreme Court Regulation on the Electronic Administration of Court Cases.[16] The research concluded that the e-Court system represents a major step in Indonesia's judicial reform, integrating information technology with procedural law to realize a modern, fast, simple, and low-cost justice process. Although still relatively new compared to systems in countries like Singapore, e-Court has had a positive impact by simplifying case registration and increasing efficiency. The study also emphasized the crucial role of advocates as registered users in ensuring the effectiveness of e-Court implementation and recommended continued adoption and compliance to support accessible and transparent judicial services.

Retnaningsih et. Al. analyzed the implementation of the e-Court and e-Litigation systems in Indonesia's District Courts, focusing on their development from the initial pilot project under Supreme Court Regulation No. 3 of 2018 to the more comprehensive framework established under Supreme Court Regulation No. 1 of 2019.[17] The

16 Atikah, I. "Implementasi E-Court dan Dampaknya terhadap Advokat dalam Proses Penyelesaian Perkara di Indonesia." In Open Society Conference, vol. 107 (2018), 127–134.

17 Retnaningsih, S., D. L. S. Nasution, R. A. Velentina, and K. Manthovani. "Pelaksanaan E-Court Menurut PERMA Nomor 3 Tahun 2018 tentang Administrasi Perkara di Pengadilan secara Elektronik dan E-Litigation menurut PERMA Nomor

study found that 2018 Regulation served as the foundation for Indonesia's first electronic court system, later expanded by the 2019 Regulation to include not only electronic filing, payment, and summons but also electronic trials (e-litigation). While the reforms represented a major step toward a more efficient and accessible judiciary, their implementation faced significant obstacles, including limited technological proficiency among lawyers and court staff, inadequate infrastructure and courtroom equipment, and incomplete data synchronization between e-Court and the court's internal case management system (SIPP).

In 2021, Ariwijaya and Samputra studied the implementation of e-Court policy in Indonesian courts using national data on electronic case registration and payments from 2019 to mid-2020.[18] The research found that the e-court policy effectively realized the judicial principles of simplicity, speed, and low cost, as shown by a significant increase in electronic case registrations and transparent online payment systems across all court levels. However, challenges remain in user digital literacy, outdated bureaucratic mindsets, lack of electronic domiciles for some litigants, and insufficient courtroom infrastructure for online hearings. The study also recommended continuous policy updates, enhanced IT infrastructure, regular monitoring, and broader public education to ensure sustainable and efficient e-court implementation nationwide.

Similarly, Handayani examined the effectiveness of the e-Court system based on civil case decisions handled by the District Court and Religious Court in Makassar during and after the COVID-19 pandemic.[19] Based on their analysis, the implementation of e-court, as regulated in supreme court regulations, was highly effective in realizing the principles of simplicity, speed, and low cost while maintaining legal

1 Tahun 2019 tentang Administrasi Perkara dan Persidangan di Pengadilan secara Elektronik (Studi di Pengadilan Negeri di Indonesia)." Jurnal Hukum & Pembangunan 50, no. 1 (2020): Article 8. https://doi.org/10.21143/jhp.vol50.no1.2486.

18 Ariwijaya, A. R., and P. L. Samputra. "Evaluasi Kebijakan Peradilan Elektronik (E-Court) Mahkamah Agung Republik Indonesia." Jurnal Hukum & Pembangunan 51, no. 4 (2022): 1104–1122. https://doi.org/10.21143/jhp.vol51.no4

19 Handayani, D. "Efektivitas E-Court Perkara Perdata Masa Pandemi dan Pascapandemi COVID-19 di Makassar." Masalah-Masalah Hukum 52, no. 2 (2023): 119–130. https://doi.org/10.14710/mmh.52.2.119-130.

certainty and fairness. During both the pandemic and post-pandemic periods, e-court significantly improved efficiency, transparency, and accessibility of justice, although some technical challenges remained in the proof submission stage and user readiness.

Lahilote et al. further explored the early implementation of e-Court and e-Litigation systems in the Bitung and Praya Religious Courts, focusing on adoption rates, infrastructure readiness, and socio-cultural factors influencing their use.[20] The research found that e-Court and e-Litigation adoption remained very low (below 10%) due to intertwined technical, social, and cultural barriers rather than infrastructure constraints alone. Despite differing workloads, both courts faced similar challenges related to limited digital literacy and community preference for traditional legal processes. The study concluded that improving effectiveness requires a multilevel, context-sensitive policy approach by the Supreme Court, strengthened digital literacy programs, user mentoring, and continuous evaluation to ensure broader, sustainable adoption of judicial technology in Indonesia's religious courts.

C. The Application of the E-Court System in Debt Restructuring and Bankruptcy Cases

1. Judicial Framework: The Commercial Court and the Suspension of Debt Payment Obligations Mechanism

The Commercial Court in Indonesia serves as a specialized judicial institution designed to resolve disputes connected to commerce and business, with a particular focus on bankruptcy and the suspension of debt payment obligations (PKPU), as regulated under Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt

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20 Lahilote, H. S., S. Sabarudin, and I. Abdullah. "Digitalisasi Peradilan di Indonesia Tengah: Studi Implementasi E-Court dan E-Litigasi di Pengadilan." Syariah: Jurnal Hukum dan Pemikiran 24, no. 2 (2024): 315–332. https://doi.org/10.36448/pranatahukum.v14i1.162.

Payment Obligations.[21] In line with Indonesia's rapid economic growth and increasing global integration, the Commercial Court plays a vital role in maintaining economic stability by providing a reliable and efficient legal mechanism for handling business and financial disputes. By ensuring legal certainty and upholding the principles of fair and effective adjudication, the Court contributes significantly to fostering investor confidence and promoting a sound business environment.[22]

The Suspension of Debt Payment Obligations and insolvency mechanisms represent two distinct legal remedies available to resolve a debtor's inability to meet financial obligations. The Suspension of Debt Payment Obligations aims to prevent bankruptcy by granting the debtor an opportunity to restructure their debts through a composition plan, whereas bankruptcy entails the liquidation of the debtor's assets to satisfy creditors' claims. In both proceedings, creditors seeking repayment must undertake a series of formal and substantive legal steps. These include court-supervised meetings among secured, preferred, and concurrent creditors, led by court-appointed administrators (*kurator*) who, under the supervision of a supervisory judge, are responsible for managing and distributing the debtor's estate in accordance with bankruptcy law.

The Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang* or *PKPU*), which is regulated under Law No. 37 of 2004 on Bankruptcy and PKPU (*Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*). This mechanism allows debtors who are unable to meet their

[21] Oelangan, M. D. "Penyelesaian Sengketa Bisnis Melalui Pengadilan Niaga." *Pranata Hukum* 14, no. 1 (2019): 522–593. https://doi.org/10.36448/pranatahukum.v14i1.162

22 Nuraeni, Y., Judijanto, L., Sufiarina, S., & Sihombing, L. A. (2024). Hukum Acara Peradilan Niaga: Teori dan Implementasinya di Indonesia. PT Sonpedia Publishing Indonesia. Page 48

debt obligations to postpone payments and negotiate a settlement plan with their creditors, thereby avoiding bankruptcy.[23]

Article 222 of Law No. 37 of 2004 establishes the legal basis for submitting a Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang*, or *PKPU*), which provides that:

a. PKPU may be filed either by a debtor who has more than one creditor or by a creditor.

b. A debtor who is unable or foresees that they will be unable to continue paying debts that are due and payable may apply for Suspension of Debt Payment Obligations with the intention of submitting a composition plan (*rencana perdamaian*) that includes an offer to pay part or all of their debts to creditors.

c. A creditor who foresees that the debtor will be unable to continue paying debts that are due and payable may request that the debtor be granted Suspension of Debt Payment Obligations to allow the debtor to submit a composition plan containing an offer to pay part or all of their debts to creditors.

Based on Article 224 paragraphs (1) to (6) of the Bankruptcy and Suspension of Debt Payment Obligations Law (UUK-PKPU), the Suspension of Debt Payment petition must be filed with the court and signed by the applicant. The petition must include details regarding the nature and amount of the debtor's receivables and debts, along with supporting evidence. The petition is submitted to the Chairman of the Commercial Court, which will review the completeness of the documents and decide whether the application can be accepted or rejected. If accepted, the court will issue a Temporary Suspension of Debt Payment Obligations (*PKPU Sementara*) lasting for a maximum of 45 days. During this period, the debtor is protected from legal actions by creditors, and the court will appoint administrators

23 Mantili, R., & Dewi, P. E. T. (2021). Penundaan Kewajiban Pembayaran Utang (PKPU) Terkait Penyelesaian Utang Piutang dalam Kepailitan. Jurnal Aktual Justice, 6(1), 1–19.

(*pengurus*) to oversee and manage the Suspension of Debt Payment Obligations process.

Once the Suspension of Debt Payment Obligations petition is received by the Commercial Court, the proceedings will include the debtor's response, examination of evidence from both the debtor and the applying creditor (and other creditors, if any), followed by the submission of conclusions from each party, leading to the issuance of a Suspension of Debt Payment Obligations decision. In this session, the court will evaluate the debtor's proposed composition plan and determine whether there is a prospect of reaching an agreement. If the debtor has prepared a composition plan, voting may be conducted. The debtor is required to submit a plan outlining the repayment scheme to creditors. However, if the debtor is not yet ready with the plan, they may request an extension through a Permanent Suspension of Debt Payment Obligations (*PKPU Tetap*).

A Permanent Suspension of Debt Payment Obligations is an extension of the Temporary Suspension of Debt Payment Obligations. It may be granted under several conditions, such as when the debtor has not yet completed the composition plan or when creditors have not reached a decision regarding the proposed plan. Whether or not a debtor is granted a Permanent Suspension of Debt Payment Obligations is determined through a voting process involving all creditors. According to Article 229(1) of the Bankruptcy and Suspension of Debt Payment Obligations Law, the granting or extension of a Permanent Suspension of Debt Payment Obligations is decided by the court based on:

a. The approval of more than half of the concurrent creditors whose claims are recognized or temporarily recognized and who are present, representing at least two-thirds of the total recognized or temporarily recognized claims of concurrent creditors or their proxies present at the hearing; and

b. The approval of more than half of the secured creditors whose claims are guaranteed by pledge, fiduciary security, mortgage, or other collateral rights, representing at least two-thirds of the total claims of such creditors or their proxies present at the hearing.

With respect to voting for the granting of a Permanent Suspension of Debt Payment Obligations, both concurrent and secured creditors have the right to determine the continuation of the Suspension of Debt Payment Obligations process. If the voting results meet the quorum required for granting a Permanent Suspension of Debt Payment Obligations, the process will continue with a maximum period of 270 days from the issuance of the Temporary Suspension of Debt Payment Obligations decision. This 270-day period serves as the timeframe for the debtor and creditors to negotiate and finalize the composition plan, not as the deadline for the debtor to settle all debts. However, if by the end of the Permanent Suspension of Debt Payment Obligations period no agreement on the composition plan is reached, the court will declare the debtor bankrupt.

2. Case Study: The Suspension of Debt Payment Obligations Proceedings of Garuda Indonesia

The COVID-19 pandemic not only placed severe pressure on the global and national economy but also triggered insolvency risks in several strategic sectors, including the aviation industry. The implementation of large-scale social restrictions over an extended period had serious consequences for commercial airlines. All inbound and outbound flights to and from Indonesia were suspended under government regulations. This impact is evident from the decline in the per capita growth of the transportation and logistics sector, which decreased by 15.1% in Indonesia and 16.5% across ASEAN.[24]

24 ASEAN Stats. (2025, August 26). ASEAN Gross Domestic Product (GDP) Annual. Retrieved from https://data.aseanstats.org/asean-gdp-annual

The pandemic created significant financial distress for the global aviation industry, including PT Garuda Indonesia (Persero) Tbk, which struggled to meet its debt obligations. As a result, Garuda Indonesia sought to restructure its debts through the Suspension of Debt Payment Obligations mechanism. In 2022, the Garuda Indonesia Suspension of Debt Payment Obligations case became one of the largest Suspension of Debt Payment Obligations proceedings in Indonesia's history. The proposed composition plan (*rencana perdamaian*) submitted by Garuda Indonesia included several key measures: extending debt maturities, partial debt remission, conversion of a portion of debt into new bond instruments, and renegotiation of aircraft lease agreements. These measures were designed to gain creditor approval and ensure the airline's financial recovery.[25]

During the Suspension of Debt Payment Obligations proceeding of Garuda Indonesia, not all discussions and negotiations could be held in person. Several creditor meetings were conducted virtually, in line with pandemic restrictions, to reach agreements or obtain necessary approvals. This raised an important legal question of whether agreements or approvals reached through online meetings could be considered valid evidence in court proceedings, particularly in commercial court cases where such agreements determine the outcome of Suspension of Debt Payment Obligations decisions and bankruptcy resolutions.

The legal recognition of electronic documents as valid evidence in Indonesia is grounded in Article 5 of the Electronic Information and Transactions Law (*Undang-Undang Informasi dan Transaksi Elektronik*). This provision explicitly states that electronic information and/or electronic documents, including their printed forms, constitute lawful evidence and represent an extension of the evidentiary tools recognized under Indonesia's procedural law. However, such evidence

25 Ang, I., and G. Lie. "Penundaan Kewajiban Pembayaran Utang dalam Kasus PT Garuda Indonesia." RIGGS: Journal of Artificial Intelligence and Digital Business 4, no. 3 (2025): 6319–6325.

is only deemed valid if it is produced or managed through an electronic system that complies with the requirements set forth in the same law.

Further clarification is provided in Article 1 paragraph (4), which defines an *electronic document* as any electronic information created, transmitted, received, or stored in analog, digital, electromagnetic, optical, or similar forms, that can be displayed or heard through electronic systems. This broad definition encompasses written text, audio, images, maps, designs, photographs, symbols, and access codes, provided that they carry meaningful content understandable to a competent person.

However, the Electronic Information and Transactions Law does not specifically regulate the procedural requirements for forming electronic legal agreements or the validity of the steps marking the initiation and completion of such agreements. This regulatory gap presents challenges for administrators and judges in the Commercial Court, particularly in bankruptcy and Suspension of Debt Payment Obligations proceedings, where ensuring the authenticity and reliability of electronically submitted documents is essential for maintaining the integrity of judicial outcomes.

In conclusion, the Garuda Indonesia Suspension of Debt Payment Obligations case illustrates how digital mechanisms became indispensable during the pandemic, ensuring that essential insolvency proceedings could continue despite physical restrictions. The use of virtual meetings and electronic documentation demonstrated the judiciary's adaptability and the growing relevance of electronic evidence in commercial court processes. Supported by the provisions of the Electronic Information and Transactions Law, electronic information and documents are legally recognized as valid forms of evidence, provided that they comply with the requirements of an authorized electronic system. This legal foundation enabled the courts to acknowledge online agreements and digital records as legitimate, ensuring procedural integrity and reinforcing the role of digitalization in modern insolvency administration.

Conclusion

The development of Indonesia's e-Court system marks a long-term transformation in judicial governance, rooted in the mandate of Law No. 48 of 2009 on Judicial Power to ensure that court processes remain simple, fast, and low-cost. Supported by a series of Supreme Court Regulations, including the most recent Supreme Court Regulation No. 7 of 2022, this digital framework became especially crucial during the period of global uncertainty brought about by the COVID-19 pandemic. During this period, the e-Court system served as a vital mechanism for safeguarding the administration of justice and maintaining the continuity of Indonesia's judicial functions. Through the e-Court platform, companies were able to access the Commercial Court to initiate or respond to debt restructuring and insolvency proceedings, even amidst travel restrictions and lockdowns. This digital infrastructure allowed legal remedies such as the Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang*) and bankruptcy petitions to proceed without delay, thereby preserving access to justice during a time of crisis.The Garuda Indonesia Suspension of Debt Payment Obligations case exemplifies how technological innovation ensured both procedural integrity and economic resilience under extraordinary circumstances. In practical terms, digital proceedings enabled debtors and creditors often located in different regions or even jurisdictions to participate in hearings, submit proofs of debt, and negotiate restructuring plans remotely. By recognizing electronic information and documents as valid forms of legal evidence, reinforced by the Electronic Information and Transactions Law, Indonesia's judiciary effectively adapted to the challenges posed by the pandemic while maintaining the principles of simplicity, speed, and affordability in judicial processes. Although the Electronic Information and Transactions Law provides the basis for treating electronic documents as admissible evidence, it does not regulate the procedural stages of forming electronic agreements or the validity of their completion. This regulatory gap presents challenges for judges and administrators in bankruptcy and Suspension of Debt Payment Obligations cases, particularly in verifying the authenticity of electronically submitted documents. Nevertheless, the Garuda Indonesia case demonstrates that the courts were able to navigate these limitations and maintain the momentum of restructuring proceedings, underscoring the broader legal and economic value of digitalization. Beyond crisis response, the digitalization of the judiciary represents a long-term transformation that strengthens the relationship between legal certainty and economic stability. The e-Court system has evolved into a cornerstone of Indonesia's judicial reform, bridging the gap between technological progress and the realization of accessible, transparent, and efficient justice. Looking forward, further development should focus on enhancing cybersecurity, data integration, and digital literacy among legal practitioners and the public. This evolution also requires technological infrastructures that go beyond stable internet access. Electronic judicial processes depend on reliable application systems capable of safeguarding the validity and trustworthiness of court decisions. In this context, blockchain technology has emerged as an important tool for ensuring integrity in digital proceedings by verifying the authenticity of litigants, validating electronic legal documents submitted as evidence, and securing judicial decisions so that courts can produce rulings that are both credible and resilient in a digital environment. In this light, the e-Court should not only be viewed as a pandemic-era solution but as a sustainable instrument for modern governance which reinforces the rule of law, supports economic recovery, and positions Indonesia's judiciary to meet the demands of an increasingly digital society.

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Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang)

Law Number 48 of 2009 concerning Judicial Power (Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman)

Law No. 1 of 2024 concerning the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (Undang-undang Nomor 1 Tahun 2024 tentang Perubahan Kedua atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik)

Supreme Court Regulation of the Republic of Indonesia No. 3 of 2018 on Electronic Court Administration (Peraturan Nomor 3 Tahun 2018 Mahkamah Agung tentang Administrasi Perkara di Pengadilan Secara Elektronik)

Supreme Court Regulation of the Republic of Indonesia No. 1 of 2019 on Case Administration and Court Proceedings Electronically (Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2019 tentang Administrasi Perkara dan Persidangan di Pengadilan Secara Elektronik)

Supreme Court Regulation of the Republic of Indonesia No. 7 of 2022 concerning Amendments to Supreme Court Regulation No. 1 of 2019 on Case Administration and Court Proceedings Electronically (Peraturan Mahkamah Agung Republik Indonesia Nomor 7 Tahun 2022 tentang Perubahan Atas Peraturan Mahkamah Agung Nomor 1 Tahun 2019 tentang Administrasi Perkara dan Persidangan di Pengadilan secara Elektronik)

PERSPEKTIF HUKUM

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PRAKTIK PERSONAL BRANDING NOTARIS TERHADAP BATASAN, ETIKA DAN LEGALITASNYA DITINJAU DARI UNDANG-UNDANG JABATAN NOTARIS DAN KODE ETIK NOTARIS

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Article	Abstract
Keywords: *Notaris, Kode Etik Notaris, Etika profesi, Personal branding, Media sosial* **Article History** Received: Sept 03, 2025; Reviewed: Oct 21, 2025; Accepted: Nov 22, 2025; Published: Nov 30, 2025;	Personal branding, understood as the reputation or "self-brand" of an individual, has become an important concept in professional practice. In the context of notarial practice in Indonesia, efforts to develop personal branding must be carefully balanced against strict legal and ethical constraints. This paper analyzes the practice of personal branding by Indonesian notaries in light of the Notary Position Law (Undang-Undang Jabatan Notaris, UUJN) and the Notary Code of Ethics. Using a normative legal research method with a statute approach and examination of professional ethics, this study reviews relevant regulations, ethical guidelines, and comparative international

practices. The findings indicate that while notaries may engage in certain reputational activities such as legal education or informational outreach, direct self-promotion is prohibited. Article 15 paragraph (2) letter e of the Notary Position Law explicitly grants the authority to provide legal counseling which can enhance reputation, but Article 4 paragraph (3) of the Notary Code of Ethics forbids any form of advertising or personal publicity. International comparisons from Spain and France reveal similarly restrictive rules for notary advertising. In conclusion, Indonesian notaries must perform personal branding within the narrow confines allowed by law and ethics, emphasizing professional expertise and public education while avoiding any media-based promotion of their notarial status. These findings aim to guide notaries in promoting their professional image without violating legal or ethical boundaries.

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Pendahuluan

Profesi notaris di Indonesia diakui sebagai jabatan kehormatan dan kepercayaan publik (*nobile officium atau officium nobile*).[1] Sebagai jabatan yang mulia, notaris dituntut untuk menjalankan tugasnya dengan integritas, kejujuran, dan tanggung jawab yang tinggi. Seorang notaris adalah pejabat umum yang memiliki wewenang membuat akta autentik, dan karena itu ia terkait erat dengan kepentingan masyarakat banyak.[2] Notaris bukan sekadar pembuat akta administratif, melainkan perpanjangan tangan negara yang bertugas memberikan kepastian hukum perdata kepada setiap individu yang membutuhkan layanan kenotariatan.

[1] Raden Ajeng Herning Nurarifah dan Luqman Hakim, "Perlindungan Hukum Dari Negara Terhadap Notaris Yang Diakui Sebagai Officium Nobile," Socius: Jurnal Penelitian Ilmu-Ilmu Sosial 1, no. 9 (2024): 100–104.

[2] M. Syarul Borman, "Kedudukan Notaris Sebagai Pejabat Umum," Jurnal Hukum dan Pembangunan Ekonomi 7, no. 2 (2019): 1–12.

Tan Thong Kie, seorang ahli kenotariatan terkemuka, dalam karyanya menegaskan bahwa pekerjaan yang dilimpahkan oleh pemerintah kepada seorang notaris merupakan sesuatu yang sangat berharga sehingga harus dijaga dengan baik. Ia juga menyatakan bahwa seorang notaris wajib menjunjung tinggi tugas tersebut serta melaksanakannya dengan tepat dan jujur. Pernyataan ini menunjukkan bahwa citra atau personal branding seorang notaris sangat penting, karena reputasi pribadi dapat memengaruhi persepsi klien dan publik terhadap lembaga kenotariatan secara keseluruhan. Kepercayaan masyarakat merupakan aset utama dalam menjalankan profesi notaris.

Personal branding dapat didefinisikan sebagai reputasi yang melekat pada diri seseorang, atau sederhananya "merek diri."[3] Bagi seorang notaris, branding diri meliputi aspek-aspek profesional dan kepribadian yang diperlihatkan dalam menjalankan tugasnya, mulai dari keahlian teknis dalam membuat akta hingga etika melayani klien. Penerapan branding diri yang tepat dapat memperkuat kepercayaan masyarakat terhadap notaris, tetapi jika tidak dijalankan dengan baik, dapat bertentangan dengan batas-batas hukum dan etika profesi.[4]

Perkembangan teknologi digital saat ini telah mengubah cara berbagai profesi membangun citra profesional. Platform media sosial, website, dan berbagai sarana komunikasi digital menjadi aspek penting dalam membangun branding profesional yang kuat. Namun demikian, bagi notaris sebagai pejabat publik, upaya membangun personal branding harus dilakukan dengan tetap mematuhi kode etik profesi yang sangat ketat. Notaris harus memastikan bahwa setiap upaya branding tidak melanggar prinsip-prinsip profesionalisme, objektivitas, dan netralitas yang menjadi fondasi kepercayaan publik terhadap jabatan notaris.[5]

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[3] Raden Roro Citra Hendardini, "Notaris dan Personal Branding dalam Menjalankan Jabatan Notaris" (Tesis Magister, Universitas Indonesia, 2021), 15.

[4] Maulana Farhan Abdillah, "Etika Notaris Dalam Era Digital: Dampak Branding Diri Dalam Profesionalitas Notaris," Jatiswara 1, no. 1 (2025): 1–15.

[5] Difqa Alvi Ramadhandiko dan Kayus Kayowuan Lewoleba, "Tinjauan Yuridis Pemanfaatan Media Sosial sebagai Sarana Promosi Online oleh Notaris sebagai Pelanggaran Kode Etik," Media Hukum Indonesia 3, no. 3 (2025): 390–398.

Fenomena pesatnya perkembangan media sosial telah berdampak signifikan pada profesi notaris sebagai pejabat publik.[6] Notaris kerap menggunakan platform digital seperti Instagram, Facebook, dan website pribadi untuk mencantumkan nama dan jabatan, yang dalam banyak kasus dapat dikategorikan sebagai promosi terselubung atau bahkan promosi langsung. Praktik ini menjadi semakin memprihatinkan mengingat larangan eksplisit dalam peraturan perundang-undangan. Berdasarkan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris dan Kode Etik Notaris, tindakan promosi diri dilarang karena dapat menurunkan martabat profesi dan melanggar prinsip-prinsip etika kenotariatan yang telah ditetapkan oleh Ikatan Notaris Indonesia. Fenomena ini semakin mengkhawatirkan mengingat pertambahan jumlah notaris di Indonesia terus meningkat, yang pada akhirnya memicu persaingan tidak sehat dalam mendapatkan klien.

Permasalahan yang diangkat dalam penelitian ini adalah bagaimana praktik personal branding oleh notaris Indonesia berada dalam batasan legal dan etika profesi. Pertanyaan penelitian antara lain: Pertama, apakah kegiatan branding diri (misalnya melalui media sosial, website pribadi, seminar publik) diizinkan oleh Undang-Undang Jabatan Notaris dan Kode Etik Notaris? Kedua, bagaimana kondisi internasional terkait hal serupa, khususnya di negara-negara yang menganut sistem kenotariatan Latin? Ketiga, bagaimana mekanisme pengawasan dan sanksi yang dapat dijatuhkan kepada notaris yang melanggar ketentuan larangan promosi diri?

Studi ini menggunakan metode yuridis normatif (pendekatan statute dan kode etik) untuk mengevaluasi ketentuan peraturan perundang-undangan dan kode etik yang berlaku. Metode ini lazim digunakan dalam analisis hukum normatif seperti pada penelitian-penelitian sebelumnya.[7] Hasil kajian literatur menunjukkan bahwa Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris (yang telah diubah oleh Undang-Undang Nomor 2 Tahun 2014) memberikan beberapa kewenangan tertentu seperti penyuluhan hukum kepada notaris, namun secara eksplisit tidak mengatur tentang promosi pribadi.

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[6] "Promosi diri notaris melalui media sosial ditinjau berdasarkan kode etik notaris Indonesia," NewElista Universitas Tarumanagara (2025).

[7] Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif: Suatu Tinjauan Singkat (Jakarta: RajaGrafindo Persada, 2015), 13–14.

Sebaliknya, Kode Etik Notaris yang diterbitkan oleh Ikatan Notaris Indonesia (INI) secara jelas melarang promosi dan publikasi diri notaris melalui media apa pun. Hal ini diperkuat dengan temuan penelitian bahwa notaris yang melakukan promosi diri melalui situs web atau media sosial telah melanggar Pasal 4 ayat (3) Kode Etik Notaris.[8] Pelanggaran tersebut dapat dikategorikan sebagai pelanggaran etik yang serius karena berpotensi menurunkan martabat jabatan notaris sebagai pejabat publik dan menggoyahkan kepercayaan masyarakat terhadap institusi kenotariatan.

Sejumlah literatur mendukung temuan ini, Hendardini menegaskan bahwa notaris yang ingin membangun branding diri dapat menggunakan cara yang diperbolehkan, seperti membuat logo pribadi berisi nama dan gelar akademik saja tanpa mencantumkan jabatan, agar tidak dianggap mempromosikan jabatan notaris.[9] Selain itu, praktik internasional mencerminkan pembatasan serupa bagi pejabat kenotariatan. Studi komparatif menunjukkan bahwa di banyak yurisdiksi seperti Spanyol dan Prancis, notaris juga tidak diperkenankan melakukan periklanan publik atau kegiatan pemasaran langsung.

Secara keseluruhan, tinjauan pustaka ini menegaskan perlunya pemahaman mendalam tentang mana saja batasan hukum (UUJN) dan norma etika (Kode Etik Notaris) yang relevan dengan personal branding notaris. Penelitian ini bertujuan untuk memberikan analisis komprehensif mengenai kegiatan branding diri yang diperbolehkan dan dilarang bagi notaris di Indonesia, serta memberikan perbandingan dengan praktik internasional guna memberikan perspektif yang lebih luas dan mendalam tentang standar profesi kenotariatan secara global.

Metode Penelitian

Penelitian ini menggunakan pendekatan yuridis normatif dengan tipe penelitian deskriptif-analitis. Metode ini bertujuan menggambarkan secara sistematis hubungan antara personal branding notaris dan ketentuan hukum yang berlaku, kemudian menganalisisnya secara

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[8] Kevin Mikail Siahaan, "Prohibition of Self-Promotion in the Notary Code of Ethics and Notary Position Law," Asian Journal of Education and Social Studies 1, no. 1 (2024): 1–8.

[9] Raden Roro Citra Hendardini, *Notaris dan Personal Branding dalam Menjalankan Jabatan Notaris*, Tesis, 2021, hal.1.

kritis untuk memperoleh pemahaman yang komprehensif.[10] Pendekatan statute digunakan dengan menelaah Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris beserta perubahannya (Undang-Undang Nomor 2 Tahun 2014), serta peraturan pelaksanaannya yang relevan termasuk peraturan dari Kementerian Hukum dan HAM.

Selain itu, pendekatan kode etik dianalisis melalui dokumen Kode Etik Notaris yang ditetapkan oleh Ikatan Notaris Indonesia, terutama Pasal 3 (kewajiban) dan Pasal 4 (larangan). Penelitian ini juga menggunakan pendekatan konseptual (conceptual approach) untuk menganalisis konsep personal branding dalam konteks profesi notaris sebagai pejabat publik. Pendekatan komparatif juga digunakan untuk membandingkan pengaturan di Indonesia dengan negara lain yang menganut sistem kenotariatan Latin (civil law) seperti Spanyol dan Prancis.

Data diperoleh dari studi pustaka (library research) berupa buku teks hukum, jurnal ilmiah nasional dan internasional, skripsi/tesis, serta sumber hukum primer dan sekunder. Bahan hukum primer meliputi peraturan perundang-undangan terkait jabatan notaris, kode etik profesi, dan keputusan Menteri Hukum dan HAM yang berkaitan dengan pengawasan notaris. Bahan hukum sekunder meliputi literatur hukum, artikel jurnal ilmiah, hasil penelitian terdahulu, putusan pengadilan, dan hasil riset dari berbagai lembaga yang relevan dengan topik penelitian. Bahan hukum tersier meliputi kamus hukum, ensiklopedia, dan sumber referensi lainnya.

Analisis data dilakukan dengan metode analisis kualitatif, membandingkan isi norma hukum dengan fakta praktik personal branding notaris serta pendekatan internasional. Pendekatan komparatif digunakan untuk membandingkan regulasi personal branding notaris di Indonesia dengan negara-negara yang menganut sistem kenotariatan Latin (civil law) seperti Spanyol dan Prancis. Analisis dilakukan secara deduktif-induktif untuk memperoleh kesimpulan yang komprehensif tentang batasan legal dan etika dalam personal branding notaris.

[10] Peter Mahmud Marzuki, Penelitian Hukum (Jakarta: Kencana, 2019), 93–95.

Hasil dan Pembahasan

A. Landasan Hukum tentang Personal Branding Notaris dalam UUJN

Secara eksplisit, Undang-Undang Jabatan Notaris (UUJN) tidak menyebut istilah "branding diri" atau "promosi diri." UUJN lebih banyak mengatur ruang lingkup kewenangan notaris dan larangan-larangan umum yang berkaitan dengan pelaksanaan jabatan. Namun demikian, beberapa ketentuan dalam UUJN memiliki implikasi terhadap praktik personal branding notaris yang perlu dipahami secara mendalam oleh setiap notaris dan stakeholder yang terlibat.

Pasal 15 ayat (2) huruf e UUJN menyebutkan bahwa notaris memiliki kewenangan "memberikan penyuluhan hukum sehubungan dengan pembuatan Akta."[11] Kewenangan ini sesungguhnya memberi ruang bagi notaris untuk tampil sebagai sumber informasi hukum yang terpercaya. Penyuluhan hukum dapat dipandang sebagai kegiatan profesional yang meningkatkan reputasi (branding) tanpa bersifat komersial, karena orientasinya adalah memberikan edukasi hukum kepada masyarakat.[12] Akan tetapi, pasal tersebut menegaskan bahwa memberikan penyuluhan hukum bersifat wewenang, bukan kewajiban; ketidaklaksanaan penyuluhan tidak mempengaruhi keabsahan akta yang dibuat oleh notaris.

Namun demikian, notaris yang aktif memberikan penyuluhan hukum akan membangun reputasi positif di masyarakat secara organik. Penyuluhan hukum dapat dilakukan melalui berbagai media, termasuk seminar, workshop, penerbitan artikel, atau melalui platform digital, selama tujuannya adalah edukasi dan tidak mengandung unsur komersial atau promosi jabatan. Perbedaan ini sangat penting dalam membedakan antara kegiatan branding yang diperbolehkan dengan kegiatan promosi yang dilarang.

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[11] Indonesia, UU No. 2 Tahun 2014, Pasal 15 ayat (2) huruf e.

[12] M.M. R.I.S. Akrabi, "Pemanfaatan Sosial Media oleh Notaris Sebagai Sarana Melaksanakan Kewenangan Notaris," *UNES Law Review*, Vol. 6, No. 2 (2023): 1–12.

Media sosial saat ini telah dilengkapi dengan fitur-fitur yang semakin mempermudah interaksi antar penggunanya, tanpa perlu mengkhawatirkan jarak dan waktu. Dikaitkan dengan kewenangan notaris dalam melakukan penyuluhan hukum, media sosial dapat menjadi sarana yang mudah dan cepat untuk melakukan penyuluhan hukum kepada masyarakat luas. Berbagai platform media sosial seperti Instagram, Blog, TikTok, LinkedIn, dan sebagainya menyediakan fitur-fitur interaktif yang dapat dimanfaatkan oleh notaris untuk melakukan penyuluhan hukum. Masyarakat dapat memperoleh pengetahuan hukum dari konten edukatif yang dibagikan oleh notaris melalui media sosial tersebut, namun harus selalu diingat bahwa setiap konten harus memenuhi standar etika yang telah ditetapkan.

UUJN juga mengatur aspek organisasi praktik notaris yang memiliki implikasi signifikan terhadap strategi personal branding. Pasal 19 ayat (1) UUJN (sebagaimana diubah dengan Undang-Undang Nomor 2 Tahun 2014) mensyaratkan bahwa "Notaris wajib mempunyai hanya 1 (satu) kantor, yaitu di tempat kedudukannya."[13] Dengan kata lain, notaris dilarang memiliki beberapa kantor cabang atau kantor satelit. Hal ini justru membatasi strategi branding konvensional seperti perluasan jangkauan pasar; notaris tidak boleh mengiklankan kantor cabangnya yang tidak sah atau menciptakan kesan bahwa mereka memiliki kantor di berbagai lokasi. Ketentuan ini juga dimaksudkan untuk menjaga ketertiban administrasi kenotariatan dan mencegah praktik-praktik yang tidak sesuai dengan standar profesi.

Selain itu, jika notaris melanggar ketentuan tempat kedudukan (misalnya memproses akta di luar wilayah resmi tanpa izin atau menunjukkan kantor di tempat yang tidak sesuai ketentuan), sanksi yang dapat dikenakan termasuk peringatan tertulis hingga pemberhentian sementara.[14] Ketentuan ini menegaskan bahwa UUJN lebih fokus pada struktur organisasi dan akuntabilitas jabatan, bukan

[13] Indonesia, UU No. 2 Tahun 2014, Pasal 19 ayat (1).
[14] Indonesia, UU No. 2 Tahun 2014, Pasal 19 ayat (4).

pada cara notaris memperkenalkan diri di publik dalam konteks promosi komersial. Pengaturan ini bertujuan untuk memberikan kepastian hukum dan perlindungan kepada masyarakat yang menggunakan jasa notaris, serta menjaga kualitas dan integritas layanan kenotariatan.

Sebagai pejabat publik, notaris tunduk pada prinsip-prinsip fundamental yang tercantum dalam Pasal 16 UUJN, antara lain bertindak amanah, jujur, mandiri, tidak berpihak, serta menjaga kehormatan jabatan.[15] Notaris juga diamanatkan untuk menyimpan cap/stempel negara dengan aman serta merahasiakan segala hal yang terjadi dalam pembuatan akta (prinsip confidentiality). Kewajiban ini merupakan pilar utama dalam menjamin kepastian hukum dan perlindungan bagi para pihak yang memanfaatkan jasa notaris. Prinsip-prinsip ini harus menjadi landasan dalam setiap aktivitas notaris, termasuk dalam membangun personal branding yang sehat dan etis.

Meskipun UUJN menetapkan etika dasar tersebut, perlindungan integritas notaris dan penegakan standar etika profesi lebih banyak diatur melalui Kode Etik Notaris INI. Singkatnya, landasan UUJN memposisikan notaris sebagai pejabat publik dengan kewenangan terbatas namun sangat penting, sementara kegiatan personal branding harus diinterpretasikan berdasarkan nilai-nilai umum tersebut (misalnya tanggung jawab moral dan akuntabilitas publik) dan pembatasan formal seperti kewajiban hanya memiliki satu kantor. Harmonisasi antara UUJN dan Kode Etik Notaris menjadi sangat penting untuk memberikan pedoman yang jelas dan konsisten bagi notaris dalam menjalankan tugasnya sambil membangun reputasi profesional yang positif.

B. Kode Etik Notaris: Larangan Promosi dan Publikasi Diri

Kode Etik Notaris (KEN) yang ditetapkan oleh Ikatan Notaris Indonesia dengan jelas mengatur larangan-larangan spesifik terkait

[15] Indonesia, UU No. 2 Tahun 2014, Pasal 16 ayat (1) huruf a.

promosi diri yang merupakan inti dari pengaturan etika profesi notaris. Kode Etik Notaris adalah kaidah moral yang ditentukan oleh Perkumpulan Ikatan Notaris Indonesia berdasarkan keputusan Kongres Perkumpulan dan/atau yang ditentukan oleh peraturan perundang-undangan yang berlaku bagi setiap dan semua anggota Perkumpulan serta semua orang yang menjalankan tugas jabatan sebagai Notaris. Kode etik ini merupakan pedoman moral yang mengikat seluruh notaris di Indonesia dan mencerminkan komitmen profesi terhadap nilai-nilai integritas dan profesionalisme.

Pada Pasal 4 ayat (3) Kode Etik Notaris hasil Kongres Luar Biasa (KLB) Ikatan Notaris Indonesia di Banten pada tanggal 29-30 Mei 2015, dinyatakan bahwa:

"Notaris maupun orang lain (selama yang bersangkutan menjalankan jabatan Notaris) dilarang melakukan publikasi atau promosi diri, baik sendiri maupun secara bersama-sama, dengan mencantumkan nama dan jabatannya, menggunakan sarana media cetak dan/atau elektronik, dalam bentuk: iklan, ucapan selamat, ucapan belasungkawa, ucapan terima kasih, kegiatan pemasaran, kegiatan sponsor, baik dalam bidang sosial, keagamaan, maupun olah raga." Larangan ini mencakup berbagai bentuk publikasi yang secara luas dapat dikategorikan sebagai promosi atau iklan dalam bentuk apa pun. Secara eksplisit, notaris dilarang mempromosikan diri lewat media apa pun, termasuk media sosial, website pribadi, iklan cetak, billboard, atau sarana komunikasi digital lainnya. Hal ini sesuai dengan temuan penelitian yang menyebut bahwa Kode Etik pasal tersebut "melarang notaris umum mengumumkan, menyiarkan, atau menyebarkan diri mereka ke publik menggunakan jasa internet." Larangan ini bersifat imperatif dan tidak dapat dikesampingkan oleh notaris dalam bentuk apa pun.

Promosi diri oleh notaris melalui platform digital seperti Instagram, TikTok, LinkedIn, dan sarana digital lainnya menimbulkan polemik serius karena dinilai bertentangan dengan prinsip dasar profesi notaris yang bersifat netral, profesional, dan tidak komersial. Tindakan tersebut dianggap dapat merendahkan martabat jabatan notaris sebagai pejabat publik dan membuka potensi persaingan tidak sehat antar notaris yang dapat merugikan masyarakat. Persaingan yang tidak sehat dapat mengakibatkan race to the bottom di mana notaris berlomba-lomba menawarkan tarif murah atau layanan berkurang dengan mengorbankan kualitas dan integritas pekerjaan mereka.

Akibat konkret dari pelanggaran promosi diri dapat berupa sanksi disiplin yang cukup berat. Studi kasus yang dilaporkan dalam berbagai penelitian menemukan notaris yang mempromosikan jabatannya via situs web pribadi dan akun Instagram dengan konten seperti foto di kantor, daftar jasa yang ditawarkan, dan testimoni klien, yang dinilai melanggar Pasal 4 ayat (3) Kode Etik Notaris.[16] Meskipun UUJN sendiri tidak secara eksplisit mengatur larangan promosi ini dalam bentuk sanksi administrasi, Kode Etik menjadi rujukan utama untuk menegakkan integritas profesi melalui mekanisme Dewan Kehormatan. Kode Etik berfungsi sebagai lex specialis yang mengatur aspek-aspek etik yang tidak tercakup dalam UUJN secara mendetail.

Selain larangan, Kode Etik juga mencantumkan kewajiban minimal bagi notaris yang harus dipenuhi setiap saat. Pasal 3 Kode Etik Notaris mengatur bahwa notaris wajib:

1. Memiliki moral, akhlak serta kepribadian yang baik dan dapat diterima masyarakat
2. Menghormati dan menjunjung tinggi harkat dan martabat Jabatan Notaris sebagai pejabat publik
3. Menjaga dan membela kehormatan Perkumpulan (Ikatan Notaris Indonesia)
4. Berperilaku jujur, mandiri, tidak berpihak, amanah, seksama, penuh rasa tanggung jawab dalam setiap tindakan
5. Meningkatkan ilmu pengetahuan dan keahlian profesi melalui pendidikan berkelanjutan
6. Mengutamakan pengabdian kepada kepentingan masyarakat dan Negara
7. Memberikan jasa pembuatan akta untuk masyarakat yang tidak mampu tanpa memungut honorarium (layanan pro bono)
8. Menetapkan satu kantor di tempat kedudukan yang telah ditentukan

Dari ketentuan di atas, jelas bahwa notaris diwajibkan untuk menjaga kehormatan jabatan dengan tetap menjadi sosok yang

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[16] Tri Noviyanti dan Edith Ratna M.S., "Akibat Hukum Notaris Mempromosikan Diri di Sosial Media Instagram," *Notarius: Jurnal Kenotariatan*, Vol 15 No 2 (2022): 1–15.

terpercaya dan professional, serta tidak melakukan hal-hal yang dapat menurunkan martabat profesi, termasuk promosi diri melalui media apapun baik yang terselubung maupun terang-terangan. Kewajiban-kewajiban ini bersifat kumulatif dan harus dipenuhi secara keseluruhan oleh setiap notaris sebagai bagian dari komitmen mereka terhadap profesi.

C. Mekanisme Pengawasan dan Sanksi Pelanggaran Kode Etik

Sesuai mekanisme organisasi yang telah ditetapkan, pelanggaran Kode Etik dapat diproses melalui Dewan Kehormatan Notaris yang merupakan badan internal Ikatan Notaris Indonesia.[17] Dewan Kehormatan adalah alat perlengkapan perkumpulan yang bertugas untuk melakukan pembinaan, bimbingan, pengawasan, pembenahan anggota dalam menjunjung tinggi kode etik, memeriksa dan mengambil keputusan atas dugaan pelanggaran kode etik yang bersifat internal. Dewan Kehormatan terdiri dari Dewan Kehormatan Daerah di tingkat lokal, Dewan Kehormatan Wilayah di tingkat regional, dan Dewan Kehormatan Pusat di tingkat nasional.

Pasal 6 Kode Etik Notaris mengatur secara detail tentang sanksi yang dapat dijatuhkan kepada notaris yang melakukan pelanggaran kode etik:

1. Sanksi yang dikenakan terhadap anggota yang melakukan pelanggaran Kode Etik dapat berupa:
    1) Teguran lisan atau tertulis dari Dewan Kehormatan
    2) Peringatan resmi dengan pencatatan dalam arsip keorganisasian
    3) Skorsing (pemecatan sementara) dari keanggotaan Perkumpulan selama periode tertentu
    4) Onzetting (pemecatan permanen) dari keanggotaan Perkumpulan
    5) Pemberhentian dengan tidak hormat dari keanggotaan Perkumpulan sebagai sanksi paling berat
2. Penjatuhan sanksi disesuaikan dengan kuantitas dan kualitas pelanggaran yang dilakukan oleh anggota tersebut, sehingga sanksi proporsional dengan berat ringannya pelanggaran.

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[17] Y. Kristiawan, "Penegakan Kode Etik Notaris Sebagai Upaya Menjaga Kehormatan dan Keluhuran Jabatan Notaris," Adil: Jurnal Hukum 13, no. 1 (2023): 1–20.

Namun demikian, perlu dicatat bahwa sanksi pemecatan yang diberikan terhadap notaris yang melakukan pelanggaran kode etik bukanlah berupa pemecatan dari jabatan notaris melainkan pemecatan dari keanggotaan Ikatan Notaris Indonesia.[18] Sehingga sanksi tersebut terkesan kurang mempunyai daya mengikat yang maksimal bagi notaris yang melakukan pelanggaran kode etik, meskipun dampak reputasi sangat signifikan. Pemecatan dari jabatan notaris itu sendiri harus melalui proses yang lebih panjang dan formal dengan melibatkan Majelis Pengawas Notaris yang merupakan badan pengawas pemerintah (bukan internal organisasi profesi) dan memerlukan keputusan resmi dari Menteri Hukum dan Hak Asasi Manusia. Hal ini menunjukkan adanya dualisme dalam pengawasan notaris antara pengawasan internal (organisasi profesi) dan pengawasan eksternal (pemerintah).

Notaris yang dijatuhkan sanksi atas pelanggaran kode etik dapat melakukan upaya pembelaan diri dan dapat mengajukan banding secara bertingkat terhadap putusan Dewan Kehormatan Daerah kepada Dewan Kehormatan Wilayah dan kemudian ke Dewan Kehormatan Pusat sebagai pemeriksaan tingkat akhir dalam struktur organisasi INI.[19] Mekanisme banding ini memberikan kesempatan bagi notaris untuk membela diri secara adil dan mendapatkan pertimbangan yang lebih matang dari tingkatan yang lebih tinggi dalam hierarki organisasi.

Selain sanksi dari Dewan Kehormatan Organisasi, notaris yang melanggar ketentuan Pasal 16 ayat (1) huruf a UUJN juga dapat dikenakan sanksi administratif yang lebih berat oleh Majelis Pengawas Notaris yang merupakan badan pengawas resmi pemerintah.[20] Sanksi administratif berdasarkan UUJN meliputi:

1. Peringatan tertulis sebagai sanksi ringan
2. Pemberhentian sementara dari menjalankan tugas notaris untuk jangka waktu tertentu
3. Pemberhentian dengan hormat (purna tugas yang normal)
4. Pemberhentian dengan tidak hormat (pemecatan sebagai notaris akibat pelanggaran serius)

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[18] Sri Yuniati dan Sri Endah Wahyuningsih, "Mekanisme Pemberian Sanksi Terhadap Notaris Yang Melakukan Pelanggaran Kode Etik Jabatan Notaris," Jurnal Akta 4, no. 4 (2017): 585–590.

[19] Kode Etik Notaris, Pasal 6 ayat (3) dan (4).

[20] Indonesia, UU No. 2 Tahun 2014, Pasal 16 ayat (11).

Majelis Pengawas Notaris terdiri dari Majelis Pengawas Daerah, Majelis Pengawas Wilayah, dan Majelis Pengawas Pusat, dan merupakan struktur pengawasan yang ditunjuk atau disetujui oleh Menteri Hukum dan HAM.

D. Kegiatan Branding Diri yang Diperbolehkan dan Dibatasi

Meskipun larangan promosi dalam Kode Etik cukup tegas dan komprehensif, Kode Etik tidak serta-merta melarang semua bentuk pengembangan reputasi profesional yang etis dan edukatif. Terdapat ruang yang diperbolehkan bagi notaris untuk membangun citra profesional yang positif tanpa melanggar ketentuan etik yang berlaku. Pemahaman yang tepat dan detail tentang batasan ini sangat penting bagi setiap notaris dalam membangun reputasi profesional yang sehat dan berkelanjutan.

Hendardini dalam penelitiannya menyimpulkan bahwa seorang notaris diperbolehkan membangun merek pribadi dengan cara-cara yang etis, misalnya dengan "membuat suatu brand untuk dirinya, salah satunya dengan membuat logo atau desain visual. Logo tersebut dipakai dengan memuat nama dan gelar pendidikan saja tanpa mencantumkan jabatan" agar tidak bersifat mempromosikan jabatan notaris secara langsung. Dengan kata lain, aspek identitas profesional boleh ditampilkan (nama, gelar, spesialisasi atau keahlian khusus) asalkan tidak dinilai sebagai iklan atau promosi komersial. Pembedaan antara identitas profesional dan promosi komersial menjadi kunci dalam memahami batasan yang tepat antara yang diperbolehkan dan yang dilarang.

Sejumlah aplikasi praktis yang diperbolehkan dalam personal branding notaris termasuk:

1. Penerbitan artikel hukum atau infografik edukatif di website pribadi untuk tujuan edukasi - Notaris dapat berbagi informasi hukum yang bersifat edukatif kepada masyarakat luas tanpa orientasi komersial atau promosi jasa. Konten edukatif ini dapat membantu masyarakat memahami hukum perdata, prosedur kenotariatan, dan hak-hak masyarakat dalam membuat akta. Website pribadi dapat menjadi referensi hukum yang bermanfaat bagi publik.
2. Seminar publik atau workshop sebagai bentuk penyuluhan hukum. Kegiatan ini sejalan dengan Pasal 15 ayat (2) huruf e UUJN yang memberi notaris kewenangan

penyuluhan hukum kepada masyarakat.[21] Partisipasi dalam seminar publik merupakan bentuk pengabdian langsung kepada masyarakat dan membangun kepercayaan melalui sosialisasi yang edukatif. Tidak ada unsur promosi langsung dalam kegiatan ini selama fokusnya adalah edukasi.

3. Konten informatif dan edukatif di media sosial - Selama tidak mencantumkan jabatan notaris secara proaktif dalam setiap posting dan tidak bersifat mengajak atau menawarkan jasa secara langsung kepada publik.52 Konten yang bersifat edukatif, informatif, atau berbagi pengetahuan hukum kepada followers dapat diterima dari perspektif etika. Namun, konten yang menampilkan kesuksesan kasus atau testimoni klien harus dihindari karena termasuk promosi terselubung.
4. Papan nama kantor yang sesuai dengan ketentuan resmi. Pasal 5 Kode Etik Notaris mengatur pengecualian dalam hal pemasangan papan nama di depan atau di lingkungan kantor notaris sesuai dengan ketentuan yang telah ditetapkan oleh organisasi profesi. Papan nama harus sesuai dengan format, ukuran, dan konten yang ditentukan, tanpa menambahkan elemen dekoratif yang berlebihan atau deskripsi jasa yang detail.

Namun batasannya sangat jelas dan tegas: semua materi dan konten publikasi harus tetap menjaga nuansa edukatif yang murni dan tidak boleh bersifat komersial atau promosi, baik secara langsung maupun terselubung. Dalam penelitian terdahulu direkomendasikan agar organisasi profesi memperkuat pengawasan dan sosialisasi karena peralihan era digital membuat kode etik yang saat ini berlaku perlu dievaluasi dan mungkin diperbarui agar tetap relevan dengan perkembangan teknologi komunikasi. Evaluasi berkala terhadap kode etik sangat diperlukan untuk menyesuaikan dengan perkembangan zaman dan teknologi, namun tetap mempertahankan prinsip-prinsip dasar etika kenotariatan.

Peraturan juga memisahkan dengan tegas antara publikasi resmi lembaga profesi (oleh Ikatan Notaris Indonesia) dan inisiatif pribadi notaris secara individual. Di banyak yurisdiksi dalam sistem kenotariatan Latin, hanya organisasi kenotariatan sebagai institusi

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[21] Indonesia, UU No. 2 Tahun 2014, Pasal 15 ayat (2) huruf e.

yang boleh beriklan untuk kepentingan profesi secara umum; notaris individual dilarang memasarkan diri mereka sendiri. Pembedaan ini penting untuk menjaga keseimbangan antara kebutuhan informasi publik dan martabat serta netralitas profesi.

E. Perbandingan Praktik Internasional

Pembatasan promosi diri notaris bukan fenomena eksklusif di Indonesia, melainkan merupakan konsensus internasional di antara negara-negara yang menganut sistem kenotariatan Latin (*civil law*).[22] Negara-negara yang menganut sistem kenotariatan Latin pada umumnya memiliki regulasi serupa yang ketat melarang notaris melakukan promosi atau iklan dalam bentuk apa pun. Perbandingan internasional ini penting untuk memberikan perspektif yang lebih luas dan memperkuat pemahaman tentang standar profesi global.

F. Regulasi Notaris di Spanyol

Regulasi di Spanyol yang diatur pada *Notary Regulations* yang disahkan dengan Dekrit tanggal 2 Juni 1944 pada pasal Pasal 71 menegaskan bahwa notaris sebagai pejabat publik tidak boleh melakukan promosi atau penawaran layanan secara langsung kepada publik dalam bentuk apa pun.[23] Ketentuan ini didasarkan pada pertimbangan filosofis yang kuat bahwa promosi dapat mempengaruhi dan mendistorsi penyediaan layanan notaris yang semestinya netral dan tidak terpengaruh oleh kepentingan komersial, serta dapat merusak prestise institusi kenotariatan yang diwakili oleh masing-masing notaris. Regulasi ini telah berlaku sejak lama dan dianggap sebagai standar emas dalam sistem kenotariatan Latin modern.

Pada tingkat daerah, Asosiasi Notaris Catalonia (Colegios de Notarios de Cataluña) dalam Peraturan Internal Pasal 24 mensyaratkan dengan sangat detail bahwa:

"Notaris, mengingat statusnya sebagai pejabat publik, tidak dapat mengiklankan atau menawarkan secara publik jasa profesionalnya dengan cara apa pun, secara tegas menetapkan bahwa kegiatan pemasaran seperti pengiriman massal, baik dalam bentuk kertas maupun digital/email, serta penarikan klien di luar kantor

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[22] Fredy Renaldi, "Perbandingan Publikasi dan Promosi Diri oleh Notaris di Indonesia dan Negara Lain," Swara Justisia (2024): 1–15.

[23] Spain, Notarial Regulations, Article 71.

notaris oleh karyawan Notaris atau oleh pihak ketiga yang terkait atau bergantung padanya, adalah kegiatan yang dilarang keras dan dapat mengakibatkan sanksi disiplin."

Notaris di Spanyol hanya diizinkan untuk memiliki *website* yang sangat sederhana dan informatif yang memuat nama, alamat kantor lengkap dengan peta lokasi, jam praktik, informasi kontak seperti email dan nomor telepon, serta informasi administratif dasar lainnya. Namun demikian, mereka tetap bebas memublikasikan konten legal informatif dalam bentuk blog atau artikel ilmiah demi edukasi publik yang murni, selama konten tersebut tidak mengundang klien baru atau mempromosikan kantor notaris secara langsung. Pendekatan ini memberikan keseimbangan yang baik antara kebutuhan informasi publik dan upaya menjaga martabat profesi notaris.

G. Regulasi Notaris di Prancis

Prancis juga memiliki regulasi ketat dan detail mengenai promosi notaris melalui Règlement National du Notariat (Règlement Professionnel du Notariat - RPN) yang komprehensif.[24] Notaris Prancis diawasi oleh Conseil Supérieur du Notariat (CSN) yang merupakan badan independen bertugas mengatur standar profesional, etika, serta teknologi untuk mendukung praktik kenotariatan yang berkualitas tinggi.[25] Pengawasan yang ketat ini memastikan bahwa notaris menjalankan tugasnya sesuai dengan standar profesi yang telah ditetapkan secara nasional.

Ketentuan dalam regulasi Prancis menyatakan dengan jelas bahwa notaris harus menahan diri dari setiap langkah bersifat iklan yang melibatkan komunikasi massal tak terpilah untuk menawarkan jasanya ke publik yang luas, dalam bentuk apa pun baik yang tradisional maupun digital. Dengan kata lain, segala bentuk periklanan massal, termasuk iklan berbayar di mesin pencari Google Ads, Facebook Ads, atau media sosial lainnya, dilarang keras dan dapat mengakibatkan sanksi. Notaris juga tidak boleh mendistribusikan kartu nama secara umum atau dengan pola massal kepada publik yang tidak secara spesifik memintanya.

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[24] France, Règlement National du Notariat (Règlement Professionnel du Notariat – RPN).

[25] Rani Febriana, "Konsep Cyber Notary sebagai Upaya Perlindungan Konsumen" (Skripsi, UIN Jakarta, 2023), 101.

Hanya badan kenotariatan tingkat nasional seperti Conseil Supérieur du Notariat yang boleh mengiklankan layanan notaris secara umum untuk kepentingan profesi secara keseluruhan, bukan untuk promosi individual. Situs web notaris pribadi pun dilarang memuat banner, elemen iklan, atau konten promosi selain logo resmi profesi dan informasi administratif dasar. Ketentuan ini menekankan dengan kuat bahwa citra notariat sebagai institusi publik diutamakan jauh lebih tinggi daripada personal branding setiap notaris individual. Pendekatan ini konsisten dengan filosofi kenotariatan Latin yang mengutamakan kepentingan publik dan netralitas institusi.

H. Perbandingan dengan Notaris dalam Sistem Common Law

Perlu dicatat bahwa regulasi ketat mengenai promosi notaris dalam sistem kenotariatan Latin ini sangat berbeda dengan sistem common law seperti di Amerika Serikat, Inggris, dan Australia.[26] Di Amerika Serikat, Notary Public memiliki fungsi, peran, dan status yang sangat berbeda dengan notaris dalam sistem civil law. Notaris Common Law lebih bersifat administratif semata dan tidak memiliki monopoli atau kewenangan dominan dalam pembuatan akta otentik seperti halnya Notaris Latin. Perbedaan fundamental ini dalam peran dan fungsi mengakibatkan pendekatan yang sangat berbeda pula terhadap promosi profesional.

Di beberapa negara bagian Amerika Serikat, Notary Public diperbolehkan untuk beriklan dengan batasan tertentu, seperti larangan menggunakan istilah "Notario" atau "Notario Publico" yang dapat menyesatkan komunitas berbahasa Spanyol karena di Meksiko dan Amerika Latin, "Notario Publico" adalah seorang pengacara yang memiliki kewenangan jauh lebih besar.[27] Larangan ini dimaksudkan untuk mencegah praktik yang menyesatkan publik dan melindungi konsumen dari praktik bisnis yang tidak etis. Namun secara keseluruhan, sistem common law memiliki pendekatan yang lebih permisif terhadap iklan profesional dibandingkan sistem *civil law*.

I. Implikasi Bagi Notaris Indonesia

[26] M. Syarul Borman, "Kedudukan Notaris Sebagai Pejabat Umum," Jurnal Hukum dan Pembangunan Ekonomi 7, no. 2 (2019): 5–6.

[27] "States Cracking Down On Notary Advertising," National Notary Association, Juli 2012.

Singkatnya, dari perspektif internasional terbukti ada konsensus yang kuat bahwa notaris dalam sistem civil law dibatasi secara signifikan dalam mempromosikan diri pribadi mereka.[28] Negara-negara Eropa tradisional seperti Spanyol dan Prancis menerapkan aturan yang lebih ketat, melarang publikasi iklan yang bersifat komersial atau promosi dalam bentuk apa pun. Sementara di beberapa negara atau wilayah lainnya, notaris diperbolehkan hanya menyampaikan informasi edukatif atau formal seperti peta lokasi kantor, jam kerja, dan informasi kontak. Indonesia sebagai penganut sistem kenotariatan Latin harus konsisten dengan prinsip-prinsip internasional ini untuk mempertahankan kredibilitas dan standar profesional.

Oleh karena itu, notaris di Indonesia yang menganut sistem kenotariatan Latin harus memperhatikan dengan serius tren global dan standar internasional ini sebagai referensi perbandingan. Larangan promosi diri yang tercantum dalam Kode Etik Notaris Indonesia sejalan sempurna dengan praktik internasional yang menempatkan notaris sebagai pejabat publik yang harus menjaga martabat profesi dengan tidak melakukan iklan komersial apapun. Konsistensi dengan praktik internasional ini tidak hanya memperkuat legitimasi pengaturan di Indonesia, tetapi juga menempatkan Indonesia sebagai negara yang menghormati standar profesional internasional dalam kenotariatan.

J. Tantangan Era Digital dan Rekomendasi Prospektif

Era digitalisasi dan transformasi digital membawa tantangan tersendiri yang signifikan bagi profesi notaris dalam hal personal branding dan komunikasi profesional.[29] Pertambahan jumlah notaris di Indonesia pada dekade terakhir pada akhirnya memicu persaingan yang semakin ketat untuk mendapatkan klien, yang mendorong beberapa notaris untuk eksis dan menonjol melakukan branding diri melalui media digital yang mudah diakses. Tantangan ini memerlukan respons yang tepat, konsisiten, dan terintegrasi dari organisasi profesi

[28] Renaldi, "Perbandingan Publikasi dan Promosi Diri oleh Notaris di Indonesia dan Negara Lain," 1–15.

[29] Gatot Eko Yudhoyono dan Yunanto, "Peran Kode Etik Profesi Notaris dalam Menjaga Martabat Jabatannya sebagai Pejabat Umum," Notarius 18, no. 3 (2025): 1–12.

dan regulator agar dapat menjaga standar etika tanpa menghambat inovasi.

Meskipun demikian, pengawasan terhadap pelanggaran etika di ruang digital masih belum optimal, dan sistem sanksi yang ada belum memberikan efek jera yang signifikan terhadap notaris yang melanggar. Oleh karena itu, diperlukan penguatan sistem pengawasan dan penegakan sanksi yang lebih konsisten dan transparan untuk menjaga integritas notaris di era digital. Penguatan ini harus melibatkan semua pemangku kepentingan dalam profesi kenotariatan, termasuk Ikatan Notaris Indonesia, Majelis Pengawas Notaris, dan stakeholder terkait lainnya.

Beberapa rekomendasi praktis yang dapat dipertimbangkan oleh organisasi profesi dan pemerintah:

1. Pembaruan dan Klarifikasi Kode Etik Notaris - Perlu dilakukan evaluasi menyeluruh dan pembaruan pengaturan dalam Kode Etik Notaris agar penggunaan media sosial untuk edukasi hukum oleh notaris tetap sejalan dengan prinsip kehormatan dan integritas profesi yang ketat.[30] Pembaruan harus mempertimbangkan perkembangan teknologi digital yang sangat cepat dan kebutuhan masyarakat akan informasi hukum. Harus dibuat panduan operasional yang jelas tentang apa yang boleh dan tidak boleh dilakukan notaris di media sosial.
2. Penguatan Mekanisme Pengawasan - Dewan Kehormatan Notaris dan Majelis Pengawas Notaris perlu memperkuat mekanisme pengawasan yang lebih proaktif terhadap aktivitas notaris di media sosial dan platform digital lainnya.[31] Diperlukan investasi dalam training pengawas untuk memahami dinamika media sosial dan tanda-tanda promosi terselubung. Pengawasan yang efektif memerlukan sumber daya manusia dan kompetensi yang memadai serta modern.
3. Program Sosialisasi dan Pembinaan Berkelanjutan - Perlu dilakukan sosialisasi secara berkala dan komprehensif

[30] M. Vanessa Herman, "Makna Kehormatan Notaris Dalam Penggunaan Media Sosial" (Tesis Magister, Universitas Wiraraja, 2025).

[31] Cindy Kurniasari dan Aju Putrijanti, "Pelanggaran Pidana oleh Notaris: Urgensi Peningkatan Kesadaran dan Pemahaman Etika Profesi," Inovasi 4, no. 1 (2025): 627–640.

kepada para notaris mengenai batasan personal branding yang diperbolehkan dan yang dilarang dalam konteks era digital. Pembinaan yang berkelanjutan dan interaktif dapat mencegah pelanggaran etika. Workshop dan seminar etika profesi harus dijadwalkan secara regular.

Pengembangan Regulasi Teknis yang Spesifik - Diperlukan regulasi teknis yang lebih spesifik mengatur penggunaan media sosial dan platform digital oleh notaris, mengingat perkembangan teknologi yang sangat cepat dan terus berubah.73 Regulasi teknis ini harus cukup detail namun fleksibel untuk dapat mengakomodasi perkembangan teknologi di masa depan. Panduan praktis tentang penggunaan LinkedIn, Instagram, TikTok, dan platform digital lainnya harus disusun.

Kesimpulan

Penelitian ini menunjukkan bahwa personal branding notaris harus berada dalam koridor hukum dan etika profesi, di mana UUJN tidak mengatur promosi diri secara eksplisit namun memberi ruang bagi notaris membangun reputasi melalui penyuluhan hukum yang bersifat edukatif dan nonkomersial. Kode Etik Notaris secara tegas melarang segala bentuk promosi atau publikasi diri dengan mencantumkan jabatan notaris melalui media apa pun karena dianggap menurunkan martabat profesi dan menimbulkan persaingan tidak sehat. Pelanggaran terhadap larangan tersebut dapat dikenakan sanksi oleh Dewan Kehormatan INI maupun Majelis Pengawas Notaris, meskipun sanksi organisasi hanya berlaku pada keanggotaan dan tidak langsung mencabut jabatan. Di sisi lain, beberapa bentuk aktivitas branding tetap diperbolehkan sepanjang bersifat informatif dan edukatif, seperti penyuluhan hukum, seminar, publikasi artikel hukum, atau penggunaan identitas profesional tanpa menyertakan jabatan. Dengan demikian, upaya membangun citra profesional notaris harus dijalankan secara hati-hati dengan mematuhi UUJN, Kode Etik, serta menjaga integritas dan netralitas sebagai pejabat publik.

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PERSPEKTIF HUKUM

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LEGAL ISSUES CONCERNING CONSUMER PROTECTION IN METAVERSE OPERATION IN NIGERIA: TAKING A LEAP FROM UGANDA

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Article	Abstract
Keywords: *Legal, Consumer Protection, Metaverse, Nigeria, Ugandan;* **Article History** Received: August 05, 2025; Reviewed: Nov 08, 2025; Accepted: Nov 28, 2025; Published: Nov 30, 2025;	*The Metaverse concept is a unique and trending digital platform, that has transformed commercial and social activities. Despite the prospect of Nigerian commercial activities in the Metaverse, it presents some unique challenges for consumers. Concerning this, the study examines the legal issues surrounding consumer protection in the Metaverse, to adopt possible legal ideas from Uganda's experience, the study adopted a hybrid method of study, and 317 questionnaires were distributed to respondents residing within Nigeria. The results were analyzed with the aid of a descriptive and analytical approach. The study reveals that the metaverse concept provides significant prospects and*

potential for consumers. However, there are legal and social issues consumers may encounter. These challenges include a lack of legal measures in safeguarding consumer rights in the metaverse, the incidence of fraudulent activities by fraudsters, and several other challenges. It was therefore concluded and recommended that, for an effective operation of the metaverse that would not violate consumer rights, there is a need to incorporate an effective legal framework that will safeguard consumer interest. In this regard, the study recommends Uganda's consumer protection laws as a model for the Nigerian government to adopt in safeguarding consumer commercial activities in the metaverse.

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Introduction

Recently, technological advancement and digitalization have exposed many top organizations and companies to a new world of ineludible progression of internet usage for commercial transactions through the concept of metaverse[1]. Metaverse can connect a lot of users across the globe with virtual facilities to engage and transact businesses to advance economic advantages irrespective of their locations. With the help of Metaverse various renowned and world-class organizations can promote their commercial transactions without distance or physical barriers to validate transactions[2]. The idea behind the introduction of the metaverse is to provide a more sophisticated avenue better than the conventional ways of promoting the economy which have a lot of limitations. Thus, with the help of the metaverse, various enterprises and other social network platforms have gained

[1] Paul A. Aidonojie, Saminu W. Abacha, and Ayuba David. "Effectiveness of the Administration of Justice in Nigeria Under the Development of Digital Technologies." Journal of Digital Technologies and Law 1, no. 4 (2023): 1105-1131. https://doi.org/10.21202/jdtl.2023.48

[2] Siti Anisah, "The Use of Per Se Illegal Approach in Proving the Price-Fixing Agreements in Indonesia." Jurnal Media Hukum 27, no. 1 (2020): 99-120. https://doi.org/10.18196/jmh.20200145

their stand in the current digital world with a lot of advantages[3]. The potentials and opportunities that come with the metaverse can be experienced in all spheres of human involvement, ranging from education, entertainment, commercial industries, and social-related activities to promote new ideas on how to utilize the benefits of advanced technology and digitalisation on commercial transactions[4]. Hence, the metaverse has been able to create a tremendous improvement on the usual way of handling commerce and social networking to a more sophisticated and digitalized format of commercial transactions.

Nigeria as a developing country, is not left out in annexing the possibilities and advantages of the metaverse. Modern companies in Nigeria are now going digital to showcase and promote their values to the world[5]. However, there is a need for consumers and end users beneficiaries of the metaverse to be protected. Despite the positive outcomes attributed to the metaverse, there are a lot of challenges and shortcomings that can be experienced with it[6]. These shortcomings are not limited to dubious online transactions, infringement on intellectual property and patent rights, fraud, cyber-related crimes, and so on. Thus, to have a hitch-free actualization of metaverse in Nigeria, especially when a lot of Nigerians are just adapting to these innovations, it is important to have regulations and laws that will

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[3] Syaiful Azam, Mulhadi Mulhadi, and Dedi Harianto. "The Undue Influence Doctrine and Its Function in Consumer Financing Cases." Jurnal Media Hukum 27, no. 2 (2020): 229-240. https://doi.org/10.18196/jmh.20200154

[4] Paul A. Aidonojie, Kolawole A. Adesoji, Obieshie Eregbuonye, Godswill O. Antai, Isaac O. Ottah, and Micheal Mutawalli. "The Prospect, Legal, and Socio-economic Implication of Metaverse Operation in Nigeria." YURISDIKSI 19, no. 4 (2024): 455. https://doi.org/10.55173/yurisdiksi.v19i4.201

[5] Amanim Iwok and Bassey Kooffrey "An Appraisal of the Legal Regime Available for the Protection of Consumers of Telecom Services in Nigeria." Journal of Law, Policy and Globalisation 29 (2014). https://heinonline.org/HOL/LandingPage?handle=hein.journals/jawpglob29&div=2&id=&page=

[6] Paul A. Aidonojie, Joseph Nwazi, and Eruteya Ugiomo. "The Legality, Prospect, and Challenges of Adopting Automated Personal Income Tax by States in Nigeria: A Facile Study of Edo State." Cogito Multidisciplinary Journal 14, no. 2 (2022): 149-170. https://www.ceeol.com/search/article-detail?id=1060583

govern its adoption, usage, and promotion since is gradually becoming synthesized to day to day business activities. The need to enact and implement appropriate legislation to guide the usage of a metaverse in Nigeria calls for immediate attention because of its complex nature and the negative implications it can cause when it is not properly regulated on society, the economy, and consumers as a whole[7].

In the course of the last 36 months, the country of Nigeria has gone through a lot of challenges in the area of digital and virtual asset platforms, which led to the regulation of the metaverse being an urgent issue at hand. Among the cases are the 2025 FCCPC fine of Meta that amounted to US$255 million, which was due to the company's violations of privacy and consumer protection laws[8], and the rise of virtual asset scams that the EFCC warned about, which are now considered a threat to investors and consumers in the unsupported digital realm. In addition, academic studies pointed out a lot of problems that the Nigerian legal system has with smart contracts, digital transactions, and metaverse operations, especially citing poor enforcement and legal ambiguities as the main factors that keep consumers unprotected[9]. All these developments indicate that without proper regulations that would cover the areas of ownership rights, data protection, dispute resolution, and corporate accountability, the metaverse would pose a lot of risks, thus making the need for legislative intervention both necessary and urgent. the possible learning points can be drawn from the already existing frameworks in countries like Uganda and others.

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[7] Cheong Ben Chester. "Avatars in the Metaverse: Potential Legal Issues and Remedies." International Cybersecurity Law Review 3, no. 2 (2022). https://doi.org/10.1365/s43439-022-00056-9

[8] *Guardian Nigeria*, "EFCC Warns of Surge in Digital Investment Scams," 2025, https://guardian.ng/news/efcc-warns-of-surge-in-digital-investment-scams/?utm_source=chatgpt.com. accessed 8th December, 2025

[9] Oloruntobi Opawoye, "Meta Verses FCCPC and $255 Million in Penalties: Understanding Nigeria's Assertive Turn in Multi-Agency Data and Consumer Protection Regulation," *JEE Africa*, 2025, https://jee.africa/insights/meta-verses-fccpc-and-255-million-in-penalties-understanding-nigeriais-assertive-turn-in-multi-agency-data-and-consumer-protection-regulation?utm_source=chatgpt.com., accessed 8th December, 2025

The overwhelming nature and challenges attributed to the metaverse which cut across the globe Nigeria inclusive, in terms of digitalization has put Nigeria on its toes to enact elaborate laws due to the paucity of legislation to regulate the metaverse concepts, especially on consumer protection. The efficacy and reliance of Nigerians on the metaverse demand immediate attention from the law-making bodies in Nigeria in other to address the challenges associated with the metaverse due to its wide coverage and also give maximum protection to the consumers[10]. Hence, the fact that metaverse is a new concept aimed at achieving a better result than the conventional way of promoting commerce and economic growth makes it mandatory for the lawmakers to be proactive in making laws to fill the lacuna metaverse could create especially on the issue of fraud and infringement of patent rights[11]. To promote the acceptability of the metaverse in Nigeria, it becomes imperative to make laws that will not only solve immediate challenges but the one that can stand the test of time to handle subsequent problems that could arise from full adoption of the metaverse[12]. Hence, lawmakers should make legislation that would give the metaverse a soft landing, sustenance, and also maximum protection to the consumers and entire citizens as they adapt to the changes the metaverse could create in this era of a digitalized changing world.

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[10] Kamarudeen Babatunde Bello, Jamila Bisi Aduke Suleiman and Ibrahim Danjuma. "Perspectives on Consumerism and Consumer Protection Act in Nigeria." European Journal of Business & Management 4, no. 10 (2012): 72. https://www.researchgate.net/profile/Kamarudeen-Bello/publication/365004557_Perspectives_on_Consumerism_and_Consumer_Protection_Act_in_Nigeria/links/6362ad9a37878b3e8777afaa/Perspectives-on-Consumerism-and-Consumer-Protection-Act-in-Nigeria.pdf

[11] Paul A. Aidonojie, Abacha, W. Saminu, and David Ayuba. "Effectiveness of the Administration of Justice in Nigeria under the Development of Digital Technologies." Journal of Digital Technologies and Law 1, no. 4 (2023): 1105-1131. https://doi.org/10.21202/jdtl.2023.48.

[12] ogesh K. Dwivedi, Laurie Hughes and, Abdullah M. Baabdullah “Samuel Ribeiro-Navarrete. "Metaverse Beyond the Hype: Multidisciplinary Perspectives on Emerging Challenges, Opportunities, and Agenda for Research, Practice and Policy." International Journal of Information Management 66 (2022): 102542. https://doi.org/10.1016/j.ijinfomgt.2022.102542

Further to the discussion stated above, it is important to consider the Nigerian legal framework on metaverse and also draw inferences from other jurisdictions with better and comprehensive legislation in other to holistically protect the interest of the consumer and the general public at large[13]. One of the countries where Nigerian law-making bodies can draw inspiration from is Uganda which is exceptionally on giving adequate enactments on consumer protection laws as portrayed by the Electronic Transaction Act of 2011 and the Competition Act 2023 respectively. The roles and importance of these legislations in Uganda have brought positive impacts and easy adaptation to technological advancement by the citizens of Uganda. The laws addressed the potential challenges that could emanate while having virtual or electronic commercial transactions amongst the business associates and at the same time make the protection of the consumers paramount with fair dealings[14]. These Acts also addressed the issue of monopoly powers, unlawful fixing of prices, and other negative impacts the metaverse could have on consumers. With this recent development in Uganda, Nigerian lawmakers can take lessons from Uganda on how to adequately protect consumers in this era of the metaverse.

Following from the above, this study intends to adopt a hybrid method of study to see how Nigerian lawmakers can enact comprehensive laws to regulate issues such as fraud and copyright infringement attributed to the metaverse. The study recommends that Nigerian lawmakers have the duty of making comprehensive laws to regulate metaverse and seek the protection of the consumers and citizens by considering the Uganda laws on metaverse for the benefit of Nigerians.

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[13] Agbonifoh, Ogwo and Nnolim, Nkamnebe. Marketing in Nigeria: Concepts, Principles and Decisions. Aba: Afrtowers Publishers Ltd, 2007. https://academicjournals.org/journal/AJBM/article-full-text-pdf/80AA2DA17418

[14] Paul A. Aidonojie, Toyin A. Majekodunmi, Omolola. J. Adeyemi-Balogun. "The Legal Issues Concerning the Operation of Fin-Tech in Nigeria." Jurnal Media Hukum 30, no. 20 (2023): 78-79. https://doi.org/10.18196/jmh.v30i2.18337

Method

In ascertaining consumer protection in commercial activities in the metaverse in Nigeria and Uganda, the study adopts a hybrid method of research (which involves a doctrinal and non-doctrinal method of research). The essence of the doctrinal method of research is aimed at theorizing the concept, relevance, and issues of commercial activities metaverse concept within Nigeria and Uganda. Furthermore, it aims to theorize legal regulation and protection of consumers operating commercial activities within the digital metaverse. Hence, several primary and secondary sources such as statutory laws, textbooks, articles, and relevant material were utilized or reviewed.

However, the non-doctrinal method of study, was aimed at interrogating consumers concerning the relevance and challenges often encountered in negotiating or executing commercial activities within the digital metaverse in Nigeria. To obtain a positive result through the non-doctrinal method, questionnaires were distributed to despondences residing in the various geopolitical zones in Nigeria The data obtained were analyzed using a mathematical and statistical descriptive approach.

Result and Discussion

A. Prospects of the Metaverse Concept towards Commercial Activities in Nigeria

The landscape of commercial activities globally has the propensity to be reformed by the metaverse which is a growing concept that encompasses a network of shared immersive virtual worlds and digital experiences[15]. The prospect of incorporating the metaverse into commercial activities in a country like Nigeria having a rapidly growing digital economy is one that is intriguing given the plethora of possible changes and opportunities that will be introduced into the Nigerian

[15] Eduard I. Denisov. "Robots, Artificial Intelligence, Augmented and Virtual Reality: Ethical, Legal and Hygienic Issues." Hygiene and Sanitation 98, no. 1 (2019): 5–10. https://doi.org/10.18821/0016-9900-2019-98-1-5-10.

business environment[16]. Some of these prospects that businesses in Nigeria can take advantage of in order to enhance their operations and participate in the evolving digital economy includes the following:

i. Enhanced Virtual Commerce
ii. Global Market Reach
iii. Innovative Marketing Strategies
iv. Virtual Real Estate Development
v. Digital Currency Integration
vi. E-commerce Evolution
vii. Remote Collaboration and Networking

Concerning the above, it suffices to state that the prospects that Nigerian businesses and entrepreneurs can harness from the metaverse concept are numerous and far-reaching ranging from enhanced virtual and e-commerce to the introduction and development of innovative marketing strategies which when adopted by businesses will bring about increase in profit of the businesses as well as stimulate the economic growth of the nation[17]. The integration of digital currencies into commercial ventures in Nigeria as well as the avenue of remote collaboration and networking of Nigerian businesses with international businesses is some of the intriguing and captivating prospects of the metaverse concept in Nigeria[18].

B. Potential Risks Faced by Nigeria Consumers or Users in the Metaverse

For every advantage there is a disadvantage similarly, for every prospect there are potential risks and the metaverse concept also poses

[16] Ebitu, Ezekiel Tom, "Consumer Rights, Consumer Protection and Public Policy in Nigeria: A Critical Review." International Business Research 7, no. 12 (2014): 120-121. http://dx.doi.org/10.5539/ibr.v7n12p120

[17] Paul A. Aidonojie, Oluwaseye O. Ikubanni, and Nosa Okoughae. "The Prospect, Challenges and Legal Issues of Digital Banking in Nigeria." Cogito Multidisciplinary Journal 14, no. 3 (2022): 186-209. https://www.ceeol.com/search/article-detail?id=1193350

[18] Fedorchenko Sergey. "Artificial Intelligence Phenomenon: Citizen Between Digital Avatar and Political Interface." Journal of Political Research 4, no. 2 (2020): 34–57. https://naukaru.ru/en/nauka/article/38590/view

certain risks as it relates to commercial activities[19]. As Nigeria integrates the metaverse concept into its commercial ventures, the promises of innovative virtual and immersive experiences is accompanied by some potential risks and challenges that Nigerian users or consumers are likely to face in the course of navigating through transactions within the metaverse[20]. These risks ranging from fraudulent activities, virtual asset disputes down to the broader spectrum of deceptive practices that can possibly jeopardize the user safety and financial well-being of its users will be verbosely discussed as follows:

- **i.** Fraudulent Activities
- **ii.** Virtual Asset Disputes
- **iii.** Deceptive Practices
- **iv.** Privacy Concerns
- **v.** Cybersecurity Threats

Concerning the above, it is clear that as Nigeria embraces the metaverse concept in commercial activities given the laudable and lucrative prospects it brings with it, there are also potential risks that must come with it[21]. These risks ranging from fraudulent activities to cybersecurity threat, privacy concerns, virtual assets disputes can hamper the effectiveness of the metaverse with regards to improving the overall virtual commercial environment of Nigerian businesses and users. However, there are some actions that can be taken by the Nigerian government, users and enterprises in order to mitigate these risks and they include establishing robust legal frameworks, enhancing cybersecurity measures, fostering digital literacy to mention but a few

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[19] Paul A. Aidonojie, Obieshie Eregbuonye, Toyin A. Majekodunmi, and Micheal E. Inagbor. "The Prospect and Legal Issues of Income Tax in the Nigerian Metaverse." Trunojoyo Law Review (TLR) 6, no. 1 (2024): 17-50. file:///C:/Users/Aidonojie/Downloads/23874-69532-3-PB%20(1).pdf

[20] Adeleye Adekunbi. "An Appraisal of the Consumer Protection Council Act and Consumer Rights in Nigeria." The Gravitas Review of Business & Property Law 8, no. 2 (2017): 20-39. https://gravitasreview.com.ng/product-category/consumer-protection-law/

[21] Glushchenko Idar. "Development of Virtual Migration in the Context of the Ongoing Digitalization." DEMIS. Demographic Research 1, no. 2 (2021): 57–64.

which can go a long way in safeguarding the interest of Nigerian users in this rapidly evolving digital landscape[22].

C. Nigeria legal frameworks governing consumer protection

Nigeria as a developing nation promotes digitalization and the use of technological advancement such as metaverse to make meaningful impacts, especially in the area of commerce[23]. However, there is a challenge to the protection of consumers due to the paucity of legal frameworks on metaverse, a recent trend in the digital world[24]. At present, Nigeria has some legislations that give protection and safety to the consumers, control the standard of items produced, and promote fairness amongst the trading parties to mention a few. Some of the legislations are the Consumer Protection Council Act, the Sales of Goods Act, and the Trade Malpractices (Miscellaneous Offenses) Act. These laws are at best protect the consumers who are majorly involved in physical or tangible goods and services with little or no provisions for those who are technologically advanced into metaverse to expand their line of business globally. This is because, the metaverse came with a lot of different features, changes, and ideologies which are outside the scope of the Nigerian legislation on consumer protection. These gaps in the Nigerian legal framework would subject many consumers to unfavourable conditions due to a lot of vices that come with metaverse such as fraud, privacy breaches, and disputes over virtual assets. For clarity, it is essential to consider some of the Nigerian legislations that protect consumers.

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[22] Oleg Gurov "Panel Discussion: 'The Processes of Reality Creation: Metaverses of Visionaries and Projects of Its Embodiment.'" Artificial Societies 17, no. 2 (2022). https://doi.org/10.18254/S207751800020299-7

[23] Wayne D. Hoyer, Deborah J. MacInnis, Consumer Behaviour. 3rd ed. New York: Prentice Hall, 1997. https://books.google.co.ug/books/about/Consumer_Behavior.html?id=AE4anwEACAAJ&redir_esc=y

[24] Paul A. Aidonojie, Toyin A. Majekodunmi, Obieshi Eregbuonye, and Isaac O. Ogbemudia. "Legal Issues Concerning Data Security and Privacy in Automated Income Tax Systems in Nigeria." Hang Tuah Law Journal 8, no. 1 (2024): 14-41. https://doi.org/10.30649/htlj.v8i1.223

The Consumer Protection Council Act (CPCA) of Nigeria, came into force in 1992 as one of the reliable and crucial laws to protect the rights and interests of consumers. The Act set up an agency called the Consumer Protection Council (CPC), this agency is saddled with the duty to protect the consumers, receive consumers' complaints, determine the standard of production for consumption, and create an egalitarian trading platform with adequate safety measures for the consumers. The provisions of sections 9, 10, and 12 of the CPCA expressly state the duties of manufacturers, distributors, and business owners to ensure consumer safety. Section 9 compels the manufacturers or distributors to immediately inform the general public about any unforeseen imminence or risk their product could cause any consumer and immediately withdraw such products from circulation. Section 10 further gives powers to the CPC or State Committee to take legal actions against any manufacturer producing or engaging in the production of goods that can threaten the safety of the consumers. In addition, Section 12 set out prohibited actions that are inimical to consumer protection, some of the things prohibited are; selling harmful goods, providing services that are detrimental to consumers, producing and supply of substandard goods, and so on with punitive measures to correct and punish the offenders informs of imposing fines or imprisonment. These sections mentioned above have been able to give a potential hope for the safety of the consumers and the standard expected of producers or manufacturers. The right to seek redress by the consumers who have suffered damage or loss resulting from the negligence, or unprofessional conducts, arising from sale of goods or rendering of essential services by producers or manufacturers is provided for in sections 6, 7, and 8 of CPCA. Such a consumer who has suffered loss can file a complaint through the State Committees. The State Committee is also empowered to receive complaints, conduct necessary investigations, and take necessary actions to protect the consumers in question. The provision of section 8 is to the effect that the consumer who files a civil suit is entitled to receive compensation, restitution, an order of specific performance, or any further orders as the court may deem fit suitable to compensate the affected consumers.

The Consumer Protection Council is permitted to collaborate with other entities to protect the consumers and discharge their duties[25]. The joint effort between the Consumer Protection Council and other entities has legal backing as provided by section 14 of the CPA. This joint effort is usually achieved through the establishment of a laboratory, the determination of acceptable facilities for procedural testing, and the setting of standards in the production of consumer goods. As a result of this provision, the Consumer Protection Council can demonstrate some levels of efficiency in ensuring the production of standard and quality goods for the consumers and safeguarding them from the danger that could arise from the consumption of poor goods[26]. In addition to the provision in section 14, section 15 provided for the designated inspector by the CPC, selected based on their qualification, requirements, and experience. These inspectors are to perform certain functions such as examination of products, taking of product samples for forensic tests, entering of premises to inspect containers, examination of records of producers and manufacturers, and seizure of goods which are contrabands to the provisions of the Consumer Protection Act. The CPA as a legal framework for the protection of the consumers empowered the CPC to prioritize the safety of the consumers and also set standards for the manufacturer to regulate their productions and where any manufacturer defaults, the CPC will conduct an investigation and bring such offender to book. Consumer Protection Council Act in Nigeria, through its various sections, set out a legal framework for the protection of the consumer.

[25] Levan Nanobashvili. "If the Metaverse is Built, Will Copyright Challenges Come?" UIC Review of Intellectual Property Law 21, no. 3 (2022): 215–251.

[26] Benedict Bakwaph Kanyip, Consumer Protection in Nigeria: Law, Theory and Policy. Rekon Books Ltd, 2005. https://books.google.co.ug/books/about/Consumer_Protection_in_Nigeria.html?id=1bLRuQEACAAJ&redir_esc=y

Another legal framework that regulates contractual transactions and also protects the consumers and other end users of products is the Sale of Goods Act. This Act intends to regulate the relationship between the contractual parties concerning their rights, duties, and obligations to maintain healthy commercial transactions. This Act has a wider coverage of various aspects of business transactions amongst manufacturers with the extension of the same to the consumers or end users. Although, the Sale of Goods Act has limitations on consumer protection, nevertheless, it constructively regulates the terms, conditions, and warranties regulating the contractual tenets and usage to protect the interest of buyers and consumers. Though sections 13 and 14 of the Sales of Goods Act tend to protect the interest of the buyer, However, it suffices to state that Sale of Goods Act in Nigeria expressly focuses on seller and buyer dealing on physical goods and without much reference to the term "consumer protection," however, one can opine that the provisions in the Act constructively and impliedly protect the consumers who stand in the position as a buyer in the sense that the terms and conditions provided by the Act to regulate the quality of the goods and services can be applied to the consumers and end users as well.

The Trade Malpractices (Miscellaneous Offenses) Act is another legislation aimed at reducing crime commission and punishing offenders is commercial and trade practices in Nigeria. The Act does not majorly address consumer protection, but it addresses the challenges any consumer may face which could emanate from illegal marketing structures and unhealthy competition in the commercial world. This Act was enacted to address the harmful effect or impact arising from the poor market system which can be hazardous to the environment and inimical to the good living of the citizens. The legislation serves as a regulator of business transactions with the hope of creating well a balanced market system, free from unethical trade practices for the benefit of the general populace most especially the consumers being the end users. Section 5 of the Trade Malpractices (Miscellaneous Offenses) Act and paragraphs 2 and 3 of its subsidiary legislation prohibit certain actions such as; false representations, deceit, misleading advertising, and unfair trade practices in other to uphold ethical standards, fair market dealing for all the competitors and protection of consumers from being victims of deceits. While this Act may not be primarily enacted for consumer protection, it however contributes to the protective and safety measures consumers can benefit from. It protects the consumers from being victims of dishonest contractual and business dealings with the hope of providing a reliable business world free from illegality and unethical behaviors.

From the discussion stated above, one can state that Nigerian legislation on the protection of the consumers is not elaborate and all-sufficient, especially in this recent time where technology and digitalization are the other of the day coupled with the introduction of metaverse in the world of commercial transactions. Hence, it is sacrosanct to understudy other jurisdictions with better legislation governing metaverse in other to draw lessons from them to reduce the challenges the consumers are facing in Nigeria concerning the introduction of metaverse.

D. Legal Issues Concerning Consumer Protection in the Metaverse Operation Ugandan

It must be noted that the need for the protection of the consumer from any form of fraud and exploitation is very sacrosanct in every economy[27]. This is concerning the fact that in the current dispensation, there has been an influx of producers within the national and global markets[28]. Furthermore, given the digital

[27] Stefan Koos "Digital Globalization and Law." Lex Scientia Law Review 6, no. 1 (2022): 33–68. https://orcid.org/0000-0001-7328-0646; Kingsley E. Ukhurebor and Paul A. Aidonojie, "The Influence of Climate Change on Food Innovation Technology: Review on Topical Developments and Legal Framework." Agric & Food Security 10, no. 50 (2021): 1-11. https://doi.org/10.1186/s40066-021-00327-4z.

[28] Simon E. Imoisi, and Paul A. Aidonojie, "Legal and Socio-economic Issues Concerning Black Marketer's Activities of Petroleum Products in Nigeria." Yuridika 38, no. 2 (2023): 61-84. https://doi.org/10.20473/ydk.v38i2.44999.

technology development (such as the metaverse), the need to further intensify the protection of the consumer has become necessary, this is concerning the fact that the current trend of most technology such as the metaverse concept, where the consumer could be engaged in commercial activities, was not contemplated by most countries legal framework as it concerns consumer protection[29]. However, it suffices to state that in Uganda, though the digital metaverse concept is not prominent and pronounced, their legal framework as it concerns consumer protection in digital transactions seems to have addressed peculiar issues related to consumer commercial digital transactions. In this regard, some of these Uganda laws as they concern consumer protection in digital rem will be examined as follows:

The Ugandan Competition Act was enacted in 2023, the introductory part of the Act specifically provides that the act aims to sustain and promote fair competition in commercial markets in Uganda; and to prevent and abate any ill practices having a negative or adverse effect on the consumer in Uganda; and for other related matters that affect the consumer rights and interests. Furthermore, section 2 of the Act stipulates the major objective of the law to include thus;

i. to promote and sustain the adaptability, efficiency, and development of the Ugandan economy;

ii. to ensure effective employment and advance the Uganda socio-economic welfare of its citizens;

[29] Mochalov, Andy. "Digital Profile: Main Risks for Constitutional Human Rights in the Face of Legal Uncertainty." Lex Russica 74, no. 9 (2021): 88–101. https://doi.org/10.17803/1729-5920.2021.178.9.088-101; Zhihan Lv, Liang Qiao, Yuxi Li, Yong Yuan, and Fei-Yue Wang "BlockNet: Beyond Reliable Spatial Digital Twins to Parallel Metaverse." Patterns 3, no. 5 (2022): 100468. https://doi.org/10.1016/j.patter.2022.100468; Frederick Mostert and Wei Ting Yeoh. "Meta-Worse, a Lawyer's Mega Paradise." Journal of Intellectual Property Law & Practice 17, no. 3 (2022): 211–212. http://hdl.handle.net/10.1093/jiplp/jpac008; Sparkes, Matthew. "What is a Metaverse." New Scientist 251, no. 3348 (2021): 18-32. https://doi.org/10.1016/S0262-4079(21)01450-0.

iii. to provide possible opportunities for Ugandan consumer participation in the world market

Concerning the above, to protect the consumer interest from any form of exploitation, section 12 of the Act provides for the prohibition of any form of exploitation or fraud of consumers by a dominant person in the Ugandan market which also includes the metaverse concept. Furthermore, the section stipulates that a dominant person or producer must not be involved in any fraudulent act limiting its production or practical and innovative development that could discriminate or prejudice consumers against consumers. In this regard, to ensure compliance with the act, section 14 of the Uganda Competitive Act empowers the Ministry responsible for trade to inquire into any form of abuse of the dominant person in the Uganda market against consumers. In this regard, section 20 of the act further stipulates that where, after an inquiry has been conducted, the Ministry findings reveal that an agreement, concerted practice, decision, or action of a dominant producer or person, to which the consumer complaint relates is in contravention the Uganda Competitive law, the ministry concern may make the following order:

i. Truncate or stop the continued abuse

ii. Request or demand the dominant producer or person to pay a fine

iii. Award compensation to the consumer or aggrieved persons

However, section 22 of the act further stipulates that Where a person is in contravention or breaches the provision of the Uganda Competitive law, the person, and an individual who, at the time of the breach was in sole control and responsible to the consumer for the conduct of his business that affected the consumer, such dominant producer will hold liable for committing such offense and will be required to serve the punishment prescribed by the law. In essence, it suffices to state that the Ugandan competitive consumer protection law did not expressly mention the concept of the metaverse, however, it's the wording of the provision of the law seems to be generic. This is concerning the fact that several of its provisions use the phrase "Consumer", "Ugandan market" and "Dominant Person", which in essence seem to include the digital metaverse market which exists in virtual form.

Furthermore, it must be noted one notable law as it concern consumer protection in digital transactions in Uganda has been enacted. This law is known as the Uganda Electronic Transaction Act. In this regard, it suffices to state that the Uganda jurisdiction is very much inclined to digital technology. However, the Uganda Electronic Transaction Act stipulates in its introductory part that the law aims to facilitate, the use, security, and legal regulation of commercial activities in digital technology platforms. Furthermore, a section of the Electronic Transaction Act further provides for an elaborate aim and objective of the Uganda Electronic Transaction Act, which aims to promote and develop electronic commercial activities.

However, to ensure that the consumer interest is protected when formulating electronic or digital transactions, section 13 of the act stipulates that in a digital commercial transaction, a contract is said to have been formed where an electronic or digital agent performs an act required by law that could relate to the forming of that contract. It also stipulates that a contract may be formed between parties to the digital commercial transaction using an electronic or digital agent to enter into such a contract. Also, section 13(2) of the Electronic Transaction Act further stipulates that a party using a digital agent to enter into a contract shall, subject to the provision of section 13 (3), be inevitably bound by the terms of the contract irrespective of whether the party to the contract reviewed the act of the digital agent or the terms of the contract.

It must be noted that one of the formidable parts of the Electronic Transaction Act as it concerns the protection of consumers is section 24 of the Act. The said section stipulates that a person offering any kind of goods or services for hire, exchange, or sale, through a digital transaction, shall provide to the consumers on its website or digital electronic communication where such services or goods are offered. Furthermore, to ensure the consumer financial activities or banking account is not subjected to hacking by internet fraudsters when engaging in payment of any goods and services obtained or transaction in an electronic or digital platform. This is concerning the fact that section 24(5) of the Uganda Electronic Transaction Act stipulates that the person offering goods and services in a digital platform must use a use a secured payment system with a highly accepted digital technologic standard. In this regard, section 24(6) of the Act further stipulates that where a person offering goods or services for hire, sale, or exchange through a digital or electronic platform is not in compliance with section 24(5) of the Act, will be held liable and made to pay damages to the consumer. Furthermore, section 28 of the act stipulated that no agreement shall exclude or limit the rights of consumer provided for in the Electronic Transaction Act of Uganda.

Concerning the above, it suffices to state that though the concept of metaverse seem not to have gain prominence in Uganda. However, Uganda seems to already have digital laws that could to some extent regulate virtually commercial activities within the metaverse. Furthermore, the Electronic Transaction Act in essence also seems to have comprehensively protected and secured the interest of consumers from any form of technological fraud or exploitation. In this regard, it suffices to state that this is an ideal law that is required for Nigeria Government should adopt and improve on to enhance consumer protection from commercial activities in the evolving metaverse concept in Nigeria.

E. Data Presentation and Analysis

This segment concentrates on the presentation and examination of the data acquired through the distribution of questionnaires among the participants in the study. The systematic retrieval of information from the respondents' questionnaire replies is delineated as follows:

F. Sample Size and Sampling Techniques

To ensure a comprehensive and representative collection of responses from individuals residing in Nigeria, the study aimed for a sample size of 317 respondents, distributed across various geopolitical zones within the country. The selection of participants utilized a simple random sampling method[30], chosen for its effectiveness inreaching a diverse audience[31]. Simple random sampling was preferred due to its several advantages[32], including:

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[30] Paul A. Aidonojie, and Idemudia O. Edetalehn. "A Facile Study of the Statutory Challenges Concerning Customary Practice of Intestate Succession in Nigeria." *Jurnal Hukum Replik* 11, no. 1 (2023): 1-11. https://jurnal.umt.ac.id/index.php/replik/article/view/7552/pdf; Pau A. Aidonojie, "The Societal and Legal Missing Link in Protecting a Girl Child Against Abuse Before and Amidst the COVID-19 Pandemic in Nigeria." *Jurnal Hukum UNISSULA* 38, no. 1 (2022): 61-80. https://doi.org/10.26532/jh.v38i1.18412; Paul A. Aidonojie, Aidonojie, Idemudia I. Edetalehn, Oluwaseye O. Ikubanni, and Adefisayo A. Oyebade. "A Facile Study Concerning the Legal Issues and Challenges of Herbal Medicine in Nigeria." *The Indonesian Journal of International Clinical Legal Education* 4, no. 4 (2022). https://doi.org/10.15294/ijicle.v4i4.61641

[31] Paul A. Aidonojie, Toyin. A. Majekodunmi, Oluwaseye O. Ikubanni, and Nosa Ibrahim. "The Causes of the Rising Incidence of Domestic Violence in Nigeria: Proposing Judicial Separation as a Panacea." *Jurnal Hukum UNISSULA* 38, no. 2 (2022): 61-80. https://doi.org/10.26532/jh.v38i2.21592; Paul A. Aidonojie, Nosa Okuonghae, and Kingsley E. Ukhurebor. "The Legal Rights and Challenges of COVID-19 Patients Accessing Private Healthcare in Nigeria." *BESTUUR* 10, no. 2 (2022): 183-197. https://doi.org/10.20961/bestuur.v10i2.68118; Paul A. Aidonojie, Oluwaseye O. Ikubanni, and Adefisayo. A. Oyebade. "Legality of EndSARS Protest: A Quest for Democracy in Nigeria." *Journal of Human Rights, Culture and Legal System* 2, no. 3 (2022): 209-224. https://doi.org/10.53955/jhcls.v2i3.40; Paul A. Aidonojie. "Voluntary Assets and Income Declaration Scheme a Panacea to Tax Evasion in Edo State, Nigeria." *Administrative and Environmental Law Review* 4, no. 1 (2023): 1-20. https://doi.org/10.25041/aelr.v4i1.2822; Paul A. Aidonojie. "Environmental Hazard: The Legal Issues Concerning Environmental Justice in Nigeria." *Journal of Human Rights, Culture and Legal System* 3, no. 1 (2023): 17-32. https://doi.org/10.53955/jhcls.v3i1.60

[32] Paul A. Aidonojie, Simon E. Imoisi, and Idemudia E. Oaihimire. "A Facile Study Concerning the Prospect and Challenges of Conducting a Hybrid Method of Legal Research in Nigeria." *Euromentor Journal* 13, no. 3 (2022): 113-138. https://www.ceeol.com/search/article-detail?id=1194336; Paul A. Aidonojie, Toyin A. Majekodunmi, and Omolola J. Adeyemi-Balogun. "Unethical and Uncensored Content Creation in Nigeria's Entertainment Industry: Springing the Law to

i. Ideal for the selection of participants from varied and heterogeneous populations.

ii. Results acquired through the application of simple random sampling are frequently impartial, fair, and unbiased.

iii. A direct and uncomplicated method to execute.

Simple random sampling can be proficiently utilized in hybrid legal research approaches.

G. Data Analysis

The analysis of the responses gathered from the distributed questionnaires was conducted meticulously, and the outcomes were showcased through graphical and tabular formats. This method enhances clarity and simplifies the interpretation process, ensuring that the results are easily understandable for a diverse audience.

H. Research Question One

Action." *Jurnal Hukum Replik* 11, no. 2 (2023): 173-202. https://jurnal.umt.ac.id/index.php/replik/article/view/8302/pdf; Paul A. Aidonojie, Nosa Okuoghae, Patient O. Agbale, and Idahosa M. Ekata "Supervisor and Supervisee Relationship: The Legal and Ethical Issues Concerning Academic Theft in Nigeria Tertiary Institution." *Euromentor Journal* 13, no. 1 (2022): 113-138. https://www.ceeol.com/search/article-detail?id=1060583; Paul A. Aidonojie and Francis Esther Chetachukwu. "Legal Issues Concerning Food Poisoning in Nigeria: The Need for Judicial and Statutory Response." *Jurnal Media Hukum* 29, no. 1 (2022): 65-78. https://doi.org/10.18196/jmh.v29i1.12595

Figure 1: Presents the participants concerning their locations resided in the geopolitical regions of Nigeria.

S/N	Geopolitical Zones in Nigeria	Responses of Respondents	Percent
1	North Central	45	14.2%
2	North East	50	15.8%
3	North West	48	15.1%
4	South East	54	17%
5	South South	64	20.2%
6	South West	56	17.7%
	TOTAL	317	100%

Table 1: is a summary of valid responses from participants concerning their locations resided in Nigeria.

Figure 1 and Table 1 Illustrate the recognition of distinct geopolitical zones in Nigeria as conveyed by the survey participants.

I. Research Question Two

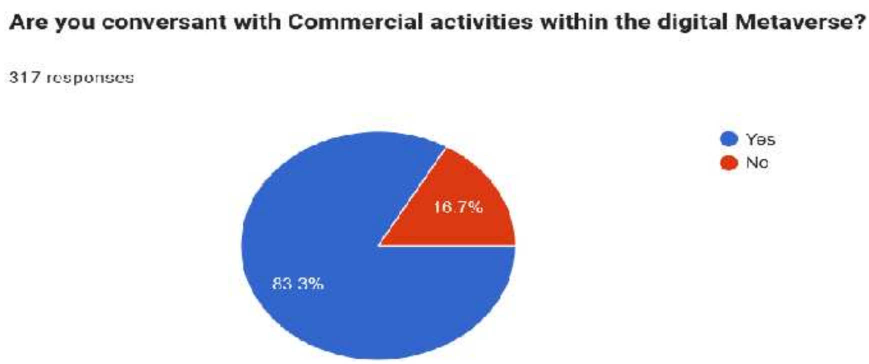

Figure 2: illustrates participants' awareness of commercial activities in the Metaverse.

	Response	Percent
Valid Yes	264	83.3%
Valid No	53	16.7%
Total	317	100%

Table 2: a valid summary of participants' awareness of commercial activities in the Metaverse

The information provided in Figure 2 and Table 2 collectively validates the respondents' recognition and awareness of commercial activities within the Metaverse.

J. Research Question Three

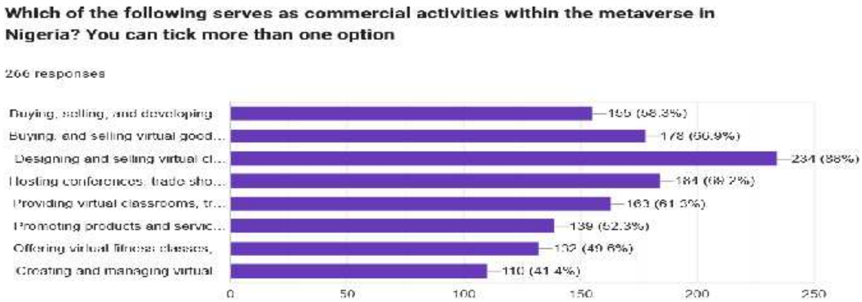

Figure 3: Identification of commercial activities within the metaverse operation in Nigeria

Commercial activities within the metaverse	Cluster of Response	Percentage
Buying, selling, and developing virtual land within the metaverse.	155	58.3%
Buying, and selling virtual goods and assets trading.	178	66.9%
Designing and selling virtual clothing and accessories for avatars.	234	88%
Hosting conferences, trade shows, and other events within the metaverse.	184	69.2%
Providing virtual classrooms, training sessions, and educational content.	163	61.3%
Promoting products and services through virtual advertising spaces.	139	52.3%
Offering virtual fitness classes, wellness programs, and health-related services.	132	49.6%
Creating and managing virtual currencies, as well as providing virtual banking services.	110	41.4%

Table 3: Valid Cluster of identifying commercial activities within the metaverse operation in Nigeria

Figure 3 and Table 3 are summarize valid cluster identification of the various commercial activities within the metaverse operation in Nigeria.

K. Research Question Four

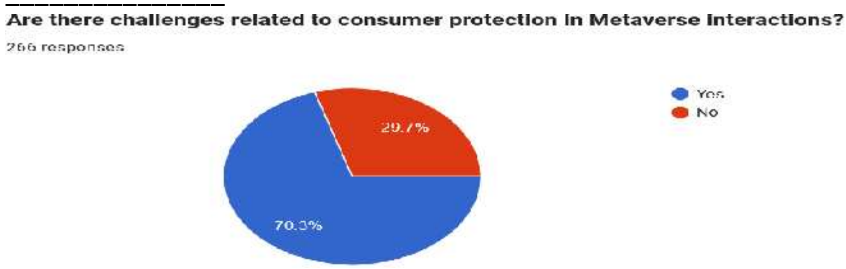

Figure 4: Confirmation of challenges of consumer protection in the metaverse operation in Nigeria

	Response	Percent
Valid Yes	187	70.3%
Valid No	79	29.7%
Total	**266**	**100%**

Table 4: Valid confirmation of the challenges of consumer protection in the metaverse operation in Nigeria

Figure 4 and Table 4 are confirmation of the challenges of consumer protection in the metaverse operation in Nigeria.

L. Research Question Five

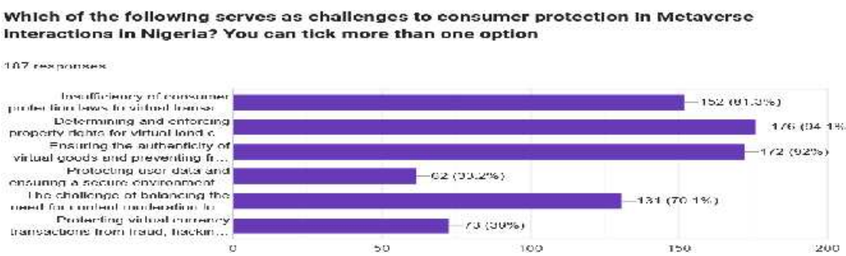

Figure 5: Identification of challenges of consumer protection in the metaverse operation in Nigeria

Challenges to consumer protection in Metaverse interactions in Nigeria	Cluster of Responses	Percentage
Insufficiency of consumer protection laws to virtual transactions and	152	81.3%

ensuring users have adequate recourse in case of fraud or disputes.		
Determining and enforcing property rights for virtual land could be challenging, leading to disputes over ownership and unauthorized use.	176	94.1%
Ensuring the authenticity of virtual goods and preventing fraudulent activities, such as scams and counterfeit items, can be difficult.	172	92%
Protecting user data and ensuring a secure environment for virtual events to prevent hacking, data breaches, and unauthorized access.	62	33.2%
The challenge of balancing the need for content moderation to prevent harm with the principles of free expression, and addressing censorship concerns.	131	70.1%
Protecting virtual currency transactions from fraud, hacking, and other security threats, is similar to challenges faced in traditional online banking.	73	39%

Table 5: Cluster of identifying the challenges of consumer protection in the metaverse operation in Nigeria

Figure 5 and Table 5 are cluster respondents identifying the challenges of consumer protection in the metaverse operation in Nigeria.

M. Research Question Six

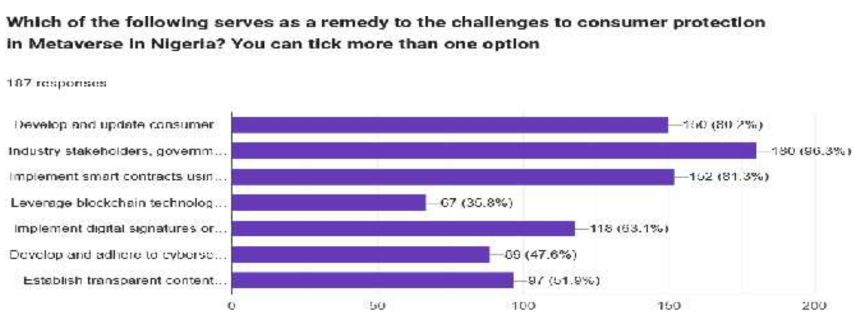

Figure 6: Remedies concerning the challenges of consumer protection in metaverse operation in Nigeria

Remedy to the challenges to consumer protection in Metaverse in Nigeria	Cluster of Responses	Percentage
Develop and update consumer protection laws specifically tailored to virtual transactions, taking into account the unique aspects of the metaverse.	150	80.2%
Industry stakeholders, governments, and the metaverse community can collaborate to create self-regulatory bodies and codes of conduct.	180	96.3%
Implement smart contracts using blockchain technology to automate and enforce property rights within the metaverse.	152	81.3%
Leverage blockchain technology to create transparent and traceable records of virtual goods, ensuring authenticity and provenance.	67	35.8%
Implement digital signatures or certificates for virtual goods to verify their legitimacy.	118	63.1%
Develop and adhere to cybersecurity standards specific to virtual activities.	89	47.6%
Establish transparent content moderation guidelines, clearly defining prohibited content and the consequences for violations.	97	51.9%

Table 6: Valid remedies concerning the challenges of consumer protection in metaverse operation in Nigeria

Figure 6 and Table 6 are valid respondents' cluster identification of remedies to concerning the challenges of consumer protection in metaverse operations in Nigeria.

N. Discussion of Findings

The meticulous analysis of responses from distributed questionnaires provides valuable insights into the dynamics of the Metaverse in Nigeria. The outcomes, presented through figures and tables, facilitate a clear understanding of participants' locations, awareness of Metaverse commercial activities, specific engagements within the Metaverse, challenges related to consumer protection, and proposed remedies. In this regard, Figure 1 and Table 1 offer a comprehensive overview of participants' locations across Nigeria's geopolitical zones. The data highlights a diverse representation, with the South-South leading at 20.2%, followed by the South-west at 17.7%. This distribution ensures a broad perspective, capturing insights from various regions. However, Figure 2 and Table 2 validate respondents' recognition and awareness of commercial activities within the Metaverse. An overwhelming 83.3% affirm awareness, indicating a substantial acknowledgment of the Metaverse among the surveyed individuals. Figure 3 and Table 3 itemize various commercial activities within the Metaverse. Notable engagements include;

i. 58.3% of respondents identify buying, selling, and developing virtual land within the Metaverse as a commercial activity.

ii. 66.9% recognize buying and selling virtual goods and assets trading as a notable Metaverse commercial activity.

iii. 88% acknowledge the commercial activity of designing and selling virtual clothing and accessories for avatars.

iv. 69.2% identify hosting conferences, trade shows, and other events within the Metaverse as a commercial engagement.

v. 61.3% recognize the provision of virtual classrooms, training sessions, and educational content as a distinct commercial activity.

vi. 52.3% acknowledge the commercial activity of promoting products and services through virtual advertising spaces.

vii. 49.6% identify offering virtual fitness classes, wellness programs, and health-related services as a commercial engagement.

viii. 41.4% recognize the creation and management of virtual currencies, as well as providing virtual banking services, as commercial activities.

However, given the commercial activities in the metaverse operation in Nigeria, Figure 4 and Table 4 confirm challenges of consumer protection in the Metaverse, with 70.3% acknowledging issues. This underscores the significance of addressing consumer protection concerns in virtual environments. In this regard, Figure 5 and Table 5 present specific challenges to consumer protection in the Metaverse. Notable concerns include insufficiency of consumer protection laws (81.3%), property rights enforcement challenges (94.1%), and difficulties in ensuring the authenticity of virtual goods (92%). These challenges highlight the complexities associated with safeguarding users in virtual spaces. Figure 6 and Table 6 outline proposed remedies for consumer protection challenges. The recommendations include;

i. 96.3% of respondents suggest that industry stakeholders, governments, and the metaverse community collaborate to create self-regulatory bodies and codes of conduct as a remedy for consumer protection challenges.

ii. 80.2% recommend developing and updating consumer protection laws specifically tailored to virtual transactions, taking into account the unique aspects of the metaverse.

iii. 81.3% propose implementing smart contracts using blockchain technology to automate and enforce property rights within the metaverse.

iv. 35.8% suggest leveraging blockchain technology to create transparent and traceable records of virtual goods, ensuring authenticity and provenance.

v. 63.1% advocate for implementing digital signatures or certificates for virtual goods to verify their legitimacy.

vi. 47.6% recommend developing and adhering to cybersecurity standards specific to virtual activities.

vii. 51.9% suggest establishing transparent content moderation guidelines, clearly defining prohibited content and the consequences for violations.

Concerning the above, it suffices to state that the findings underscore the growing awareness of the Metaverse in Nigeria, with participants actively engaging in diverse virtual activities. However, the acknowledgment of consumer protection challenges signals the need for targeted interventions. The proposed remedies, including legal adaptations and industry collaboration, provide actionable steps for policymakers and stakeholders to enhance the regulatory framework and ensure a secure and transparent Metaverse environment in Nigeria. The study lays a foundation for informed decision-making in navigating the complexities of virtual interactions in the country.

Conclusion

This study has been able to examine legal issues and the relevance of consumer operating commercial activities in the Metaverse within Nigeria and Uganda. Study reveals the fact that the concept of metaverse is a trending digital technology that tend to exist in virtual reality form and exists side by side with the physical world. The study further states the fact that there are lot of potential that the metaverse concept tends to provide in enhancing commercial activities. The study also identifies the fact that given the innovative potential of the metaverse concept, it is gradually gain increase in recognisition.

Concerning the above, it suffices to state that given the potential of the metaverse concept, Nigeria has sort to gradually accept same in her commercial activities. However, there seem to be short coming of adopting the metaverse in operating commercial activities, this is concerning the fact that the study further reviews the fact that Nigeria does not poses the sufficient laws it protects and safeguarding consumer rights from any form of violation and fraudulent activities. However, it must be noted that in Uganda, thiough the concept of metaverse seems not be pronounce, but they pose the requisite legal framewok that tend to provide for the protection of right of consumer. This is concerning the fact that the Uganda Competitive Law 2023 and the Electronic Transaction Act, which tend to secure and protect the consumer operating on any digital platform.

Concerning the above, it is therefore recommended as follows: Enhance consumer protection frameworks within the metaverse, combatting fraud within the metaverse and establish dispute-resolution mechanisms. Furthermore, there is a need for public awareness and education concerning commercial activities within the metaverse By implementing these recommendations, Nigeria can lay the foundation for a robust and adaptive legal framework that not only protects consumers but also fosters innovation and responsible business practices within the Metaverse. As the Metaverse continues to evolve, proactive measures are imperative to ensure that it becomes a space where users can confidently engage in virtual interactions, free from undue risks and uncertainties. Furthermore, the following are also recommended:

1. Strengthening Legal and Regulatory Frameworks

The Nigerian government needs to put into place a complete legal structure whose main purpose is to control commercial interactions and protect consumers in the metaverse. This structure should unify the principles of existing laws, such as consumer protection, data privacy, intellectual property, and cybersecurity, into a uniform digital policy. Also, the laws should be able to change with technology so that they remain highly relevant and easily enforced in a digitally changing world.

2. Cybersecurity and Fraud Prevention Measures

To protect buyers and keep them trusting virtual transactions, Nigeria must upgrade its cybersecurity infrastructure. This means creating very tough measures to detect, prevent, and punish deceptive activities inside the metaverse. Forming special cybercrime units, increasing digital forensics capabilities, and encouraging cross-sector partnerships among banks, police, and digital service providers are important for stopping virtual fraud and data loss.

3. Digital Education and Consumer Literacy

A national digital literacy program aimed at educating the public about the dynamics of commercial transactions within the metaverse needs to be implemented by the Nigerian government, partnering with educational institutions and industry stakeholders. The program should touch on the key areas such as the risks and advantages of participating in metaverse transactions, the rights and duties of digital consumers, and the most effective ways to protect personal data and prevent online fraud. The public will be more aware and responsible in their use of the digital economy through such initiatives.

4. Establishment of Virtual Dispute Resolution Mechanisms

An Alternative Dispute Resolution (ADR) framework specifically for virtual settings should be in place in Nigeria to handle efficiently consumer complaints and disputes that have come up in the metaverse area. The implementation of e-mediation and virtual arbitration platforms, which are fast, inexpensive, and easily accessible for conflict resolution without the physical constraints of proceedings, could be part of the ADR framework. The creation of such mechanisms would not only build up consumer trust but also encourage fair practices in the digital commerce realm.

5. International and Regional Collaboration

Legal cooperation with other African countries, which are Nigeria's neighbors in terms of digital regulatory and management capabilities, e.g., Uganda, Kenya, and South Africa, should be one of the steps in Nigeria's strategy for cross-border digital activities regulation. This collaboration will ease the way of knowledge transfer, standardization, and the building of a unified metaverse governance framework. The partnerships are imperative to overcome the challenges resulting from the unrestricted nature of digital transactions and to guarantee corresponding consumer protection across countries.

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Uganda Competitive Act

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PERSPEKTIF HUKUM

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PENDEKATAN HUKUM PEMERINTAH INDONESIA TERHADAP PEMULIHAN ASET DARI NEGARA NON- AEOI

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Article

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Abstract

This research aims to analyze the impact of the legal vacuum in international tax treaties on Automatic Exchange of Information (AEoI) on tax avoidance practices in Indonesia, as well as to find ways that the state driven by the government can withdraw assets from individuals and entities hidden in tax heaven countries whose tax treaties do not contain global information exchange standards set by the OECD, the research method used is a normative juridical approach with qualitative analysis. Primary data was obtained through document studies of national and international regulations, while secondary data was obtained from literature, journals, and reports of international institutions such as the OECD and the Global Forum, the results showed that the legal vacuum at the level of technical implementation of AEoI in Indonesia led to the low effectiveness of cross-border data exchange. This opens a gap for taxpayers to move assets to jurisdictions that do not have active AEoI agreements, which ultimately reduces the potential for state revenue from foreign taxes and the inability of the state to retrieve and or confiscate assets from individuals and entities obtained by harming the state and society such as organ trafficking, tax evasion, transfer pricing to corruption, These findings confirm the need for harmonization of domestic regulations with international standards, This recommendation is important to strengthen the integrity of the national tax system and prevent cross-border tax evasion and concealment practices. These recommendations are important to strengthen the integrity of the national tax system and prevent the practice of tax evasion and concealment of cross- border assets.

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Pendahuluan

Automatic Exchange of Information (AEoI) adalah rencana dari peserta negara yang terhimpun dalam G20, yang diinisiasi oleh *Organization for Economic Cooperation and Development* (OECD), untuk melakukan pertukaran informasi wajib pajak antar negara. Kebijakan ini didasari karena kurangnya kepatuhan subyek pajak, sehingga dengan adanya sistem ini subyek pajak yang membuka rekening di negara lain bisa terlacak oleh otoritas pajak negara asalnya. Tujuan penerapan AEoI utamanya adalah untuk mencegah praktik penggelapan atau penghindaran pajak, yang dilakukan oleh subyek pajak, dalam hal menyembunyikan keuangan atau asetnya di luar negeri. Sistem kerjanya yakni dilakukan antar otoritas pajak yang tergabung dalam AEoI, dengan cara mengirimkan dan menerima informasi awal setiap tahunnya, tanpa harus mengajukan permintaan khusus[1].

[1] Bambang Sugeng Ariadi Subagyono et al., *Implementasi berlakunya undang-undang no 9 tahun 2017 sebagai komitmen indonesia dalam pertukaran*

dengan adanya AEoI ini otoritas pajak dan otoritas keuangan tiap-tiap negara yang telah memuat AEoI dalam perjanjian perpajakan internasionalnya dapat dengan mudah melacak keuangan dan aset milik subyek pajak di negaranya, terutama mengenai asal mula kekayaan dan bagaimana subyek pajak mendapatkan aset-aset berharganya yang diletakkan di luar negeri. Namun, sering kali banyak dari subyek pajak yang kemudian memanfaatkan kekosongan hukum untuk melarikan aset berharganya ke negara yang tidak memuat perjanjian AEoI dalam perjanjian perpajakan internasional, agar aset tersebut tidak disita oleh pemerintah negara.

Pada kerangka **hierarki hukum internasional**, AEoI menempati posisi sebagai norma *non-binding* atau *soft obligation*. Hal ini berbeda dari *hard law* seperti konvensi internasional (contoh: Konvensi Wina 1969 tentang Hukum Perjanjian), yang memiliki kekuatan mengikat secara yuridis. Meskipun demikian, AEoI memiliki kekuatan normatif yang tinggi karena didukung oleh konsensus global dan praktik luas antarnegara (*state practice*). Dalam beberapa kasus, ketentuan-ketentuan dalam AEoI mulai menunjukkan ciri khas norma kebiasaan internasional (*customary international law*) karena konsistensi penerapan dan keyakinan hukum (*opinio juris*) negara peserta bahwa kewajiban pertukaran informasi adalah bagian dari tata kelola fiskal global yang baik[2].

Posisi hukum AEoI semakin kuat apabila negara peserta menerjemahkannya ke dalam sistem hukum nasional, misalnya melalui regulasi pajak domestik atau ratifikasi perjanjian bilateral/multilateral yang menyebutkan implementasi standar CRS. Di Indonesia, hal ini tercermin dalam penerbitan berbagai regulasi seperti Peraturan Menteri Keuangan (PMK) No. 73/PMK.03/2017 tentang Tata Cara Pertukaran Informasi Berdasarkan Perjanjian

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informasi keuangan secara otomatis (CV Jakad Media Publishing, 2019), https://repository.unair.ac.id/107705/.

[2] Noor Anwar, *Hierarki Hukum Internasional*, n.d., accessed June 22, 2025, https://www.academia.edu/8823370/hierarki_hukum_Internasional.

Internasional[3], yang merupakan dasar hukum domestik pelaksanaan AEoI. Dengan demikian, AEoI berada pada lapisan hukum internasional yang fleksibel namun efektif. Keikutsertaan negara dalam sistem ini tidak diwajibkan secara hukum, tetapi secara politis dan ekonomis memiliki daya dorong tinggi untuk dipatuhi. Keterikatan tersebut sering disebut sebagai *compliance by cooperation*, yang menekankan pada kesadaran kolektif antarnegara untuk melawan praktik penghindaran pajak secara lintas batas melalui mekanisme pertukaran informasi yang terstruktur dan otomatis.

Fenomena penghindaran pajak lintas negara telah menjadi perhatian utama dalam diskursus perpajakan global, terutama sejak terungkapnya skandal seperti Panama Papers dan Paradise Papers yang menunjukkan keterlibatan individu dan entitas dari berbagai negara dalam menyembunyikan kekayaan di negara-negara *tax heaven*. Keprihatinan ini mendorong negara-negara anggota G20 dan *Organisation for Economic Co-operation and Development* (OECD) untuk mengembangkan sistem transparansi keuangan internasional berbasis kerja sama.[4]

Sejak diperkenalkan pada tahun 2014 melalui inisiatif ***Common Reporting Standard*** **(CRS)** oleh OECD[5], sistem AEoI mengalami perkembangan pesat. Saat ini lebih dari 120 yurisdiksi, termasuk negara-negara anggota G20, telah berkomitmen untuk mengimplementasikan AEoI secara timbal balik. Negara-negara maju seperti Jerman, Inggris, Prancis, Jepang, dan Australia telah

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[3] Perubahan Atas Peraturan Menteri Keuangan Nomor 73/PMK.03/2017 Tentang Petunjuk Teknis Mengenai Akses Informasi Keuangan Untuk Kepentingan Perpajakan, accessed June 22, 2025, http://peraturan.bpk.go.id/Details/112711/pmk-no-73-pmk032017.

[4] International Consortium Of Investigate Journalists, "ICIJ Offshore Leaks Database," No Date, https://offshoreleaks.icij.org/.

[5] Organization for Economic Cooperation and Development, "Common Reporting Standard (CRS) and Crypto-Asset Reporting Framework (CARF)," No Date, https://web-archive.oecd.org/tax/automatic-exchange/common-reporting-standard/index.htm.

menetapkan regulasi domestik yang mengintegrasikan ketentuan AEoI dalam sistem hukum nasionalnya. Di Jerman, misalnya, lembaga perpajakan federal memiliki akses langsung terhadap data perbankan lintas negara berdasarkan laporan yang disusun sesuai standar CRS. Begitu pula di Inggris, lembaga seperti *HM Revenue and Customs* (HMRC) secara aktif memanfaatkan data AEoI untuk menindak pelanggaran perpajakan dan memulihkan aset tersembunyi di luar negeri.

Perjanjian perpajakan internasional memiliki peran yang sangat penting dalam mengatur hubungan perpajakan antara dua negara atau lebih. Dua model utama yang digunakan dalam perjanjian ini adalah ***bilateral agreements*** dan ***multilateral agreements***. Keduanya memiliki kelebihan dan kelemahan masing-masing yang memengaruhi efektivitas pelaksanaan sistem perpajakan internasional, termasuk dalam hal penghindaran pajak dan pertukaran informasi keuangan antarnegara. Perjanjian **bilateral** umumnya disusun antara dua negara untuk menghindari pajak berganda dan mencegah penghindaran pajak, sedangkan perjanjian **multilateral** mengatur hubungan pajak antara banyak negara, dengan tujuan mencapai efisiensi dalam pengelolaan pajak lintas negara.

Konteks implementasi ***Automatic Exchange of Information*** **(AEoI)**, perjanjian bilateral memberikan ruang untuk kesepakatan yang lebih spesifik antara dua negara, namun menghadirkan tantangan terkait keberagaman kebijakan dan kesulitan dalam menjangkau negara-negara yang berpotensi menjadi *tax haven*. Sebaliknya, perjanjian multilateral seperti ***Multilateral Competent Authority Agreement*** **(MCAA)**[6] yang disusun oleh OECD, memberikan kemudahan pertukaran informasi antarnegara dalam

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[6] Organisation for Economic Co-operation and Development (OECD), *Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information*, 2014, https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-transparency-and-international-co-operation/multilateral-competent-authority-agreement.pdf.

kerangka yang lebih luas, tetapi mungkin mengalami kendala dalam hal fleksibilitas dan penyesuaian dengan kebutuhan masing-masing negara peserta.

Pemahaman mengenai perbedaan mendalam antara kedua jenis perjanjian ini menjadi sangat penting dalam konteks upaya Indonesia dan negara-negara lainnya untuk menanggulangi penghindaran pajak lintas batas, serta memperkuat penerimaan pajak melalui mekanisme AEoI. Perjanjian-perjanjian tersebut sering kali perlu diubah atau diperbarui untuk memastikan bahwa mereka tetap relevan dengan perkembangan sistem perpajakan internasional dan peraturan yang terus berubah.

Renegosiasi atau amandemen suatu ***tax treaty*** (perjanjian perpajakan internasional) bukanlah hal yang sederhana. Proses ini melibatkan aspek hukum dan diplomatik yang kompleks. Negara-negara yang terlibat harus melakukan diskusi dan kesepakatan ulang mengenai ketentuan-ketentuan yang telah disepakati sebelumnya. Proses ini sering kali memerlukan waktu yang cukup lama dan harus mempertimbangkan berbagai faktor, seperti perubahan kebijakan nasional, dinamika ekonomi internasional, dan kesepakatan bersama tentang standar perpajakan internasional yang baru, termasuk penerapan AEoI. Dalam hal ini, langkah-langkah hukum yang perlu dilakukan meliputi proses persetujuan parlemen, perundingan bilateral atau multilateral, serta implementasi regulasi yang relevan untuk memastikan bahwa perjanjian yang baru memenuhi kepentingan kedua negara

Automatic Echange of Information (AEoI) merupakan kerangka kerjasama internasional yang bertujuan untuk mengungkapkan aset dan pendapatan yang disembunyikan secara ilegal di luar negeri. Melalui pertukaran informasi otomatis antara negara-negara yang terlibat, AEoI memungkinkan para otoritas pajak untuk memperoleh akses terhadap informasi keuangan warga negara mereka yang disimpan di lembaga keuangan asing[7], sistem ini dimuat dalam perjanjian perpajakan internasional antar negara, namun faktanya dalam perjanjian perpajakan internasional Negara Indonesia dengan beberapa negara lain, masih ada perjanjian perpajakan internasionalnya yang tidak memuat sistem Automatic Exchange of Information ini, sebagai contohnya adalah perjanjian perpajakan negara indonesia dengan negara switzerland[8],

Implementasi AEoI juga berdampak nyata dalam menutup celah penghindaran pajak. OECD mencatat bahwa sejak peluncuran AEoI, negara-negara anggota berhasil mengidentifikasi lebih dari EUR 100 miliar aset yang sebelumnya tidak terlapor, sekaligus meningkatkan kepatuhan sukarela (*voluntary compliance*) para wajib pajak. Negara seperti Australia mencatat peningkatan pendapatan negara dari pajak asing sebagai hasil langsung dari pemanfaatan data AEoI. Hal ini menunjukkan bahwa efektivitas AEoI sangat tergantung pada komitmen politik, kesiapan infrastruktur data, serta integrasi hukum yang kuat di tingkat nasional.

Kekosongan hukum terkait *automatic exchange of information* (AEoI) antar negara ini dapat menimbulkan dampak yang serius diataranya adalah penghindaran dan penggelapan pajak yang disebabkan karena kosongnya kerangka hukum yang jelas untuk pertukaran informasi keuangan secara otomatis, hal ini dapat dimanfaatkan oleh individual atau suatu entitas dapat dengan mudah menyembunyikan harta di luar negeri tanpa sepengetahuan otoritas pajak dinegara asalnya, ketika informasi keuangan tidak dapat diakses karena tidak adanya mekanisme AEoI, maka potensi penerimaan pajak dari harta individu atau entitas yang berada diluar negri tidak

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[7] Indira Despuanitara Batara Randa and Imam Haryanto, “Perlindungan Hukum Atas Data Wajib Pajak Dalam Sistem Automatic Exchange of Information (AEoI) Studi Perbandingan Indonesia Uni Eropa,” *Legal Standing : Jurnal Ilmu Hukum* 5, no. 1 (2021): 1, https://doi.org/10.24269/ls.v5i1.3563.

[8] Ortax, “Switzerland (Swiss) - Ortax,” Treaty - Ortax, January 1, 1990, https://datacenter.ortax.org/ortax/treaty/show/55.

dapat ditagih, hal ini menyebabkan bekurangnya pendapatan negara yang dapat digunakan untuk kepentingan pembangunan dalam negeri, dengan kekosongan itu bisa berdampak pada pelemahan kepercayaan publik terhadap integritas sistem pajak, dan wajib pajak lokal mungkin merasakan ketidakadilan karena individu maupun entitas yang memiliki kekayaan dapat dapat menghindari pajak dengan memanfaatkan kekosongan hukum internasional, hal ini juga dapat menciptakan ketergangguan hubungan internasional karena negara yang tidak memiliki regulasi AEoI dapat dianggap sebagai negara surga pajak dan negara negara mitra berpotensi akan melakukan tekanan diplomatik atau bahkan sanksi ekonomi, tanpa pertukaran informasi otomatis para aparat penegak hukum akan sulit mengakses data lintas negara yang menghambat efisiensi penyelidikan kasus kejahatan finansial seperti penggelapan pajak[9].

Penelitian terdahulu yang membahas terkait penggelapan aset keluar negara Indonesia yang memanfaatkan kekosongan hukum mengenai AEoI dalam perjanjian perpajakan internasional, hanya membahas mengenai pengertian dan pemanfaatan *automatic exchange of information* oleh para pelaku *tax evasion* dan *tax avoidance*[10], peran dan dampak dari *automatic exchange of information*[11], *Tansfer Pricing*[12]. Sejauh ini belum pernah ada penelitian yang membahas mengenai tindakan hukum apa yang dapat dilakukan oleh pemerintah jika

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[9] Daniel Jeong-Dae Lee, "Hide-and-Seek: Can Tax Treaties Reveal Offshore Wealth?," *Development Economic Review* 14, no. 1 (2020): 1.

[10] Imtiyaz Farras Mufidah, "Menyoal Konsep Peran Automatic Exchange of Information Untuk Meningkatkan Pendapatan Negara Atas Kepatuhan Terhadap Pajak," *Journal Economic Insights* 3, no. 1 (2024): 1, https://doi.org/10.51792/jei.v3i1.92.

[11] Agustina Prativi Nugraheni et al., "Peran Dan Dampak Automatic Exchange of Information," *Jurnal Ilmiah Manajemen, Ekonomi, & Akuntansi (MEA)* 7, no. 2 (2023): 2, keuangan, https://doi.org/10.31955/mea.v7i2.3065.

[12] Alifatul Akmal Al Hasyim et al., "Pengaruh Transfer Pricing, Kepemilikan Asing, Dan Intensitas Modal Terhadap Penghindaran Pajak," *Jurnal Akuntansi dan Pajak* 23 (01 2023), https://doi.org/DOI:%2520https://doi.org/10.29040/jap.v23i2.7525.

pertukaran informasi otomatis tidak termuat dalam perjanjian perpajakan internasional.

Pada konteks tersebut, penting bagi Indonesia untuk memperkuat kerangka hukum domestik dan diplomasi internasional guna memperluas cakupan negara mitra dalam sistem AEoI. Penelitian ini bertujuan untuk mengevaluasi implementasi global AEoI, membandingkan praktik terbaik dari negara-negara OECD/G20, serta mengusulkan strategi hukum yang dapat diterapkan Indonesia dalam rangka mengoptimalkan pemanfaatan AEoI dan menutup celah penghindaran pajak lintas negara.

Pada penelitian ini penulis akan memberikan saran yang mungkin bisa menjadi Solusi yang dapat diterapkan oleh pemerintah negara Indonesia untuk perjanjian perpajakan internasional (*tax treaties*) yang memuat AEoI didalamnya dengan pembaharuan kebijakan dan negosiasi ulang dengan negara negara *tax heaven*, hal ini merupakan suatu isu hukum yang hendaknya diperhatikan oleh pemerintah, dan bagi masyarakat hendaknya mengetahui isu ini sebagai literasi bahwa hal semacam ini terjadi di Indonesia. Mengenai isu hukum yang akan dibahas yaitu, Apa tindakan hukum yang dapat dilakukan oleh pemerintah negara Indonesia bila ada Individu Maupun Entitas yang menyembunyikan Hartanya ke negara yang tidak memuat *Automatic Exchange of Information* (AEoI) dalam perjanjian perpajakan internasionalnya dengan negara indonesia?

Metode Penelitian

Penelitian ini memakai metode yuridis normatif dengan pendekatan peraturan dan perbandingan hukum. Analisis dilakukan melalui studi kepustakaan atas norma dan prinsip hukum tertulis. Pendekatan ini digunakan untuk menjelaskan kekosongan hukum dalam perjanjian perpajakan. Penafsiran dilakukan menggunakan metode penafsiran hukum gramatikal, sistematis, dan teleologis untuk mengidentifikasi potensi kekosongan norma terkait pertukaran informasi dengan yurisdiksi non-AEoI. Fokus kajian diarahkan pada strategi normatif Indonesia menghadapi negara non-AEoI, serta praktik terbaik (*best practices*) negara lain dalam menutup celah penghindaran pajak lintas batas

Bahan hukum:

1. Undang-Undang Nomor 36 Tahun 2008 tentang Pajak Penghasilan
2. Undang-Undang Nomor 28 Tahun 2007 tentang Ketentuan Umum dan Tata Cara Perpajakan
3. Kitab Undang-Undang Hukum Pidana (KUHP) TERBARU
4. Undang-undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang
5. Undang-Undang Nomor 1 Tahun 1999 tentang Perjanjia antara republik indonesia dan Australia mengenai bantuan timbal balik dalam masalah pidana (TREATY BETWEEN THE REPUBLIC OF INDONESIA AND AUSTRALIA ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS)
6. Vienna Convention on the Law of Treaties 1969 – United Nations
7. undang undang nomor 24 tahun 2000 tentang perjanjian internasional
8. Perjanjian Penghindaran Pajak Berganda (P3B) Indonesia–Singapura
9. Protokol Amandemen P3B Indonesia–Singapura tahun 2021
10. Double Taxation Agreement (DTA) Switzerland–United States of America
11. FATCA Agreement (IGA Model 2) Switzerland–United States of America
12. Unexplained Wealth Order (UWO) – Inggris
13. Directive on Asset Recovery and Confiscation – Uni Eropa
14. Amandemen RUU Penyitaan Aset – Belanda
15. Fugitive Economic Offenders Act (2018) – India
16. Gold Mafia Investigation – Afrika Selatan
17. Multilateral Instrument (MLI) – Organization For Economic Cooperation and Development (OECD)

18. Crypto-Asset Reporting Framework (CARF) – Organization For Economic Cooperation and Development (OECD)
19. Multilateral Competent Authority Agreement (MCAA) – Organization For Economic Cooperation and Development (OECD)

Jurnal Hukum, Artikel Akademik *Organization for Economic Cooperation and Development* (OECD), G20, Literatur perpajakan internasional terkait AEoI, *Beneficial Ownership* dan pemulihan aset lintas negara

Hasil dan Pembahasan

A. Tindakan Hukum Pemerintah Indonesia dalam Menanggulangi Kekosongan AEoI

Pada dasarnya kealpaan perjanjian AEoI inilah yang menyebabkan pemerintah negara Indonesia tidak dapat melakukan Tindakan hukum apapun pada subyek pajak yang menggelapkan asetnya keluar negara Indonesia, karena posisi hukum indonesia Sebagian besar P3B Indonesia (kecuali yang sudah diamandemen) hanya mengatur *Exchange of Information on Request* (EOIR)[13] dan Tidak memuat *Automatic Exchange of Information* (AEOI), menurut perjanjian *Vienna Convention on the Law of Treaties* 1969 pasal 26 Indonesia hanya bisa menuntut pertukaran data sesuai yang tertulis dalam P3B, Jika AEOI tidak ditulis, maka negara mitra tidak wajib mengirim data otomatis, sebagai contoh ada Perjanjian Penghindaran Pajak Berganda antara Indonesia dengan singapura tahun 2020 sebelum diamandemen pada tahun 2021, didalamnya hanya memuat *Exchange Of Information On Request*, hal ini menunjukkan kekosongan hukum secara nyata, selama ini yang diterapkan hanyalah *Common Reporting Standar* (CRS) Melalui *Organization for Economic Cooperation and*

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[13] Sekar Nasly Bani Putri, "Aturan Pertukaran Informasi Pajak Pada Perjanjian Internasional," *Pajakku*, June 11, 2025, https://artikel.pajakku.com/aturan-pertukaran-informasi-pajak-pada-perjanjian-internasional.

Development (OECD) yang bersifat *soft law* dan tidak memaksa Negara Negara Non AEoI, dampaknya adalah Tanpa adanya AEoI dalam perjanjian perpajakan internasional Indonesia tidak punya dasar hukum meminta data otomatis hal ini akan membuat Direktorat Jendral Pajak tidak memiliki akses awal dan sulit mengidentifikasi aset, rekening, atau struktur *offshore* yang ujungnya akan menyebabkan penyitaan/asset recovery menjadi terhambat.

Namun ada beberapa upaya untuk mengisi kekosongan hukum ini oleh Pemerintah negara Indonesia untuk dapat memuat perjanjian AEoI ini dalam perjanjian Perpajakan internasionalnya, diantaranya adalah dengan tindakan normatif yakni melakukan kerjasama bilateral dan memperbarui perjanjian perpajakan internasional dengan negara-negara yang tidak memuat perjanjian AEoI dalam perpajakan internasionalnya, menggunakan perjanjian multilateral yang telah diterapkan selama ini dalam forum G20 untuk diterapkan ke negara-negara lain yang belum memuat AEoI dalam perjanjian Perpajakannya, menerapkan prinsip *Global Minimum Tax* (GMT)[14] yang bertujuan agar para wajib pajak tidak merasa terbebani dengan nominal pajak yang selama ini berlaku sehinnga berdampak pada para wajib pajak yang patuh dengan peraturan perpajakan. Selain itu pemerintah juga dapat membuat program pengampunan pajak (*tax amnesty*)[15] untuk memfasilitasi subyek pajak yang memiliki aset diluar negara Indonesia, memperkuat undang undang perpajakan dan mengatur kewajiban pelaporan, mengimplementasikan peraturan yang mencegah penghindaran pajak, termasuk mengenai transfer pricing, penerapan sanksi bagi individu maupun badan hukum yang tidak mematuhi peraturan perpajakan dan pelaporannya, lalu pemerintah juga dapat melakukan Tindakan aternatif seperti

[14] Felix Hugger et al., *The Global Minimum Tax and the Taxation of MNE Profit*, OECD Taxation Working Papers, vol. 68 (January 2024), https://doi.org/10.1787/9a815d6b-en.

[15] Fany Inasius et al., "Tax Compliance After the Implementation of Tax Amnesty in Indonesia," *SAGE Open* 10, no. 4 (2020): 215824402096879, https://doi.org/10.1177/2158244020968793.

diplomasi ekonomi dengan cara berdialog dan bekerja sama dengan negara non AEoI untuk menarik mereka bergabung dalam AEoI, mengedukasi dan menyadarkan masyarakat dan pelaku bisnis tentang pentingnya kepatuhan pajak dan konsekuensi dari penghindaran pajak, memperbaiki dan menguatkan infrastuktur perpajakan untuk efisiensi dalam pemungutan dan pelaporan pajak, kerjasama regional di Kawasan untuk membangun standar dan praktik terbaik dalam transparansi pajak

Posisi hukum Indonesia ini ternyata banyak juga dihadapi oleh negara negara lain yang sudah mengadopsi AEoI tetapi masih terikat dengan Perjanjian Penghindaran Perpajakan Berganda (P3B) lama yang hanya memuat *Exchange of Information On Request* (EOIR), seperti negara Malaysia[16], Thailand[17], Filipina[18], Brazil[19], hal ini menunjukkan bahwa banyak negara lain memiliki posisi hukum yang sama dengan Negara Indonesia dalam perjanjian perpajakan internasionalnya

Hambatan yuridis dalam penegakan dan penyitaan aset lintas negara adalah *Lex Loci Delicti Commisi* yang memiliki assas bahwa Perbuatan yang menimbulkan kewajiban perpajakan lintas negara itu harus dinilai dengan hukum setempat dimana perbuatan perpajakan

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[16] Wei Min Chua, "Common Reporting Standards – Impact in Malaysia and ASEAN," *Asia Law Portal - News, Information and Opportunity in the APAC Legal Sector*, July 9, 2018, https://asialawportal.com/common-reporting-standards-impact-in-malaysia-and-asean/.

[17] Kudun and partners, "Thailand's Latest Tax Revolution: Navigating the Common Reporting Standard (CRS) | Kudun & Partners," *Kudun*, n.d., accessed December 13, 2025, https://www.kap.co.th/thought-leadership/thailands-latest-tax-revolution-navigating-the-common-reporting-standard-crs/.

[18] Switzerland and Philipphines, "Double Taxation Agreements Switzerland - Philippines | FTA," accessed December 13, 2025, https://www.estv.admin.ch/estv/en/home/international-fiscal-law/international-by-country/sif/philippines.html.

[19] Leonardo Homsy and Rogério Bittencourt, "Trends in Brazilian Tax Treaties," accessed December 13, 2025, https://www.ibanet.org/trends-in-brazilian-tax-treaties.

tersebut terjadi[20], implikasinya adalah jika aset tersebut berada di negara non AEoI maka negara tersebutlah yang berhak untuk menentukan, dengan tidak adanya kewajiban AEoI maka negara tersebut bebas untuk tidak memberikan atau memberikan data karena kedaulatannya dilindungi, ada juga prinsip kedaulatan (*sovereignty*) yang mana negara tidak dapat dipaksa membuka data apapun kecuali Perjanjian Perjanjian Penghindaran Pajak Berganda (P3B), *Mutual Legal Asistance Treaties* (MLATs) atau hukum domestiknya sendiri, ini sangat berkaitan dengan kekosongan Hukum AEoI karena tidakwajiban AEoI ditambah dengan kedaulatan negara mitra menjadikan Indonesia tidak punya dasar apapun untuk memaksa untuk mendapatkan informasi yang berujung pada aset asing sulit diidentifikasi atau disita

Ketiadaan ketentuan *Automatic Exchange of Information* (AEoI) dalam beberapa perjanjian perpajakan internasional Indonesia menciptakan tantangan serius bagi otoritas pajak dalam upaya mendeteksi dan menarik kembali aset tersembunyi di luar negeri. Pemerintah Indonesia perlu melakukan langkah hukum strategis, antara lain melalui:

1. **Renegosiasi Perjanjian Perpajakan Internasional**

Renegosiasi perjanjian Perpajakan internasional secara bilateral dimungkinkan karena hal ini sudah diatur dalam Konvensi Wina tahun 1969 (*Vienna Convention on the Law of Treaties*[21], disingkat VCLT 1969) pada pasal 39 – 41 dengan dasar *Mutual Consent* adalah perjanjian internasional yang mengatur hukum dan tata cara mengenai pembuatan, pelaksanaan, perubahan, dan pengakhiran perjanjian internasional antarnegara, Pemerintah Indonesia dapat

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[20] Dewan Pimpinan Cabang Perhimpunan Advokat Indonesia redaksi, "Lex Loci Delicti Commisi," *DPC PERADI TASIKMALAYA*, March 8, 2022, https://peradi-tasikmalaya.or.id/lex-loci-delicti-commisi/.

[21] Oliver Dörr and Kirsten Schmalenbach, eds., *Vienna Convention on the Law of Treaties* (Springer, 2018), https://doi.org/10.1007/978-3-662-55160-8.

menerapkan prinsip prinsip yang terkandung dalam perjanjian tersebut. dengan dilakukannya renegosiasi Perjanjian Penghindaran Pajak Berganda (P3B) untuk memuat AEoI didalamnya, pemerintah negara indonesia bisa melakukan upaya hukum terhadap harta harta dari para pelaku penghindaran dan penggelapan pajak yang menempatkan hartanya di negara negara *tax heaven*, ada juga undang undang nomor 24 tahun 2000 tentang perjanjian internasional pada pasal 32 yang menjelaskan bahwa perubahan perjanjian harus melaui persetujuan kedua belah pihak, Renegosiasi menjadi jalan hukum yang sah untuk memasukkan AEoI karena P3B adalah lex specialis, AEoI tidak otomatis berlaku lewat *Multilateral Instrument* (MLI) (kecuali diatur), Tanpa renegosiasi, negara non-AEOI tidak punya kewajiban baru, dengan legal standing yang dimiliki Indonesia sekarang implikasi hukumnya Adalah Renegosiasi memungkinkan Indonesia menambahkan kewajiban pertukaran otomatis sebagai *binding obligation*, bisa Mengurangi ketergantungan pada EOIR dan Memberikan dasar hukum penyitaan aset di luar negeri yang selama ini tidak dapat dilakukan karena kurangnya *predicate information*,

Pengambilalihan aset WNI (Warga Negara Indonesia) di luar negeri secara perdata memiliki beberapa tantangan dan pertimbangan hukum yaitu Prinsip Hukum Internasional berupa Kedaulatan Negara karena Setiap negara memiliki kedaulatan atas wilayah dan hukum didalamnya, sehingga Indonesia tidak dapat secara langsung mengambil alih aset di negara lain tanpa kerjasama dari negara tersebut dan Penghormatan terhadap Hukum Lokal dalam Pengambilan alih aset harus mematuhi hukum negara tempat aset berada lalu Perjanjian Bilateral dalam bentuk Kerjasama Internasional Jika Indonesia memiliki perjanjian bilateral dengan negara tempat aset berada, hal ini bisa memfasilitasi proses pengambilan alih aset, terutama dalam konteks penyidikan atau penuntutan kasus tertentu (misalnya, penghindaran dan penggelapan pajak) lalu Proses Hukum Litigasi di Negara Asal pemerintah negara Indonesia dapat memproses tuntutan hukum di negara tempat aset tersebut berada. Namun, ini harus dilakukan sesuai dengan hukum dan prosedur yang berlaku di negara tersebut dalam Pencarian Aset Melalui mekanisme hukum, Indonesia dapat mencari aset yang dianggap berasal dari tindak pidana dan mengajukan permohonan untuk penyitaan atau pengembalian aset lalu Bantuan Hukum Timbal Balik atau biasa disebut dengan *Mutual Legal Assistance Treaties* (MLATs)[22]: Jika terdapat perjanjian bantuan hukum timbal balik, Indonesia dapat meminta bantuan negara lain untuk melakukan penyitaan aset berdasarkan keputusan pengadilan di Indonesia lalu Kompetensi Hukum dalam Hukum Perdata Aset dapat dituntut secara perdata jika ada dasar hukum yang jelas, seperti utang yang belum dibayar atau klaim atas hak milik serta Penyitaan aset mungkin dilakukan dalam konteks perkara pidana, tetapi tetap harus mengikuti prosedur hukum yang diakui secara internasional dengan semua hal tersebut diatas maka Tantangannya adalah Proses yang Panjang dalam Pengambilalihan aset di luar negeri bisa memakan waktu dan biaya, serta melibatkan proses hukum yang kompleks dengan Risiko Peraturan yang Terkadang negara tempat aset berada memiliki peraturan yang ketat mengenai penyitaan atau pengalihan aset oleh negara lain.

Pemerintah Indonesia dapat menawarkan *mutual benefit* yang sama sama menguntungkan kedua belah pihak, sebagai contoh pembaharuan *tax treaty* antar negara untuk memuat *automatic excahnge of information* bagi kedua belah pihak yang memungkinkan kedua negara saling berbagi informasi atas harta harta dari warga negara yang memiliki harta di kedua negara, yang hasilnya akan meningkatkan transparansi dan kepatuhan pajak, ada juga tawaran kerja sama ekonomi sebagai insentif yang dapat ditawarkan oleh pemerintah Indonesia diantaranya adalah memperkuat hubungan perdagangan bilateral seperi pengurangan tarif atau kemudahan investasi, menawarkan akses pasar atau proyek pembangunan bersama di bidang infrastruktur, teknologi, atau sektor strategis lainnya, Menjalin

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[22] U.S. Department of Justice, "MUTUAL LEGAL ASSISTANCE TREATIES OF THE UNITED STATES," Criminal Division, Office of International Affairs, 2022, https://www.justice.gov/criminal/criminal-oia/file/1498806/dl.

kemitraan dalam pengembangan sumber daya manusia, teknologi informasi, atau inovasi perpajakan, Insentif ekonomi ini dapat menjadi daya tarik tambahan bagi mitra perjanjian untuk menerima perubahan dalam tax treaties yang mengakomodasi AEoI, karena manfaatnya tidak hanya terbatas pada perpajakan tetapi juga memperluas peluang ekonomi.

Pemerintah juga dapat menggunakan jalur diplomatik bilateral maupun multilateral untuk memperbarui ketentuan dalam perjanjian penghindaran pajak berganda (P3B)[23], dengan mengintegrasikan klausul pertukaran informasi otomatis. Instrumen hukum seperti *Multilateral Instrument (MLI)*[24] dari OECD dapat dipakai untuk memodifikasi ketentuan perjanjian bilateral tanpa harus membentuk perjanjian baru.

Pemerintah negara Indonesia dapat mencontoh beberapa negara *tax heaven* yang memperbarui perjanjian perpajaknnya dengan negara lain contohnya adalah singapura yang pada 26 November 2024, Singapura bersama 60 yurisdiksi lainnya berkomitmen untuk mengimplementasikan *Crypto-Asset Reporting Framework* (CARF)[25] yang baru. Singapura juga menandatangani *Multilateral Competent Authority Agreement on Automatic Exchange of Information* (CARF MCAA)[26] dan

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[23] Albertus Kukuh Yudi Pratama et al., *LITERATUR REVIEW: PENGHINDARAN PAJAK BERGANDA (TAX TREATY) DALAM TRANSAKSI INTERNASIONAL DI INDONESIA* (Universitas Mercu Buana Yogyakarta, 2022), https://www.academia.edu/download/96885265/PENGHINDARAN_PAJAK_BERGANDA_TAX_TREATY_DALAM_TRANSAKSI_INTERNASIONAL_DI_INDONESIA.pdf.

[24] Organisation for Economic Co-operation and Development (OECD), "BEPS Multilateral Instrument," OECD, accessed June 22, 2025, https://www.oecd.org/en/topics/beps-multilateral-instrument.html.

[25] Organisation for Economic Co-operation and Development (OECD), "Crypto-Asset Reporting Framework XML Schema," OECD, October 1, 2024, https://www.oecd.org/en/publications/crypto-asset-reporting-framework-xml-schema_578052ec-en.html.

[26] Detik Finance, "RI-Singapura Siap Kerja Sama Pertukaran Data Pajak," *Detik Finance*, June 22, 2025, https://finance.detik.com/berita-

Addendum pada *Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information* (CRS MCAA)[27]. Perjanjian ini akan memperkuat pertukaran informasi otomatis terkait aset kripto dan memperbarui standar *due diligence* serta persyaratan pelaporan di bawah *Common Reporting Standard* (CRS)[28], lalu ada negara swiss yang Pada 27 Juni 2024, Swiss dan Amerika Serikat menandatangani perjanjian untuk saling bertukar data akun keuangan secara otomatis. Sebelumnya, Swiss hanya memberikan informasi secara sepihak kepada AS, namun dengan perjanjian baru ini, Swiss juga akan menerima data dari AS. Pertukaran informasi otomatis ini dijadwalkan akan dimulai pada tahun 2027 dan sejalan dengan regulasi *Foreign Account Tax Compliance Act* (FATCA)[29], ada juga negara malta yang Pada 28 Februari 2024, Administrasi Pajak dan Bea Cukai Malta mengeluarkan versi terbaru (v4.6) dari pedoman implementasi pertukaran informasi otomatis (AEoI). Perubahan tersebut mencakup penambahan Aruba dan Thailand sebagai yurisdiksi yang dapat dilaporkan untuk periode pelaporan 2016 dan 2022, serta

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ekonomi-bisnis/d-3558040/ri-singapura-siap-kerja-sama-pertukaran-data-pajak.

[27] Organisation for Economic Co-operation and Development, *Addendum: CRS MCAA Signatories* (OECD, n.d.), https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-transparency-and-international-co-operation/addendum-crs-mcaa-signatories.pdf.

[28] Inland Revenue Authority of Singapore, "Singapore Enhances International Tax Cooperation through Automatic Exchange of Information on Crypto-Assets," IRAS, accessed May 3, 2025, https://www.iras.gov.sg/news-events/newsroom/singapore-enhances-international-tax-cooperation-through-automatic-exchange-of-information-on-crypto-assets.

[29] illien noelle, "Switzerland, US Agree on Exchange of Financial Account Data," Finance, *Reuters*, June 27, 2024, https://www.reuters.com/business/finance/switzerland-us-agree-exchange-financial-account-data-2024-06-27/.

memasukkan kembali Costa Rica sebagai yurisdiksi yang dapat dilaporkan mulai dari periode pelaporan 2016[30],

Indonesia telah menandatangani beberapa *Mutual Legal Assistance Treaties* (MLATs)[31] yakni perjanjian internasional yang memungkinkan negara-negara untuk saling membantu dalam hal penyidikan dan penuntutan perkara pidana dengan negara-negara lain diantaranya adalah Perjanjian dengan negara Australia, Amerika serikat dan negara yang tergabung di ASEAN, MLATs termasuk dalam hard law yang mengatur kerja sama penegakan hukum, Indonesia sendiri sudah memiliki beberapa MLATs diantaranya adalah antara Indonesia dan australia, Indonesia dengan Korea selatan, juga antara Indonesia dengan ASEAN, apaun keterbatasan dari MLATs ini adalah sifatnya *On Request* bukan otomatis, membutuhkan bukti awal yang dimana bukti awal itu dapat diperoleh jika data sudah didapat, karena sifatnya yang *on Request* maka MLATs tidak bisa menggantikan kekosongan AEoI, hal itu menimbulkan sebab akibat jika tanpa adanya AEoI maka tidak ada data yang tersedia, MLATs tidak dapat digunakan karena tidak ada bukti awal yang dapat digunakan untuk mengajukan Permohonan Data ke negara tertuju hal ini menyebabkan penyitaan aset di negara non AEoI menjadi tidak efektif yang berujung pada para pelaku memanfaatkan negara tersebut untuk menyimpan hartanya. Tujuan utama MLATs adalah untuk mempercepat proses hukum antar negara, meningkatkan kerjasama dalam penegakan hukum, dan memastikan bahwa keadilan dapat ditegakkan secara efektif. Ruang lingkup dari MLATs adalah mencakup berbagai jenis bantuan hukum seperti pertukaran informasi dan bukti, bantuan dalam penangkapan dan ekstradisi tersangka, kerjasama dalam

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[30] Lisa Zarb Mizzi, "FATCA-CRS: Updated AEOI Implementing Guidelines Published by the MTCA - KPMG Malta," KPMG, March 4, 2024, https://kpmg.com/mt/en/home/insights/2024/03/fatca-crs-updated-aeoi-implementing-guidelines-published-by-the-mtca.html.

[31] I. Nyoman Sindhu Gautama, "Pemberatasan Kejahatan Internasional Berdasarkan Mutual Legal Assistance Treaties (MLATs)," *Jurnal Aktual Justice* 4, no. 1 (2019): 1, https://doi.org/10.47329/aktualjustice.v4i1.474.

penyidikan dan penuntutan. Selain itu, manfaat dari MLATs ini adalah peningkatan kerjasama internasonal dalam menghadapi kejahatan lintas negara, efisiensi dalam proses hukum dengan menyediakan mekanisme yang jelas untuk meminta dan memberikan bantuan hukum, penguatan kapasitas penegakan hukum dalam menyelidiki dan menuntut pelanggaran hukum internasional, tantangan yang dihadapi dalam Perjanjian ini adalah proses yang rumit dikarenakan proses dari bantuan hukum tergantung dalam sistem hukum masing-masing negara, adapun implikasi yang akan dihadapi adalah negara Indonesia harus menggabungkan MLAT, AEoI + *Beneficial Ownership system*[32]. Tanpa 3 pilar ini, *asset recovery* selalu tertinggal dan tidak memenuhi asas *effectiveness* dalam hukum administrasi dan perpajakan

Indonesia sebagai anggota *Financial Action Task Force* (FATF)[33] dan juga sebagai anggota dalam kelompok kerja regional seperti *Asia/Pasifik Group on Money Laundering* (APG)[34], memiliki perjanjian bilateral dengan beberapa negara untuk memfasilitasi kerjasama dalam memerangi kejahatan keuangan. Perjanjian bilateral di bawah naungan FATF biasanya berkaitan dengan kerjasama dalam memerangi pencucian uang (*money laundering*) dan pendanaan terorisme (*terrorism financing*). FATF adalah lembaga internasional yang

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[32] Jyoti Arora and Pragya Kaushik, "Understanding the Beneficial Ownership v. Beneficial Holding Concepts," ITR, September 14, 2021, https://www.internationaltaxreview.com/article/2a68rfy5bw2ycq1ybhw7c/understanding-the-beneficial-ownership-v-beneficial-holding-concepts.

[33] Zelika Setya Ardiani Setya Ardiani, "Tinjauan Pemenuhan Rekomendasi Financial Action Task Force (FATF) Dalam Rangka Menjaga Iklim Ivestasi yang Berintegritas dan Bersih dari Tindak Pidana Pencucian Uang (TPPU) Ddan Tindak Pidana Pendanaan Terorisme (TPPT) di Indonesia," *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 7, no. 1 (2023), https://doi.org/10.58258/jisip.v7i1.4087.

[34] The Asia/Pacific Group on Money Laundering (APG), *Asia / Pasific Group on Money Laundering* (Indonesia, Third Round Mutual Evaluation Report, APG, Sydney, 2018), https://apgml.org/members-and-observers/members/member-documents.aspx?m=7f4ab684-6496-493f-adc8-c37cd233a7b3.

menetapkan standar dan mempromosikan langkah-langkah untuk meningkatkan efektivitas sistem anti-pencucian uang. Tujuan dari perjanjian ini bertujuan untuk memperkuat kerjasama internasional dalam hal pertukaran informasi dan tindakan kolektif untuk mencegah dan mengatasi pencucian uang dan pendanaan terorisme, hal itu sangat berkaitan dengan kekosongan AEoI, dengan *Beneficial Ownership* yang kuat, negara sumber tetap dapat memetakan struktur kepemilikan dan mengurangi efek negatif negara non AEoI, FATF memiliki fokus kerja sama untuk pertukaran informasi intelejen keuangan, penyidikan dan penuntutan kasus-kasus pencucian uang hingga pendanaan terorisme, peningkatan kapasitas lembaga lembaga keuangan dan penegakan hukum, prinsip dari kerjasama FATF ini adalah penggunaan standar FATF dalam merancang kebijakan dan strategi anti pencucian uang, kesepakatan untuk saling membantu dalam hal pelaksanaan regulasi dan penegakan hukum. Manfaat dari perjanjian ini adalah membantu negara-negara dalam mengidentifikasi dan mengatasi ancaman pencucian uang dan pendanaan terorisme secara lebih efektif, Mendorong transparansi dalam sistem keuangan internasional, yang penting untuk membangun kepercayaan di antara negara-negara. Negara-negara yang tergabung dapat saling belajar dari praktik terbaik dan pengalaman dalam penegakan hukum terkait keuangan tantangan dari perjanjian FATF adalah berbagai sistem hukum dan budaya dapat menyulitkan pelaksanaan perjanjian, memastikan kepatuhan terhadap perjanjian dan standar FATF, sebagai contoh Indonesia memiliki Undang Undang Nomor 8 tahun 2010 tentang tindak pidana pencucian uang yang merupakan hasil dari adopsi rekomendasi dari FATF termasuk *Beneficial Ownership*, adapun beberapa implikasi hukumnya adalah Memperkuat kewenangan PPATK dan DJP dalam mengakses data entitas, Mengatasi penggunaan *nominee*, *shell companies*, dan *trusts* di negara non-AEOI, Menjadi dasar normatif India, UK, dan EU dalam menutup celah aset asing merupakan model yang bisa di-*transplant*.

Sebagai studi kasus, Indonesia dan Singapura telah menjalin kerja sama perpajakan sejak 1992 melalui P3B, yang kemudian diperbarui pada tahun 2021 untuk menyesuaikan dengan standar global seperti BEPS Action Plan dan AEoI. Salah satu ketentuan penting adalah tarif *withholding tax* (WHT)[35] yang lebih rendah, yaitu maksimum 10% untuk dividen dan bunga, yang bertujuan meningkatkan daya tarik investasi lintas negara, Perubahan signifikan terjadi pada amandemen 2021, terutama melalui klausul anti-abuse dan penerapan pertukaran informasi secara otomatis. Implikasi kebijakan ini sangat penting dalam konteks pengawasan aset lintas negara, khususnya dalam mendukung strategi pemerintah Indonesia dalam menekan praktik penghindaran pajak dan memperluas basis pajak. Selain itu, kerja sama ini mencerminkan tren global dalam menciptakan sistem perpajakan yang adil dan transparan di kawasan ASEAN. Yang dapat dilihat dalam tabel 1:

Jenis Perjanjian	Negara Terlibat	Tahun	Obyek Pajak Yang diatur	Ketentuan Utama	Tujuan Perjanjian	Damplak Implementasi
P3B (Tax Treaty)	INDONESIA – SINGAPURA	1992	Pajak Penghasilan, Dividen, Royalty, Bunga	Dividen Maksimal 10%Royalty Maksimal 15% - Bunga Maksimal 10%	Menghindari Pemajakan Berganda - Mendorong Investasi Bilateral	Menarik investor singapura karena pengurangan tarif WHT dan Kepastian hukum

[35] Arum Puspita Wardhani and Dinik Fitri Rahajeng Pangestuti, "WITHHOLDING TAX SYSTEM UNTUK PEMUNGUTAN AKURASI," *Jurnal Riset Akuntansi dan Keuangan* Vol 1 No 1 (2019) (n.d.), https://doi.org/10.36407/akurasi.v1i1.64.

Protoko l Amndemen P3B	INDONESIA - SINGAPURA	2021	Pajak Penghasilan dan Pertukaran Informasi	Klausul Anti penhindarannpajak (anti abuse) - pertukaran data otomatis	Transparansi perpajakan dan penguatan kerja sama fiskal	Membantu DJP melacak aset wajib pajak Indonesia di singapura (AEoI/CRS)

TABEL 1 Daftar Perjanjian P3B Saat dibentuk dan sesudah Amandemen

Lalu negara Switzerland dan negara Amerika Serikat yang berfokus pada penghindaran pajak berganda (DTA)[36] dan transparansi fiskal lintas negara (FATCA)[37]. DTA tahun 1996 merupakan kerangka hukum dasar yang memberikan kepastian pajak dan mendorong investasi antarnegara melalui pengaturan tarif WHT yang kompetitif. Perjanjian ini memperkuat posisi Swiss sebagai pusat keuangan internasional sekaligus menjaga akses pasar modal AS, Sementara itu, implementasi FATCA pada 2014 menjadi titik balik penting dalam hubungan perpajakan kedua negara. Swiss, yang sebelumnya dikenal karena kerahasiaan perbankannya, diwajibkan melaporkan data keuangan warga negara AS kepada IRS. Ini menunjukkan pergeseran kebijakan Swiss dari model kerahasiaan menuju transparansi, sejalan dengan prinsip OECD mengenai *Automatic Exchange of Information* (AEoI). Dampaknya, kepatuhan perpajakan meningkat dan terjadi penurunan praktik penghindaran pajak melalui rekening luar negeri, Kedua perjanjian ini menggambarkan bagaimana kerja sama bilateral

[36] Swiss Federal Tax Administration (SFTA), "Double Taxation Agreements (DTAs)," SIF, accessed June 22, 2025, https://www.sif.admin.ch/en/double-taxation-agreements-dtas.

[37] U.S. Department of the Treasury, "Foreign Account Tax Compliance Act," U.S. Department of the Treasury, February 8, 2025, https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act.

dapat mengintegrasikan aspek **perlindungan pajak berganda** dan **penguatan pengawasan pajak internasional**, yang sangat relevan dalam konteks globalisasi ekonomi dan mobilitas modal lintas batas. Sebagaimana dapat dilihat dalam Tabel 2:

Jenis Perjanjian	Negara Terlibat	Tahun	Obyek Pajak Yang diatur	Ketentuan Utama	Tujuan Perjanjian	Damplak Implementasi
Double Taxation Agreement (DTA)	SWITZERLAND – UNITED STATES OF AMERICA	1996 (diratifikasi 2017)	Pajak penghasilan, dividen, royalti, bunga	Dividen WHT 5%–15% - Bunga & royalti WHT max. 0% - Penentuan domisili pajak	Mencegah pemajakan berganda, meningkatkan investasi	Pengurangan tarif WHT, kepastian pajak untuk investor & ekspat
FATCA Agreement (IGA Model 2)	SWITZERLAND – UNITED STATES OF AMERICA	2014	Pertukaran informasi pajak (aset keuangan)	Swiss wajib lapor data rekening WN Amerika - Transfer data via otoritas pajak Swiss ke IRS	Meningkatkan transparansi fiskal dan pengawasan pajak lintas negara	Membatasi kerahasiaan perbankan Swiss, meningkatkan kepatuhan pajak WN AS di luar negeri (FATCA compliance)

TABEL 2 Daftar Perjanjian DTA Saat dibentuk dan sesudah Amandemen

Lalu berbagai negara dan benua telah memperbarui peraturan mereka untuk menyita aset yang diperoleh secara ilegal dan disembunyikan di negara tax heaven. Langkah-langkah ini mencakup penerapan peraturan yang memungkinkan penyitaan aset tanpa perlu adanya vonis pidana, memperkuat kerja sama internasional, dan meningkatkan efektivitas dalam menanggulangi pencucian uang serta korupsi. Upaya ini sejalan dengan standar internasional yang ditetapkan oleh Financial Action Task Force (FATF) dan Uni Eropa, sebagaimana dapat dilihat dalam tabel 3:

Negara	Judul Perjanjian	Tujuan	Metode	Hasil	Kesimpulan
Inggris	Unexplained Wealth Order (UWO)	Menyita Aset yang Tidak dapat dijelaskan Asal Usulnya	Penerapan UWO untuk menyita aset mewah	Menyita rumah Senilai 14 juta euro dan klub golf	Efektif dalam menanggulangi pencucian uang dan korupsi
Uni Eropa	Directive onAsset recovery and Confiscation	Menyusun aturan minimum untuk penyitaan aset kriminal	Pembekuan dan penyitaan aset tanpa vonis pidana	Memperkuat kerja sama antarnegara anggota	Meningkatkan efektivitas penyitaan aset lintas batas
Belanda	Amandement to the confiscation bill	Menyesuaikan dengan uni eropa dalam penyitaan aset	Penyitaan aset tanpa perlu vonis pidana	Aset dapat disita jika asal-usulnya tidak dapat dijelaskan	Mempercepat proses penyitaan dan meningkatkan kerja sama internasional
India	Fungitive Economic Offenders Act (2018)	Menyita Aset pelaku ekonomi yang melarikan diri	Kerjasama internasional dalam penyitaan aset	Menyita aset senilai Rs 10.786 juta dari luar negeri	Memperkuat upaya penegakan hukum terhadap pelaku

					ekonomi yang melarikan diri
Afrika Selatan	Gold Mafia Investigation	Menyita aset terkait penyelundupan sindikat emas	Pembekuan aset dan penyelidikan terhadap bank terkait	Menyita aset senilai ZAR 4.84 Miliar	Mengungkap dan menanggulangi praktik pencucian uang lintas negara

TABEL 3 Daftar Perjanjian dari Negara Negara yang melakukan penerbitan instrumen hukum

Secara keseluruhan, Indonesia memiliki berbagai instrumen untuk menghadapi negara non-AEoI, mulai dari kebijakan pajak domestik yang lebih ketat hingga pendekatan diplomatik, bilateral dan multilateral dengan beberapa cara tersebutlah pemerintah dapat melakukan Upaya untuk mengisi kekosongan hukum mengenai perjanjian AEoI yang tidak termuat dalam perjanjian perpajakan internasional dan membuat para pemilik asset yang berada diluar indonesia menarik Kembali dan atau menyita asetnya ke Indonesia

Pemerintah Negara Indonesia bisa mengadopsi prinsip prinsip dari *Unexplained Wealth Order* (UWO), *Foreign Account Tax Compliance Act* (FATCA), *Fungitive Economic Offenders Act* (FEOA) untuk bahan legal treansplantation dengan memegang prinsip dasar dan sah dengan pertimbangan pertimbangan sesuai dengan konstitusi, tidak bertentangan dengan asas hukum nasional, dapat diintegrasikan dengan Undang Uundang Nomor 28 Tahun 2007 tentang Ketentuan Umum dan Tata Cara Perpajakan, Undang-Undang Nomor 36 Tahun 2008 tentang Pajak Penghasilan, Kitab Undang-Undang Hukum Pidana (KUHP) TERBARU, dan Undang-undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang[38]. Ada 3 contoh Upaya hukum internasional yang

[38] UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 8 TAHUN 2010 TENTANG PENCEGAHAN DAN PEMBERANTASAN TINDAK PIDANA PENCUCIAN UANG, accessed December 13, 2025, http://peraturan.bpk.go.id/Details/38547/uu.

bisa di di transplantasikan oleh negara Indonesia, diantaranya Adalah UWO (Inggris) bisa diadaptasi karena sejalan dengan asas pembuktian terbalik dalam Undang-undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang, FATCA (Amerika) tidak bisa diadopsi penuh mekanisme pemaksaan unilateral bertentangan dengan asas kedaulatan Indonesia dan FEOA (India) hanya dapat diadopsi sebagian cocok untuk pelaku yang kabur ke yurisdiksi non-AEOI.

Upaya dalam menghadapi negara-negara yang tidak mau berkooperatif dan atau berpartisipasi dalam pembaruan tax treaties antar negara yang memuat sistem *Automatic Exchange of Information* (AEoI), pemerintah Indonesia memiliki beberapa instrumen hukum dan tindakan alternatif yang dapat diambil. Negara yang tidak mendukung AEoI dapat mempengaruhi transparansi dan pertukaran data keuangan yang berkaitan dengan kebijakan perpajakan internasional. Berikut beberapa instrumen hukum dan tindakan alternatif yang mungkin diambil oleh pemerintah Indonesia:

1. Penerapan Sanksi atau Pembatasan Ekonomi

Pemerintah Indonesia dapat mengimplementasikan sanksi atau pembatasan perdagangan terhadap negara-negara non-AEoI. Ini bisa berupa pembatasan atau penghentian kerja sama ekonomi, pembatasan transaksi perbankan, atau pembatasan investasi. Langkah ini berfungsi untuk memberikan tekanan terhadap negara-negara tersebut agar bergabung dalam sistem AEoI.

2. Penegakan Undang-Undang Perpajakan Nasional

a) **Pajak Penghasilan atas Penghasilan yang Sumbernya dari Luar Negeri**: Indonesia bisa memberlakukan pajak atas penghasilan yang diperoleh oleh wajib pajak Indonesia di negara-negara non-AEoI.

b) **Pengaturan Pemilik Benefisial**: Melalui ketentuan mengenai pemilik manfaat (*beneficial owner*), Indonesia dapat memperketat aturan pelaporan mengenai aset atau investasi yang berada di negara-negara yang tidak mendukung AEoI. Ini dapat memaksa individu atau badan hukum Indonesia yang terlibat dengan negara non-AEoI untuk melaporkan atau membayar pajak sesuai dengan peraturan domestik.

3. Perjanjian Pertukaran Informasi Pajak Bilateral

Indonesia dapat menandatangani perjanjian pertukaran informasi perpajakan bilateral dengan negara non-AEoI. Meskipun negara tersebut tidak terlibat dalam AEoI, Indonesia dapat berusaha menjalin kesepakatan bilateral melalui mekanisme seperti ***Tax Information Exchange Agreement*** (TIEA)[39], yang memungkinkan pertukaran informasi terkait pajak antara kedua negara secara langsung dalam perjanjian perpajakan yang berlaku, juga ditambahkan perjanjian, untuk pengambilan atau penyitaan dari semua harta tersebut digunakanlah undang undang ekstradisi untuk mengambil harta harta yang disembunyikan ke negara asalnya

4. Mendorong Negara Lain untuk Menekan Negara Non-AEoI

Indonesia dapat berkoordinasi dengan negara-negara lain, baik melalui organisasi internasional seperti **OECD** atau **G20**, untuk memberikan tekanan diplomatik kepada negara yang tidak mendukung AEoI. Ini dapat berupa upaya untuk memperkenalkan sanksi multilateral atau mengurangi kerja sama ekonomi dengan negara-negara tersebut.

5. Penguatan Kebijakan Anti-Pencucian Uang (APU) dan Pencegahan Pendanaan Terorisme (PPT)

Negara non-AEoI yang sering menjadi tempat persembunyian aset-aset yang tidak tercatat dalam pertukaran informasi dapat

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[39] Organisation for Economic Co-operation and Development (OECD), "Tax Transparency and International Co-Operation," OECD, accessed June 22, 2025, https://www.oecd.org/en/topics/tax-transparency-and-international-co-operation.html.

diperlakukan dengan ketentuan yang lebih ketat dalam hal *Anti-Money Laundering* (AML) dan *Counter Financing of Terrorism* (CFT)[40]. Indonesia dapat memperkenalkan kebijakan yang lebih ketat terkait pengawasan transaksi yang melibatkan negara-negara ini, sehingga meminimalisir risiko pencucian uang dan pendanaan terorisme.

6. Diversifikasi Kerja Sama Pajak dengan Negara-AEoI

Jika negara non-AEoI enggan mengikuti standar internasional, Indonesia bisa memperkuat kerja sama dengan negara-negara yang sudah mendukung AEoI. Hal ini dapat menciptakan aliran informasi yang lebih transparan dan meningkatkan kepatuhan perpajakan, meskipun negara-negara non-AEoI tidak berpartisipasi.

7. Peraturan Internal untuk Mengatur Investasi di Negara Non-AEoI

Pemerintah Indonesia juga dapat menerapkan kebijakan yang lebih ketat terhadap investasi yang dilakukan oleh perusahaan Indonesia di negara-negara non-AEoI. Ini bisa mencakup kewajiban untuk melaporkan investasi yang dimiliki atau dikendalikan di luar negeri, serta mengatur mekanisme yang lebih transparan bagi wajib pajak.

9. Peningkatan Kerja Sama Regional

Indonesia dapat bekerja sama lebih erat dengan negara-negara di kawasan Asia Tenggara (ASEAN) atau negara-negara yang memiliki kepentingan serupa dalam masalah transparansi pajak dan pertukaran informasi, untuk menekan negara non-AEoI agar bergabung dengan mekanisme ini.

Itulah Sembilan kebijakan yang dapat diterapkan pada negara negara yang tidak mau berkooperatif dan atau bekerjasama untuk

[40] International Monetary Fund (IMF), "Anti-Money Laundering and Combating the Financing of Terrorism," IMF, accessed June 22, 2025, https://www.imf.org/en/Topics/Financial-Integrity/amlcft.

menerapkan *Automatic Exchange of information* dalam *tax treaty* dengan negara indonesia

2. **Penguatan Instrumen Hukum Nasional**

Untuk menghadapi negara yang belum menjadi bagian dari skema AEoI, Indonesia dapat mengembangkan *unilateral enforcement mechanism* melalui revisi Undang-Undang Perpajakan, termasuk ketentuan mengenai pembuktian terbalik (*reverse burden of proof*) dan aturan mengenai *unexplained wealth* seperti diadopsi dalam *Unexplained Wealth Order* (UWO)[41] di Inggris.

Penguatan atau pemberian kuasa tambahan pada Lembaga penegak hukum seperti Komisi Pemberantasan Korupsi (KPK), Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), dan Direktorat Jendral Pajak (DJP) secara aktif dalam dalam proses penelusuran harta lintas negara (*asset tracing*), guna meningkatkan efektifitas pemberantasan Penggelapan harta dinegara yang tidak memuat *Automatic exchange of information* dalam *tax treaty* dengan negara Indonesia

Sebagai contoh kasus dan kemungkinan dapat diberlakukannya *Unexplainned Wealth Order* ini adalah kasus dari Zamira Hajiyeva Seorang istri mantan pejabat bank negara Azerbaijan yang menjadi sorotan karena belanja mewahnya di Harrods (lebih dari £16 juta), Pada tahun 2018, *National Crime Agency* (NCA) Inggris mengajukan *Unexplained Wealth Order* terhadap Zamira, UWO mewajibkan Zamira menjelaskan asal-usul kekayaan yang digunakan untuk membeli properti mewah di Inggris, Karena tidak mampu memberikan bukti yang meyakinkan tentang sumber dana sah (misalnya penghasilan sendiri atau warisan yang sah), properti yang dimilikinya berisiko disita oleh pemerintah Inggris, dalam kasus tersebut menunjukkan

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[41] Rahman Ravelli LLP, "Unexplained Wealth Orders (UWOs) - An In-Depth Guide," Rahman Ravelli LLP, accessed June 22, 2025, https://www.rahmanravelli.co.uk/expertise/unexplained-wealth-orders/what-is-an-unexplained-wealth-order-an-in-depth-guide/.

bagaimana UWO bisa digunakan secara efektif untuk memaksa individu menjelaskan kekayaan mencurigakan, meskipun belum terbukti bersalah dalam pengadilan pidana. Dalam konteks pemberantasan korupsi, UWO merupakan instrumen preventif yang dapat menghambat penyembunyian aset hasil korupsi di luar negeri, hal ini menunjukkan bahwa sebenarnya Indonesia memiliki tantangan yang serupa seperti adanya pejabat publik yang memiliki kekayaan tidak wajar, ketiadaan beban pembuktian terbalik dalam kasus penggelapan harta di negara yang tidak memuat *automatic exchange of information* dengan negara Indonesia, dan kesulitan dalam melakukan tracing aset lintas negara yang dapat diselesaikan dengan UWO yang dapat diterapkan[42]

3. **Strategi Ekstrateritorial dan Kerja Sama Yudisial**

Pemerintah dapat mengadopsi pendekatan hukum ekstrateritorial dalam kerangka *asset tracing and recovery* seperti dilakukan India melalui *Fugitive Economic Offenders Act*. Melalui kerja sama *mutual legal assistance treaty* (MLAT), Indonesia dapat meminta bantuan hukum dari negara lain meskipun tidak terdapat ketentuan AEoI dalam perjanjian pajak bilateral.

Fugitive Economic Offenders Act (FEOA), yang diberlakukan oleh India pada tahun 2018, adalah undang-undang yang dirancang untuk menangani pelaku ekonomi yang melarikan diri dari yurisdiksi hukum India untuk menghindari proses hukum. Undang-undang ini muncul sebagai respons terhadap kasus profil tinggi seperti Vijay Mallya dan Nirav Modi, yang melarikan diri ke luar negeri setelah menyebabkan kerugian besar terhadap institusi keuangan India. Adapun pokok pokok penting dalam *Fungitive Economic Offenders* ada dalam Tabel 4

Aspek	Penjelasan

[42] Dominic Casciani, "Perempuan yang belanja ratusan miliar rupiah di Harrods, London, terungkap," *BBC News Indonesia*, n.d., accessed June 22, 2025, https://www.bbc.com/indonesia/majalah-45824142.

Tujuan	Mengembalikan pelaku ekonomi buron ke India dan menyita aset mereka.
Definisi FEO	Seseorang terhadap siapa surat perintah penangkapan telah dikeluarkan untuk pelanggaran ekonomi senilai lebih dari ₹100 crore (~Rp190 miliar) dan melarikan diri dari India.
Proses	Enforcement Directorate (lembaga seperti PPATK/Bareskrim di India) mengajukan permohonan ke pengadilan khusus.
Penyitaan Aset	Pengadilan dapat menyita aset di India dan luar negeri, bahkan sebelum vonis, jika terdakwa tidak kembali dalam waktu 6 minggu.
Tanpa Hak Pembelaan	Seorang FEO yang ditetapkan tidak dapat mengajukan gugatan atau pembelaan dalam proses hukum sipil di India.

TABEL 4 Pokok Pokok Fungitive Economic Offenders

Model India melalui *Fugitive Economic Offenders Act* adalah langkah proaktif dan tegas dalam menangani kejahatan ekonomi lintas negara. Indonesia bisa meniru model ini dengan:

1. Membentuk undang-undang atau revisi UU Tipikor/UU Pencegahan dan Pembertantasan Tindak Pidana Pencucian Uang yang memungkinkan penyitaan aset terhadap buronan ekonomi.

2. Meningkatkan perjanjian kerja sama hukum internasional untuk memudahkan ekstradisi dan pelacakan aset.

3. Menciptakan unit khusus (mirip dengan Enforcement Directorate India) untuk menangani pelaku ekonomi buron.

Langkah-langkah ini akan memperkuat sistem hukum Indonesia dalam menghadapi kejahatan ekonomi yang bersifat transnasional dan mengembalikan kerugian negara secara lebih efektif.

Pemerintah Indonesia dapat Bekerja sama dengan Interpol dan atau *Egmount Group* Untuk Mendapatkan Informasi tentang adanya warga negara yang menyembunyikan hartanya di negara yang tidak memuat *Automatic Exchange of Information* dalam *tax treaty* dengan negara Indonesia, karena Interpol memiliki kekuatan dan peran dalam mendukung penegakan hukum dengan sistem *global policing*, Menyediakan platform I-24/7, yaitu jaringan komunikasi global antar polisi yang bisa digunakan untuk bertukar data investigatif secara real-time, Memiliki StAR (*Stolen Asset Recovery Initiative*)[43] bekerja sama dengan *United Nations Office on Drugs and Crime* (UNODC) dan *World Bank*, untuk mendukung negara-negara dalam pelacakan dan pemulihan aset hasil kejahata dan bisa mengeluarkan *Red Notices* untuk pelaku, dan *diffusions* terkait informasi aset yang disembunyikan, dan *Egmount Group* memiliki kekuatan dan peran dalam jaringan *Financial Intelligence Units* (FIUs) dari berbagai negara, Mengfasilitasi pertukaran informasi keuangan lintas negara secara informal namun aman dan cepat antar FIU, Anggota FIU (seperti PPATK di Indonesia) dapat meminta data keuangan spesifik terkait pencucian uang, pendanaan terorisme, dan kejahatan keuangan lintas negara, *Platform Egmont Secure Web* (ESW) memungkinkan pengiriman data rahasia.

B. Entitas atau Individu yang Menyembunyikan Aset ke Negara Tanpa AEoI

Salah satu dampak langsung dari ketiadaan ketentuan AEoI adalah meningkatnya insentif bagi entitas atau individu untuk memindahkan asetnya ke negara yang tidak memiliki kewajiban pertukaran informasi dengan Indonesia. Hal ini menimbulkan tantangan sebagai berikut:

1. Pemanfaatan Celah Hukum Internasional

Tanpa AEoI, entitas dapat dengan mudah membuka rekening bank, membentuk *shell company*, atau menggunakan *nominee*

[43] Stolen Asset Recovery Initiative (StAR), World Bank, "Our Work | Learn about StAR's Workstreams, Communications and Partnership Work," accessed June 22, 2025, https://star.worldbank.org/our-work.

arrangement di negara suaka pajak. Hal ini menyulitkan Direktorat Jenderal Pajak untuk melacak sumber penghasilan dan kewajiban pajak yang seharusnya dilaporkan di Indonesia.

Adapun contoh struktur perusahaan cangkang (*shell companies*) dan penggunaan nominee directors dalam skema *offshore* yang biasa digunakan untuk menyembunyikan kepemilikan aset atau keuntungan pajak dapat dilihat di Gambar 1

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Pemilik Benefisial / Ultimate Beneficial Owner (UBO)
↓
Penanggung Nama Saham (Nominee Shareholder)
↓
Perusahaan Cangkang (Shell Company - Offshore)
↓
Direktur Penanggung Nama (Nominee Director)
↓
Perusahaan Anak / Aset (Subsidiary / Assets)
```

GAMBAR 1 Struktur Perusahaan Cangkang

Paradise Papers (2017)[44] dan *Pandora Papers* (2021)[45] adalah dua kebocoran data besar yang mengungkap bagaimana individu dan entitas kaya termasuk politisi, pebisnis, dan selebriti yang menyembunyikan Harta mereka melalui struktur *offshore* di yurisdiksi

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[44] International Consortium of Investigative Journalists (ICIJ), *Paradise Papers: Secrets of the Global Elite - ICIJ*, ICIJ, November 5, 2017, https://www.icij.org/investigations/paradise-papers/.

[45] International Consortium of Investigative Journalists (ICIJ), *Offshore Havens and Hidden Riches of World Leaders and Billionaires Exposed in Unprecedented Leak - ICIJ*, Investigations, October 3, 2021, https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/.

yang tidak (atau belum sepenuhnya) menerapkan AEoI (*Automatic Exchange of Information*).

2. **Ketiadaan Informasi untuk Penegakan Hukum**

Tanpa data dari lembaga keuangan asing, Indonesia tidak dapat mengeksekusi proses penyitaan atau pembekuan aset yang diperoleh dari hasil kejahatan fiskal, seperti *transfer pricing abuse*, *round-tripping*, dan *base erosion*. Akibatnya, potensi penerimaan negara dari sektor perpajakan menjadi berkurang signifikan, semua ini disebabkan oleh kesulitan membuktikan asal usul harta karena Pemerintah Negara Indonesia tidak memiliki data pendukung seperti laporan keuangan, Informasi Rekening dan atau Bukti transaksi. Pemerintah akan kesulitan menentukan sumber perolehan harta, Membuktikan korelasi antara penghasilan yang dilaporkan dan harta yang dimiliki, Mengidentifikasi rekayasa transaksi atau penggunaan nominee, Penilaian Pajak Terutang pun tidak akan Akurat karena tanpa data otoritas pajak tidak dapat menghitung Besaran penghasilan yang sebenarnya diterima wajib pajak, Jenis penghasilan (objek pajak atau bukan), serta tarif yang seharusnya dikenakan, Pajak yang telah dibayar sebelumnya dengan tepat juga Lemahnya Bukti dalam Proses Pemeriksaan dan Penegakan Hukum karena dalam pemeriksaan, keberatan, atau sengketa pajak, otoritas harus dapat menunjukkan Dasar perhitungan pajak secara objektif, Bukti dokumenter dan data transaksi sebagai landasan tagihan atau koreksi, pun Ketergantungan pada Sumber Eksternal Ketika data tidak tersedia dari wajib pajak, otoritas pajak akan bergantung pada Pihak ketiga (bank, notaris, PPAT, Direktorat Jendral Pengelolaan Pembiayaan dan Resiko (DJPPR), BI, dll) melalui pertukaran data, kerja sama internasional (*exchange of information*) untuk data di luar negeri dan yang terakhir adalah Tidak Efektifnya Program Kepatuhan dan Pemutihan, Dalam program seperti Pengungkapan Pajak Sukarela (*tax amnesty* atau PPS), tanpa data Wajib pajak tidak terdorong untuk ikut karena merasa risiko ketahuan kecil, Otoritas tidak dapat menyasar wajib pajak berisiko tinggi secara akurat karena kekurangan profil risiko dan analisis data.

OECD melaporkan bahwa sejak implementasi *Automatic Exchange of Information* (AEoI) pada tahun 2017, otoritas pajak di seluruh dunia telah berhasil menukarkan informasi mengenai lebih dari 134 juta rekening keuangan, dengan total aset hampir EUR 12 triliun pada tahun 2023, Melalui program pengungkapan sukarela dan inisiatif kepatuhan pajak lainnya, lebih dari EUR 130 miliar dalam bentuk pajak, bunga, dan denda telah berhasil dikumpulkan sejak AEoI dimulai, Selain itu, implementasi AEoI telah menyebabkan penurunan sekitar 20% dalam investasi keuangan yang disimpan di pusat keuangan internasional, yang sering digunakan untuk menyembunyikan aset secara tidak sah

3. Perlunya Inovasi Hukum Nasional

Indonesia dapat memitigasi celah ini dengan menerapkan model *substance over form* atau doktrin *beneficial ownership*, seperti yang diadopsi Uni Eropa dalam aturan pelaporan kepemilikan akhir. Dengan pendekatan ini, otoritas pajak bisa mengidentifikasi pemilik sesungguhnya dari aset atau perusahaan, meskipun aset tersebut berada di luar yurisdiksi Indonesia, Meskipun Indonesia telah mengadopsi kebijakan terkait beneficial ownership, penerapannya masih lemah karena beberapa faktor yaitu regulasi masih lemah dan tergragmentasi, kurangnya penegakan dan pengawasan, struktur kepemilikan yang kompleks dan kurangnya integrasi dan transparansi sistem, kesemuanya dapat diatasi dengan Sinkronisasi aturan antar lembaga dan sektor (perbankan, perusahaan, perpajakan), Lembaga seperti PPATK, DJP, dan KPK perlu diberi wewenang dan sumber daya untuk memverifikasi dan menindak pelanggaran, Membangun sistem keterbukaan data beneficial ownership seperti Open Ownership Register, Memperkuat pertukaran informasi lintas negara untuk mengungkap kepemilikan di luar negeri, Memberlakukan denda dan konsekuensi hukum yang kuat bagi pelanggaran prinsip ini.

Penerapan *e-filing*, sistem SPT berbasis *real-time*, serta peningkatan aksesibilitas data lintas otoritas merupakan elemen strategis dalam modernisasi administrasi perpajakan yang bertujuan untuk meningkatkan efisiensi, transparansi, serta akurasi pelaporan pajak, sekaligus memperkuat pengawasan dan kolaborasi antar lembaga domestik maupun internasional

C. Implikasi Hukum atas Negara Mitra yang Tidak Menyepakati AEoI dengan Indonesia

Negara-negara yang tidak memiliki perjanjian AEoI aktif dengan Indonesia sering kali dianggap sebagai *non-cooperative jurisdictions*. Hal ini berdampak pada beberapa aspek penting hubungan antarnegara:

1. Terganggunya Hubungan Diplomatik dan Ekonomi

Negara mitra yang enggan menyepakati pertukaran informasi otomatis dapat menghadapi tekanan politik dan ekonomi, termasuk masuk dalam daftar hitam (*blacklist*) oleh OECD atau FATF (*Financial Action Task Force*). Indonesia dapat menggunakan *leverage* ini dalam forum internasional untuk mendorong kerja sama lebih lanjut.sebagai contoh *Organisation for Economic Co-operation and Development* (OECD) telah Menyusun daftar negara yang dianggap belum memenuhi standar transparansi pajak internasional dengan nama “Grey List” yang diharapkan agar negara nagara yang mendapat sorotan ini segera melakukan reformasi untuk meningkatkan Kerjasama pajak, negara negara yang yang masuk didalamnya adalah megara Belize, Seychelles, turkey, Vietnam, Armenia, Malaysia, British Virgin Island, Costa Rica, Curaçao, Eswatini[46]. Selain OECD Uni Eropa (EU) juga membuat daftar negara yang dianggap tidak kooperatif dalam hal transplantasi pajak dan penghindaran pajak dengan nama “*Black List*” dan dikenakan sanksi ekonomi dan diplomatik, Adapun negara negara yang menjadi sorotan adalah negara Rusia, Panama, Vanuatu, Guam, Fiji, Palau, Samoa, Trinidad Tobago, US Virgin Island, Anguilia[47],

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[46] Financial Action Task Force (FATF), “‘Black and Grey’ Lists,” accessed June 22, 2025, https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html.

[47] Muhamad Wildan Gumiwang Ringkang, “Uni Eropa Coret 4 Negara Ini dari Daftar Hitam Negara Suaka Pajak,” DDTCNews - Berita

selain mendapatkan sorotan negara negara tersebut juga mendapatkan dampak terhadap Hubungan Diplomatik serta ekonomi seperti pembekuan harta dan pembatasan perdagangan, rusaknya reputasi negara dimata investor dan mitra internasional, adanya tekanan dari mitra dagang untuk mereformasi *tax treaty* untuk memenuhi standar Internasional, investor dan Perusahaan multinasional akan menghindari negara dengan reputasi buruk karena risiko reputasi seperti korupsi atau penghindaan pajak, ketidakpastian hukum dan regulasi, potensi sanksi dari mitra dagang internasional, pembatasan transaksi dari Lembaga keuangan global dengan entitas yang ada dinegara tersebut yang menjadi menurunnya minat investor asing, lalu pengawasan yang ketat dari Lembaga internasional seperti OECD, FATF, IMF dan World Bank yang bisa mempengaruhi kemampuan negara untuk mendapatkan pinjaman atau bantuan internasional, lalu resiko pembatasan akses ke sistem keaungan internasional karena bank dan Lembaga keuangan asing bisa menutup korspondensi bank, menolak transaksi lintas negara, memberlakukan biaya tinggi atas resiko kepatuhan, yang berakibat pada, meningkatnya biaya transaksi internasional dan memperlambat aliran modal, dan resiko hukum dan sanksi internasional karena negara yang tidak kooperatif bisa dikenakan sanksi fiscal atau tarif tambahan oleh uni eropa maupun mitra dagang, menjadi target penyelidikan praktek korporasi global, serta rusaknya citra internasional karena dipersepsikan sebagai "*Tax Heaven*" yang tidak etis, tempat aman bagi harta hasil korupsi, atau kejahatan finansial yang berdampak pada kepercayaan Masyarakat internasional dan mempersulit kerja sama diplomatik.

2. **Ancaman Sanksi Ekonomi dan Tindakan Retaliasi**

Beberapa negara OECD telah memberlakukan sanksi terhadap yurisdiksi yang tidak kooperatif yang biasa disebut dengan *Non*

Pajak Terkini dan Terpercaya di Indonesia dan Internasional, accessed June 22, 2025, https://news.ddtc.co.id/berita/internasional/1800831/uni-eropa-coret-4-negara-ini-dari-daftar-hitam-negara-suaka-pajak.

Cooperative Jurisdictions (NCJs)[48] yang diterapkan oleh negara-negara seperti Prancis, Amerika Serikat, dan Jerman sebagai bagian dari upaya global untuk melawan penghindaran pajak, pencucian uang, dan praktik keuangan tidak transparan seperti pembatasan akses ke sistem keuangan internasional. Indonesia dapat memanfaatkan pendekatan serupa melalui pembatasan investasi, akses perdagangan, atau kebijakan insentif pajak diferensial, kenaikan tarif pajak pemotongan, pelarangan pengurangan biaya, audit pajak otomatis dan kewajiban pelaporan tambahan, sanksi *Office of Foreign Assets Control* (OFAC)[49], pencabutan atau penghapusan perlakuan pajak istimewa, dan pengawasan *transfer pricing*.

Beberapa negara mempertimbangkan atau menerapkan perlakuan fiskal khusus terhadap entitas atau individu yang berasal dari negara non-AEoI, sebagai bagian dari upaya melawan penghindaran pajak dan mendorong transparansi seperti tarif pajak differensial yaitu tarif yang lebih tinggi atas dividen, bunga, *royalty*, atau pembayaran lintas batas yang dikirm ke negara non AEoI, lalu pembatasan pengurangan pajak seperti pembayaran kepada entitas dinegara non AEoI tidak dapat dijadikan biaya yang mengurangi beban pajak, dan penyesuaian *transfer pricing* lebih ketat seperti transaksi dengan negara non AEoI dikenai uji harga transfer lebih ketat dan pelaporan lebih rinci, juga wajib lapor khusus untuk setiap transaksi atau kepemilikan harta di negara non AEoI wajib dilaporkan secara khusus dan terpisah, untuk kegagalan pelaporan dapat berujung pada denda besar atau tuntutan pidana pajak, serta penerapan anti

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[48] European Commission and Taxation and Customs Union, "Update of the EU List of Non-Cooperative Jurisdictions for Tax Purposes - European Commission," accessed June 22, 2025, https://taxation-customs.ec.europa.eu/news/update-eu-list-non-cooperative-jurisdictions-tax-purposes-2025-02-18_en.

[49] U.S. Department of the Treasury and Office of Foreign Assets Control (OFAC), "Home | Office of Foreign Assets Control," accessed June 22, 2025, https://ofac.treasury.gov/.

avoidance rules, aturan seperti *Controlled Foreign Corporation* (CFC)[50] dan *General Anti Avoidance Rule* (GAAR)[51] dapat diberlakukan lebih ketat jika melibatkan entitas dari negara non AEoI

3. **Alternatif Kerja Sama Melalui Forum Global**

Meskipun tidak ada AEoI formal, Indonesia masih dapat memanfaatkan platform kerja sama lain seperti *Global Forum on Transparency and Exchange of Information for Tax Purposes* atau *Egmont Group* untuk bertukar data secara ad hoc melalui mekanisme *exchange on request* atau *spontaneous exchange*.

Global Forum adalah suatu badan internasional yang berada di bawah naungan *Organisation for Economic Co-operation and Development* (OECD). Didirikan pada tahun 2000 dan direformasi pada tahun 2009 sebagai respons terhadap krisis keuangan global, forum ini bertujuan untuk meningkatkan tranparansi fiskal global dan mendorong pertukaran informasi perpajakan antar negara untuk memerangi penghindaran pajak, pengelakan pajak dan aliran keuangan gelap

Fungsi utama global forus adalah mendorong pertukaran informasi perpajakan seperti *Exchange of Information on Request* (EOIR)[52] dan *Automatic Excahange of Information* (AEoI), lalu Melakukan *Peer Review* untuk menilai seberapa baik negara menerapkan standar internasional transparansi dan pertukaran informasi pajak yang menjadi pengaruh reputasi fiskal suatu negara,

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[50] Organisation for Economic Co-operation and Development (OECD), "Taxation," OECD, accessed June 22, 2025, https://www.oecd.org/en/topics/taxation.html.

[51] Christophe Waerzeggers and Cory Hillier, "Introducing a General Anti-Avoidance Rule (GAAR)," *Tax Law Technical Note* 2016, no. 001 (2016): 1, https://doi.org/10.5089/9781513515823.008.

[52] Organisation for Economic Co-operation and Development (OECD), "Assistance for the Exchange of Information on Request," OECD, accessed June 22, 2025, https://www.oecd.org/en/networks/global-forum-tax-transparency/what-we-do/assistance-exchange-of-information-on-request.html.

menyediakan bantuan teknis dan kapasitas untuk pelatihan, bimbingan teknis, pendampingan reformasi kebijaka perpajakan hal ini biasanya ditujukan bagi negara berkembang

Hingga kini lebih dari 165 yurisdiksi telah menjadi anggota, termasuk negara-negara berkembang dan maju yang memiliki hak suara yang setara dan keanggotaan mewajibkan komitmen untuk menerapkan standar internasional mengenai EOIR dan AEoI serta semua anggota harus menjalani evaluasi peer review secara berkala

Indonesia dapat memanfaatkan global forum secara optimal dengan cara meningkatkan kemampuan pemanfaatkan kemampuan pemanfaatan data AEoI, penguatan kapasitas aparat pajak, meningkatkan kolaborasi bilateral dan multilateral, aktif dalam proses peer review dan reformasi serta mendukung reformasi pajak domestik

Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK) adalah finansial Intelegence Unit (FIU) Indonesia dan telah menjadi anggota Egmont Group sejak 2002. Beberapa langkah optimalisasi ESW yang bisa dilakukan oleh PPATK adalah meningkatkan kualitas dan frekuaensi pertukaran data dengan Aktif memanfaatkan ESW untuk meminta atau menyediakan informasi kepada FIU mitra, khususnya dalam tindak pidana korupsi, penyelundupan dana, tindak pidana perpajakan dan kejahatan terorganisir, mengitegrasikan hasil pertukaran kedalam sistem nasional seperti KPK, POLRI, KEJAKSAAN, Direktorat Jendral Pajak (DJP), Direktorat Jendral Bea dan Cukai (DJBC), lalu kolaborasi dengan negara tujuan dana asing WNI terutama untuk mendukung program pemngembalian aset (*aset recovery)*, Mengembangkan kapasitas teknis dan sumber daya manusia, dan respons proaktif terhadap permintaan dari negara lain yang menunjukkan komitmen Indonesia dalam kerja sama internasional dan memperkuat reputasi di komunitas global pemberantasan kejahatan keuangan

Exchange of information on Request (EoIR) dan *Automatic Exchange of Information* (AEoI) adalah dua mekanisme utama dalam pertukaran informasi perpajakan antarnegara yang digunakan untuk mencegah penghindaran dan pengelakan pajak lintas batas, dua sistem hukum tersebut memiliki mekanisme, penggunaan dan batasan yang berbeda yakni EOIR memiliki mekasnisme berdasarkan permintaan dari otoritas pajak suatu negara kepada negara mitra, Negara yang menerima permintaan akan mencari dan memberikan informasi relevan tentang wajib pajak atau transaksi tertentu dan Harus menunjukkan adanya alasan spesifik, lalu penggunaan EOIR adalah Ketika ada indikasi kuat bahwa wajib pajak menyembunyikan aset atau penghasilan di negara lain dan batasan dari EOIR adalah Informasi hanya diberikan jika permintaan disampaikan dengan cukup detail, memiliki potensi Respons yang lambat tergantung proses administratif dan kerja sama negara tujuan, dan Tergantung pada perjanjian bilateral atau multilateral sedangkan AEoI memiliki mekanisme Informasi dikirim secara otomatis dan berkala antarnegara, tanpa permintaan khusus, Umumnya digunakan untuk informasi keuangan, seperti data rekening bank, saldo, bunga, dividen, dan penghasilan lainnya, dan Diatur oleh kerangka kerja Common Reporting Standard (CRS) yang dikembangkan oleh OECD, dan AEoI Digunakan secara rutin setiap tahun oleh negara-negara partisipan CRS, juga Untuk mendeteksi secara dini penghindaran pajak lintas negara, ketika Negara anggota menerima informasi tentang wajib pajak mereka yang memiliki rekening atau aset di luar negeri, adapun batasan dari AEoI ini adalah Hanya antarnegara yang sudah sepakat dan memenuhi persyaratan CRS, termasuk keamanan data dan kerahasiaan, Informasi terbatas pada format dan kategori yang ditetapkan CRS dan Tidak mencakup data masa lalu sebelum implementasi CRS.

D. Sebab dan akibat antara kekosongan hukum AEoI dan lemahnya kapasitas penyitaan aset lintas negara

1. Keterbatasan data dan dampaknya

   Dengan tidak dimuatnya AEoI dalam Perjanjian Perpajakan Internasional direktorat jendral pajak (DJP) tidak akan menerima data rekening secara rutin hal ini akan menyebabkan DJP tidak akan bisa membuat *risk profiling* begitu juga Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK) juga tidak dapat memetakan lintasan dana lintas negara, hal itu akan menjadikan *Mutual Legal Asistance Treaties* (MLATs) menjadi tidak efektif yang berujung pada Penyitaan aset tersendat karena tidak ada "*predicate information*"

2. Inovasi Hukum Nasional

Beberapa macam Instrumen Instrumen yang bisa digunakan untuk Menutup kekosongan Adalah Penguatan *Beneficial Ownership* melalui revisi Peraturan presiden Nomor 13 tahun 2018, penerapan pengaturan Pembuktian terbalik atau penyitaan dini seperti *Unexplained Wealth Order* (UWO) atau *Fungitive Economic Offender Act* (FEOA), Perluasan wewenang DJP meminta data pihak ketiga, harmonisasi Undang-Undang Nomor 28 Tahun 2007 tentang Ketentuan Umum dan Tata Cara Perpajakan dengan Undang Undang Nomor 8 tahun 2010 tentang tindak pidana pencucian uang Untuk Berbagi data

3. Implikasi bagi negara Non AEoI

Pemerintah negara Indonesia dapat memberikan disinsentif berupa menerapkan *With Holding Tax* (WTH) yang lebih tinggi, Memasukkan mereka kedalam daftar negara beresiko tinggi, Penerapan *Enhanced Customer Due Diligence (CDD)* oleh PPATK, negara negara non AEoI akan Mendapat tekanan reputasional dan Diplomatik, Indonesia dapat menolak struktur pajak yang melibatkan yurisdiksi non-AEOI (asas *substance over form*).

Kesimpulan

Dampak dari kealpaan perjanjian pertukaran informasi otomatis dalam perjanjian perpajakan internasional ini adalah ketidakmampuan pemerintah negara khususnya negara Indonesia dalam melacak dan menyita asset dari para subyek pajak yang menggelapkan asetnya keluar negara Indonesia Adapun beberapa Upaya untuk mengisi kekosongan hukum tersebut adalah dengan melakukan Kerjasama bilateral dan memperbarui perjanjian perpajakan internasional dengan negara negara yang tidak memuat perjanjian AEoI dalam perpajakan internasionalnya, lalu pemerintah negara Indonesia dapat menggunakan perjanjian multilateral yang telah diterapkan selama ini dalam forum G20 untuk diterapkan ke negara negara lain yang belum memuat AEoI dalam perjanjian Perpajakannya, lalu pemerintah negara Indonesia juga bisa menerapkan prinsip *Global Minimum Tax* (GMT) yang bertujuan agar para wajib pajak tidak merasa terbebani dengan nominal pajak yang selama ini berlaku sehinnga berdampak pada para wajib pajak yang patuh dengan peraturan perpajakan, pemerintah juga dapat membuat program pengampunan pajak (*tax amnesty*) untuk memfasilitasi subyek pajak yang memiliki aset diluar negara Indonesia, menerapkan sanksi atau pembatasan ekonomi pada para pelaku, mendorong negara lain yang belum tergabung dalam AEoI dengan bantuan dari negara yang telah bergabung dengan AEoI, melakukan Pembaharuan perjanjian perpajakan internasional dengan negara tax heaven dan menerapkan undang undang ekstradisi untuk mengambil atau menyita harta individua atau entitas yang ada di negara *tax heaven*, adanya hasil penelitian ini diharapkan dapat memberikan masukan kepada pemerintah negara Indonesia untuk mengisi kekosongan hukum di bidang pertukaran informasi otomatis dalam perjanjian perpajakan internasional di kemudian hari, kajian ini bertujuan untuk memberikan kontribusi substantif dan menunjukkan bahwa keterbukaan *Beneficial ownership* melalui *open ownship register* merupakan prasyarat informasional bagi efektivitas risk based audit system, integrasi kedua instrumen ini mengurangi celah informasi yang selama ini menghambat pemprofilan risiko wajib pajak, sehingga meningkatkan kekemampuan otoritas pajak dalam mendeteksi pola penyembunyian asset lintas negara yang tidak dapat diakses melalui Mekanisme AEoI saja, Temuan ini Menegaskan bahwa *Open Ownership Register* (OOR) bukan hanya pelengkap kebijakan anti money laundering tetapi fondasi strategis bagi penguatan tata Kelola perpajakan modern

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PERSPEKTIF HUKUM

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URGENSI PENGATURAN *FINANCIAL TECHNOLOGY*: KEWENANGAN PENGHIMPUNAN DANA MASYARAKAT

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Abstract

Technological developments are driving acceleration in all fields, especially financial technology, where the services required for banking products are equivalent to those of banks. In line with current conditions, namely the advent of digital 4.0, financial institutions are beginning to shift to technology-based financial institutions. One of the current advancements in the financial sector is the adaptation of Financial Technology, commonly known as fintech. The implementation of fintech must not be hindered by legal violations due to legal loopholes. This study employs a normative legal approach. Based on this method, a statute approach is used in this study, reinforced by a literature approach. This study was conducted to accelerate the implementation of fintech so that it does not fall into a legal vacuum, thereby preventing problems arising from violations of norms, particularly in the banking sector. The modernity of financial transactions, especially financial services such as fintech, has violated the provisions of the Banking Law, which in this case is the establishment of business entities that attract public funds in banking institutions. However, to date, there is still a legal vacuum, and with the rapid development of technology, there needs to be a change in regulations related to this issue to prevent a legal vacuum.

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Pendahuluan

Perkembangan teknologi informasi dan komunikasi (TIK) telah membawa perubahan drastis dan mendasar dalam banyak sendi kehidupan manusia, utamanya interconnection-networking (internet), berdampak sangat luas di seluruh bagian hidup manusia. Perkembangan moderitas jaman saat ini sepenuhnya ketergantungan pada pesatnya perkembangan teknologi digital. Bisnis Finansial Technology merupakan salah satu inovasi finansial dalam era digital 4.0. Buckley menyampaikan bahwa *Financial Technology is a financial product and services through a combination of the technology platform and innovative business model.*[1] Apabila diterjemahkan secara bebas, maka dapat diperoleh pengertian sebagai berikut: "Teknologi Finansial adalah produk dan layanan jasa keuangan melalui kombinasi platform teknologi dan model bisnis yang inovatif", yaitu bahwa layanan teknologi finansial merupakan layanan yang berbasis perpaduan platform bisnis inovatif yang dipadukan dengan modernitas teknologi. Salah satu bagian yang merupakan termasuk ke dalam usaha bisnis Fintech adalah Layanan Jasa Keuangan yang dilakukan secara digital. Layanan jasa keuangan di era digital ini memungkinkan masyarakat tidak lagi membutuhkan uang secara fisik dalam bertransaksi. Bahkan

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[1] Buckley R. P. and Webster S., 'Fin-Tech in Developing Countries : Charting New Customer Journeys J Capco Inst J Financ Transform' (2018) 44 Journal of Financial Transformation 1, 19.

hingga tidak perlu membutuhkan kondisi tatap muka dalam bertransaksi.

Pada praktiknya bisnis Fintech selain memberikan kemajuan yang luar biasa dalam dunia transaksi keuangan, namun juga memiliki potensi risiko yang akan timbul, yaitu a). risiko keamanan data konsumen dan b). risiko kesalahan transaksi.[2] Berdasarkan hal tersebut, maka menurut Otoritas Jasa Keuangan memandang perlu untuk dilakukan pengaturan dan bagi keberlangsungan fintech di Indonesia. Legalitas terhadap pelaksanaan bisnis Fintech, pengawasan dilakukan oleh dua Lembaga negara yaitu: Kementerian Komunikasi dan Informatika Republik Indonesia (Kemkominfo RI) yang merupakan pembentuk regulasidalam pelaksanaan sistem elektronik/perbankan digital dan Bank Indonesia serta OJK sebagai pembentuk aturan tentang sistem kelembagaan atas badan usaha yang bergerak dalam bidang Jasa Keuangan. Merujuk pada Undang Undang Nomor 10 Tahun 1998 tentang Perubahan Atas Undang Undang Nomor 7 Tahun 1992 Tentang Perbankan selnajutnya disebut UU Perbankan khususnya Pasal 16 ayat (1) Menentukan bahwa "Setiap pihak yang melakukan kegiatan menghimpun dana dari masyarakat dalam bentuk simpanan wajib terlebih dahulu memperoleh izin usaha sebagai Bank Umum atau Bank Perkreditan Rakyat dari Pimpinan Bank Indonesia, kecuali apabila kegiatan menghimpun dana dari masyarakat dimaksud diatur dengan Undang-Undang tersendiri". Merujuk pada ketentuan tersebut, bahwa penghimpunan dana dari selain yang dimaksud dalam Undang Undang Perbankan ini akan diatur dalam Undang Undang yang lain, sedangkan ketentuan yang mengatur terkait dengan penghimpunan dana ini juga terdapat dan hanya di Undang Undang Nomor 8 Tahun 1995 tentang Pasar Modal yang pada Pasal 1 angka 27 menentukan bahwa "Reksa Dana adalah wadah yang dipergunakan untuk

[2] OJK, Kajian Perlindungan Konsumen Sektor Jasa Keuangan: Perlindungan KOnsumen Pada Fintech (Departemen Perlindungan Konsumen OJK 2017). Jakarta: Kencana

menghimpun dana dari masyarakat pemodal untuk selanjutnya diinvestasikan dalam Portofolio Efek oleh Manajer Investasi"

Selanjutnya kewenangan dalam pengawasan dan pengelolaan Lembaga Keuangan baik Lembaga Bank maupun Lembaga Non Bank serta tentang Pasar Modal yang sebelumnya menjadai kewenangan Bank Indonesia telah dilimpahkan kepada Otoritas Jasa Keuangan (OJK) selanjutnya disebut dengan UU OJK, melalui perintah Undang Undang Perbankan serta diperkuat dengan Undang Undang Nomor 21 Tahun 2011 tentang Otoritas Jasa Keuangan khususnya Pasal 9 huruf (h) yang menentukan bahwa "Untuk melaksanakan tugas pengawasan sebagaimana dimaksud dalam Pasal 6, OJK mempunyai wewenang memberikan dan/atau mencabut:

a. izin usaha;
b. izin orang perseorangan;
c. efektifnya pernyataan pendaftaran;
d. surat tanda terdaftar;
e. persetujuan melakukan kegiatan usaha;
f. pengesahan;
g. persetujuan atau penetapan pembubaran; dan
h. penetapan lain,".

Saat ini ijin tersebut telah dijalankan oleh OJK yang salah satunya kepada perusahaan PT. Telekomunikasi Indonesia, Tbk (Telkomsel) serta PT Aplikasi Karya Anak Bangsa (Go Jek) yang masing – masing merupakan Badan Usaha bergerak dalam bidang telkomunikasi dan transportasi. Telkomsel melalui dompetku dan Go Jek melalui Go Pay nya merupakan contoh wujud dari perusahaan non Bank yang bergerak dalam usaha pengumpulan dana masyarakat. Apakah Telkomsel dan Go Jek illegal?, tidak. Operasionalisasi Fintech yang dijalankan Telkomsel dan Go Jek dalam fitur **Dompetku** dan **Go Pay** telah memiliki ijin dari Otoritas Jasa Keuangan, yang merupakan Lembaga dalam kapsitas kewenangannya untuk memberikan ijin tersebut. Hal ini sesuai dengan ketentuan peraturan perundangan dan juga dikuatkan dalam Peraturan Bank Indonesia Nomor 19/12/PBI/2017 Tahun 2017 Tentang Penyelenggaraan Teknologi Finansial juncto Peraturan Otoritas Jasa Keuangan Nomor 13 /POJK.02/2018 Tahun 2018 tentang Inovasi Keuangan Digital Di Sektor Jasa Keuangan

Permasalahan terjadi bilamana ijin yang diberikan ternyata melanggar ketentuan peraturan di atasnya atau peraturan yang lebih tinggi kedudukannya. Undang Undang Perbankan menentukan bahwa dalam pengumpulan dana masyarakat harus memiliki ijin sebagai lembaga Bank. Melalui asas – asas penerapan Undang Undang dapat kita ketahui terjadi friksi peraturan antara peraturan tingkat atas nya. Berdasarkan permasalahan tersebut, menjadikan batasan dalam penelitian ini dengan memberikan rumusan masalah sebagai berikut:

A. Bentuk kebijakan pengelolaan dana masyarakat oleh lembaga non bank.

B. Politik hukum pengelolaan dana masyarakat oleh lembaga keuangan *non bank.*

Tujuan dari penulisan ini diharapkan dapat menemukan peranan layanan jasa keuangan non bank di era teknologi yang semakin maju serta lahirnya rambu - rambu yang membatasi masyarakat dalam penggunaan layanan berbasis teknologi keuangan.

Metode Penelitian

Penelitian ini adalah penelitian yuridis yang dilakukan dengan metode yuridis normatif. Jenis penulisan yuridis normatif mempunyai maksud dan tujuan untuk mengkaji perundang-undangan dan peraturan yang berlaku juga kajian teoritis dari literatur yang ada kemudian dihubungkan dengan permasalahan kebijakan yang berkaitan dengan penghimpunan dana masyarakat melalui meia digital. Maka dari itu penelitian Yuridis normatif ini ditulis melalui pendekatan Peraturan Perundang – undangan (*Statute Approach*) dan pendekatan konseptual (*Conseptual Approach*). Secara rinci deskriptif metodologi di jelaskan sebagai berikut:

a. Pendekatan Masalah Penelitian

Peter Mahmud Marzuki mendefinisikan penelitian hukum sebagai suatu proses untuk menemukan aturan hukum, prinsip-prinsip hukum, maupun doktrin-doktrin hukum guna menghadapi isu hukum yang dihadapi.[3] Pendekatan yang dipergunakan dalam penelitian ini menggunakan pendekatan perundang-undangan *(statute approach)* dan pendekatan kepustakaan *(library approach)* terkait dengan pengertian umum – pengertian umum terkait dengan penghimpunan dana masyarakat melalui media digital. Melalui beberapa pendekatan tersebut diharapkan menjadi suatu kesatuan yang saling melengkapi dan nantinya dapat memperoleh hasil penelitian yang komprehensif dan memiliki tingkat akurasi yang tinggi.

Pendekatan perundang-undangan *(statute approach)* dilakukan dengan menelaah semua undang-undang dan regulasi berkaitan dengan kebijakan dalam wujud peraturan perundangan dalam rangka penghimpunan dana masyarakat melalui media digital.

b. Metode Analisis

Melalui pisau analisis Teori tentang Hierarki Perundang Undangan serta Politik Hukum dalam rangka keosongan hukum, khususnya terkait dengan Penghimpunan Dana yang dilakukan oleh Lembaga *Non Bank* yang dilakukan secara digital.

[3] Peter Mahmud Marzuki,Penelitian Hukum, Kencana Prenada Media Group, Jakarta, 2021, hlm 35.

Hasil dan Pembahasan

A. Tinjauan Umum Tentang *Financial Technology*

Dunia *Financial Technology* dengan segala permasalahannya seperti tidak lekang oleh waktu karena lemahnya pengetahuan masyarakat tentang dunia *fintech* dunia bisnis Indonesia adalah Fintech. Bahkan terbaru Presiden Amerika menginginkan perkembangan dunia *Fintech* ingin ditenggelamkan seiring keinginan Presiden Amerika memaksa Indonesia menggunakan system Visa mereka dan menghapus system QRIS. Istilah Fintech merupakan singkatan dari *Financial Technology*, jika diterjemahkan ke dalam Bahasa Indonesia berarti teknologi finansial. Pasal 1 angka 1 Peraturan Bank Indonesia Nomor 19/12/PBI/2017 tentang Penyelenggaraan Teknologi Finansial, teknologi finansial diartikan sebagai penggunaan teknologi dalam sistem keuangan yang menghasilkan produk, layanan, teknologi, dan/atau model bisnis baru serta dapat berdampak pada stabilitas moneter, stabilitas sistem keuangan, dan/atau efisiensi, kelancaran, keamanan, dan keandalan sistem pembayaran.

Terminologi *Financial Technology* sesuai yang disampaikan Bank Indonesia dalam laman edukasi website Bank Indonesia desibutkan bahwa *Financial Technology* (Fintech) merupakan hasil gabungan antara jasa keuangan dengan teknologi yang akhirnya mengubah model bisnis dari konvensional menjadi moderat, yang awalnya dalam membayar harus bertatap-muka dan membawa sejumlah uang kas, kini dapat melakukan transaksi jarak jauh dengan melakukan pembayaran yang dapat dilakukan dalam hitungan detik saja.[4] Fintech merupakan salah satu sarana berinvestasi yang menghadirkan pilihan bagi masyarakat yang mempunyai keinginan untuk mengakses layanan jasa keuangan secara praktis, efisien, dan ekonomis. Keberadaan *Fintech* saat ini mempengaruhi gaya hidup masyarakat secara ekonomi yaotu terkait dengan kemudahan dalam

[4] https://www.bi.go.id/id/edukasi/Pages/mengenal-Financial-Teknologi.aspx

melakukan transaksi keuangan. Perpaduan antara efektivitas dan teknologi memiliki dampak positif bagi masyarakat pada umumnya.

Adapun manfaat *Fintech* dalam kehidupan masyarakat sat ini khususnya masyarakat Indonesia adalah:[5]

a. *Fintech* dapat membantu perkembangan baru di bidang start up teknologi yang tengah menjamur. Hal ini dapat membantu perluasan lapangan kerja dan meningkatkan pertumbuhan ekonomi. Pertumbuhan ekonomi tersebut mendatangkan

b. *Fintech* dapat membantu peningkatan taraf hidup masyarakat oleh karena Fintech dapat menjangkau masyarakat yang tidak dapat dijangkau oleh perbankan konvensional.

c. *Fintech* dapat meningkatkan ekonomi secara makro oleh karena Fintech dapat memberikan kemudahan sehingga dapat meningkatkan penjualan melalui sarana *e-commerce*.

d. *Fintech* memiliki manfaat besar melalui penurunan bunga pinjaman dalm melakukan beberapa jenis transaksi.

Perkembangan pengguna *Fintech* juga terus berkembang dari tahun ke tahun. World Bank merilis bahwa pengguna Fintech yang awalnya 7% di tahun 2007, berkembang menjadi 20% di tahun 2011, kemudian meningkat menjadi 36% di tahun 2014, dan di tahun 2017 kemarin sudah menginjak angka 78% atau tercatat sebanyak 135-140 perusahaan, dengan total nilai transaksi Fintech di Indonesia pada tahun 2017 tersebut diperkirakan mencapai Rp 202,77 Triliun!

Berikut beberapa jenis-jenis perkembangan di negara Indonesia:

1. *Crowdfunding*

Crowdfunding atau penggalangan dana merupakan salah satu model FinTech yang sedang populer di berbagai negara, termasuk Indonesia. Dengan adanya teknologi ini, masyarakat dapat

[5] https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/10468

menggalang dana atau berdonasi untuk suatu inisiatif atau program sosial yang mereka pedulikan. Salah satu contohya adalah penggalangan dana untuk membangun Pesawat R80 yang didesain oleh BJ Habibie. Contoh start-up FinTech dengan model crowdfunding yang kini tengah populer di Indonesia adalah KitaBisa.com.

2. *Microfinancing*

Microfinancing adalah salah satu layanan Fintech yang menyediakan layanan keuangan bagi masyarakat kelas menengah ke bawah untuk membantu kehidupan dan keuangan mereka sehari-hari. Karena masyarakat dari golongan ekonomi ini kebanyakan tidak memiliki akses ke institusi perbankan, maka mereka pun mengalami kesulitan untuk memperoleh modal usaha guna mengembangkan usaha atau mata pencaharian mereka. *Microfinancing* berusaha menjembatani permasalahan tersebut dengan menyalurkan secara langsung modal usaha dari pemberi pinjaman kepada calon peminjam. Sistem bisnis dirancang agar return bernilai kompetitif bagi pemberi pinjaman, namun tetap attainable bagi peminjamnya. Salah satu startup yang bergerak dalam bidang microfinancing ini adalah Amartha yang menghubungkan pengusaha mikro di pedesaan dengan pemodal secara online.

3. *P2P Lending Service*

Jenis ini lebih dikenal sebagai Fintech untuk peminjaman uang. Fintech ini membantu masyarakat yang membutuhkan akses keuangan untuk memenuhi kebutuhan. Dengan Fintech ini, konsumen dapat meminjam uang dengan lebih mudah untuk memenuhi berbagai kebutuhan hidup tanpa harus melalui proses berbelit-belit yang sering ditemui di bank konvensional. Salah satu contoh dari Fintech yang bergerak dalam bidang peminjaman uang ini adalah AwanTunai, sebuah startup yang memberikan fasilitas cicilan digital dengan aman dan mudah.

4. *Market Comparison*

Melalui Fintech ini, dapat diperbandingkan jenis - jenis produk keuangan dari berbagai penyedia jasa keuangan. Fintech juga dapat berfungsi sebagai perencana finansial. Dengan bantuan *Fintech*, pengguna akan mendapatkan beberapa pilihan investasi untuk kebutuhan di masa depan.

5. *Digital Payment System*

Fintech ini bergerak di bidang penyediaan layanan berupa pembayaran semua tagihan seperti pulsa & pascabayar, kartu kredit, atau token listrik PLN. Salah satu contoh Fintech yang bergerak dalam digital payment system ini adalah Payfazz yang berbasis keagenan untuk membantu masyarakat Indonesia, terutama mereka yang tidak memiliki akses ke bank, untuk melakukan pembayaran berbagai macam tagihan setiap bulannya.

Kebijakan perbankan Indonesia dalam mengatur keberadaan *Fintech* ini sesuangguhnya merupakan beriring – iringan kemajuan dalam inovasi finansial dengan sentuhan kemajuan teknologi modern, yang memanfaatkan perkembangan teknologi informasi guna menciptakan inovasi baru di sektor jasa keuangan, yang lebih cepat dan mudah digunakan. *Financial Techno-logy is a financial product and services service through a combination of the technology platform and innovative business model* (Teknologi Finansial adalah produk dan layanan jasa keuangan melalui kombinasi platform teknologi dan model bisnis yang inovatif).[6] Kegiatan usaha dari bisnis Fintech adalah Layanan Jasa Keuangan (selanjutnya disebut LJK) secara elektronik. Dengan demikian bisnis Fintech adalah suatu model bisnis yang menyediakan LJK dengan memanfaatkan teknologi informasi. *Fintech*

[6] Buckley R. P. and Webster S., 'Fin-Tech in Developing Countries : Charting New Customer Journeys *J Capco Inst J Financ Transform*' (2018) 44 Journal of Financial Transformation 1, 19.

is an innovation that involves the use of modern technology in the field of financial services.[7]

Jadi apabila dilihat dari sistem kegiatan usaha yang dijalankan, maka bisnis Fintech menjalankan sistem elektronik untuk menjalankan system LJK kepada konsumennya. Sehingga bisnis Fintech terikat pada peraturan perundang-undangan tentang sistem elektronik dan peraturan tentang LJK. Oleh karena itu, bisnis Fintech diatur dan diawasi oleh Kementerian Komunikasi dan Informatika Republik Indonesia (Kemkominfo RI) sebagai regulator sistem elektronik dan Bank Indonesia serta OJK sebagai regulator sistem LJK.

B. Prinsip Umum Penyelenggaraan Perbankan

Badan Usaha yang bergerak dibidang Perbankan khususnya, wajib selalu memegang prisnsip - prinsip perbankan, prinsip tersebut merupakan prinsip yang menjadi nafas dalam pelaksanaan kegiatan usaha perbankan. Adapun prinsip – prinsip tersebut adalah 1) Prinsip Kepercayaan (*fiduciary relation principle*), 2) prinsip kehatihatian (*prudential principle*), 3) prinsip kerahasiaan (*secrecy principle*), dan 4) Prinsip mengenal nasabah (*know how costumer principle*).

1. Prinsip Kepercayaan (*Fiduciary relation principle*).

Prinsip ini diatur dalam Pasal 29 ayat (4) Undang-Undang Nomor 10 Tahun 1998 tentang Perbankan (UU Perbankan) Pasal ini menentukan bahwa Prinsip kepercayaan adalah suatu asas yang melandasi hubungan antara bank dan nasabah bank. Bank berusaha dari dana masyarakat yang disimpan berdasarkan kepercayaan, sehingga setiap bank perlu menjaga kesehatan banknya dengan tetap memelihara dan mempertahankan kepercayaan masyarakat.

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[7] A. Raharjo & T. Sudrajat (Eds.), 'Fintech Indonesia User Legal Protection in Balance Borrowing Money Based on Information Technology' (2018) 54 SHS Web of Conferences 1, 1.

2. Prinsip Kehatihatian (*prudential principle*)

Prinsip berikutnya ditentukan melalui Pasal 2 dan Pasal 29 ayat (2) UU Perbankan terkait dengan Prinsip kehati-hatian. Sesuai dengan ketentuan prinsip kehati – hatian menegaskan bahwa bank dalam menjalankan kegiatan usaha baik dalam penghimpunan terutama dalam penyaluran dana kepada masyarakat harus sangat berhati-hati. Tujuan dilakukannya prinsip kehati-hatian ini agar bank selalu dalam keadaan sehat menjalankan usahanya dengan baik dan mematuhi ketentuan-ketentuan dan norma-norma hukum yang berlaku di dunia perbankan.

3. Prinsip Kerahasiaan (*secrecy principle*)

Prinsip kerahasiaan bank yang hingga saat ini menjadi perhatian public, mengingat prinsip ini berkaitan dengan perlindungan nasabah. Prinsip ini ditentukan melalui Pasal 40 sampai dengan Pasal 47 Huruf A UU Perbankan. Pasal ini menentukan bahwa bank wajib merahasiakan keterangan mengenai nasabah penyimpan dan simpanannya. Namun dalam ketentuan tersebut kewajiban merahasiakan itu bukan tanpa pengecualian. Namun kewajiban merahasiakan itu dikecualikan untuk dalam hal-hal guna kepentingan pajak, terjadinya sengketa utang piutang bank (Kepailitan, PKUPU, Fidusia, dll) yang sudah diserahkan kepada badan Balai Harta Peninggalan (BHP) / Panitia Urusan Piutang Negara (UPLN/PUPN), litigasi pengadilan dalam perkara perdata, litigasi pengadilan dalam perkara pidana antara bank dengan nasabah, dan dalam rangka tukar menukar informasi antar bank.

4. Prinsip Mengenal Nasabah (*Know how costumer principle*)

Prinsip terakhir yang juga merupakan prinsip krusial adalah prinsip mengenal nasabah. Satu – satunya prinsip yang terdapat diluar ketentua UU Perbankan melainkan melalui ketentuan Peraturan

Bank Indonesia (PBI) No.3/10/PBI/2001 tentang Penerapan Prinsip Mengenal Nasabah. Prinsip ini lahir atas maraknya dugaan terorisme dan tindak pidana korupsi, dimana penyimpanan dana nasabah musti diketahui harta asal usulnya. Prinsip yang diterapkan oleh bank untuk mengenal dan mengetahui identitas nasabah, memantau kegiatan transaksi nasabah termasuk melaporkan setiap transaksi yang mencurigakan. Tujuan yang hendak dicapai dalam penerapan prinsip mengenal nasabah adalah meningkatkan kewaspadaan sebagai peran mengelola lembaga keuangan dengan berbagai kebijakan dalam menunjang praktik lembaga keuangan. Prinisp ini juga berfungsi untuk menangkal pendanaan atas tindakan terorisme serta penelusuran terhadap kegiatan pencucian uang. Tujuan besar dalam prinsip ini setidaknya menghindari berbagai kemungkinan lembaga keuangan dijadikan ajang tindak kejahatan dan aktivitas illegal yang dilakukan nasabah, dan melindungi nama baik dan reputasi lembaga keuangan

C. Analisa Urgensi Pembaharuan Peraturan Perundangan terkait pengaturan tentang *Finansial Technology*

Berdasarkan penelusuran literasi yang dilakukan oleh peneliti dan dibantu oleh mahasiswa yang terlibat dalam penelitian ini , dihasilkan beberap penggalia data sebagai berikut: bahwa regulasi terkait dengan penarikan dana masyarakat bersumber melalui tiga ketentuan yang saat ini masih mejadi dasar utama terkait lembaga bank sebagai penghimpun dana masyarakat.

1) Undang Undang Nomor 10 Tahun 1998 tentang Perubahan Atas Undang-Undang Nomor 7 Tahun 1992 tentang Perbankan
   Merupakan ketentuan induk dalam Tindakan penghimpunan dana Masyarakat yang mewajibkan dalam bentuk Lembaga bank
2) Peraturan Bank Indonesia Nomor: 11/ 1 /PBI/2009 tentang Bank Umum

Ketentuan ini mengatur tentang kelembagaan perbankan untuk mendorong terciptanya industri perbankan yang sehat dan kuat sehingga mengedepankan prinsip kehati-hatian dalam pengelolaan kelembagaan bank

3) POJK Nomor 10/POJK.05/2022 tentang Layanan Pendanaan Bersama Berbasis Teknologi Informasi
Peraturan ini mengatur tentang penyelenggaraan Layanan Pendanaan Bersama Berbasis Teknologi Informasi (LPBBTI), yang dikenal juga sebagai fintech peer-to-peer lending (P2P Lending).
4) POJK Nomor 6/POJK.07/2022 tentang Perlindungan Konsumen dan Masyarakat di Sektor Jasa Keuangan
Peraturan ini mengatur tentang perlindungan konsumen dan masyarakat dalam kegiatan jasa keuangan, termasuk penghimpunan dana masyarakat.
5) POJK Nomor 12/POJK.03/2021 tentang Bank Umum
Peraturan ini mengatur tentang bank umum, termasuk kegiatan penghimpunan dana dalam bentuk simpanan.
6) POJK Nomor 13/POJK.03/2021 tentang Bank Perkreditan Rakyat.
Peraturan ini mengatur tentang bank perkreditan rakyat (BPR), termasuk kegiatan penghimpunan dana dalam bentuk simpanan.
7) POJK Nomor 20/POJK.04/2015 tentang Penawaran Efek Syaria.
Peraturan ini mengatur tentang penawaran efek syariah, termasuk penghimpunan dana melalui penerbitan sukuk

Berdasarkan sumber – sumber hukum yang menjadi payung hukum dalam pelaksanaan fintech di negara Indonesia seperti yang tertulis di atas, maka dapat diketahui bersama bahwa bisnis *Fintech* merupakan perkembangan teknologi dalam bidang *finance* khususnya dalam rangka layanan perbankan, baik layanan penghimpunan dana masyarakat maupun layanan pembayaran (transaksi) melalui pemanfaatan teknologi informasi guna menciptakan terobosa baru di sektor jasa keuangan yang tanpa batas dan lebih cepat serta mudah digunakan. *Financial Technology is a financial product and services through a combination of the technology platform and innovative business model* (Teknologi Finansial adalah produk dan layanan jasa keuangan melalui kombinasi platform teknologi dan model bisnis yang inovatif).[8] Bisnis *Fintech* merupakan Layanan Jasa Keuangan (selanjutnya disebut LJK) secara elektronik. Berkaitan dengan hal tersebut, maka bisnis Fintech dipat dikatakan bahwa merupakan suatu model bisnis yang menyediakan LJK dengan memanfaatkan teknologi informasi. *Fintech is an innovation that involves the use of modern technology in the field of financial services*.[9] Dapat disimpulka bahwa bisnis Fintech menjalankan sistem elektronik sebagai implementasi sistem LJK sebagai wujud layanan kepada konsumen perbankan (Keuangan). Maka dari itu bisnis Fintech musti terikat pada peraturan perundang-undangan tentang sistem elektronik dan peraturan tentang LJK. Oleh sebab itu, bisnis Fintech sudah seyogyanya diatur dan diawasi oleh Bank Indonesia serta OJK sebagai regulator sistem LJK (perbankan) namun dalam rangka platform teknologi digital maka *Fintech* seyogyanya juga dipayungi oleh Kementerian Komunikasi dan Informatika Republik Indonesia (Kemkominfo RI) sebagai regulator Teknologi Informasi dan Komunikasi.

Payung kebijakan fintech ditentukan melalui Peraturan Bank Indonesia No 19 /12/PBI/2017 yang menentukan tentang *Penyelenggaraan Fintechi*. Berdasarkan ketentuan tersebut penyelenggaraan fintech dikategorikan menjadi 5 (lima), yaitu:

1. **Sistem pembayaran** (*digital payment*) yang mencakup otorisasi, kliring, penyelesaian akhir, dan pelaksanaan pembayaran. Contoh-nya penggunaan teknologi *block-chain* atau distributed

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[8] Buckley R. P. and Webster S., 2018, 'Fin-Tech in Developing Countries : Charting New Customer Journeys *J Capco Inst J Financ Transform*', 44 Journal of Financial Transformation 1, 19.

[9] A. Raharjo & T. Sudrajat (Eds.), 'Fintech Indonesia User Legal Protection in Balance Borrowing Money Based on Information Technology' (2018) 54 SHS Web of Conferences 1, 1.

ledger untuk penyelenggaraan transfer dana, uang elektronik dompet elektronik dan mobile payments;
2. **Pendukung pasar**, merupakan *Fintech* yang menggunakan tekno-logi informasi dan/atau teknologi elektronik untuk memfasilitasi pemberian informasi yang lebih cepat dan lebih murah terkait dengan produk dan/atau LJK kepada masyarakat. Contohnya penyediaan data perbandingan informasi produk atau LJK;
3. **Manajemen investasi dan manajemen risiko**. Contohnya penyediaan produk investasi online dan asuransi online.
4. **Pinjaman, pembiayaan dan penye-diaan modal**. Contohnya layanan pinjam meminjam uang berbasis teknologi informasi (*peer to peer lending*) serta pembiayaan atau penggalangan dana berbasis teknologi informasi (*crowd-funding*).
5. **Jasa finansial lainnya** selain keempat hal yang sudah disebutkan sebelumnya.

Sesuai amanh ketentuan Undang Undang Nomor 21 Tahun 2011 tentang Otorita Jasa Keuangan (UU OJK), maka otomatis kewenangan Bank Indonesia yang dulunya sebagai kebijakan perbankan, melalui UU OJK kewenangan Bank Indonesia hanya sebagai Lembaga pembentuk kebijakan moneter dan fiscal serta pencetakan uang kartal dari negara Indonesia. Kebijakan terkait Lembaga keuangan baik pasar modal, perbankan dan segala bentuk investasi menjadi pengawasan di bawah Otoritas Jasa Keuangan.

Pasal 6 UU OJK menentukan bahwa Pasal 6 OJK melaksanakan tugas pengaturan dan pengawasan terhadap:

a) kegiatan jasa keuangan di sektor Perbankan;
b) kegiatan jasa keuangan di sektor Pasar Modal; dan
c) kegiatan jasa keuangan di sektor Perasuransian, Dana Pensiun, Lembaga Pembiayaan, dan Lembaga Jasa Keuangan Lainnya.

Lebih lanjut berdasarkan Pasal 7 huruf a dan b menentukan bahwa:

Untuk melaksanakan tugas pengaturan dan pengawasan di sektor Perbankan sebagaimana dimaksud dalam Pasal 6 **huruf a**, OJK mempunyai wewenang:

a. pengaturan dan pengawasan mengenai kelembagaan bank yang meliputi:
   1) perizinan untuk pendirian bank, pembukaan kantor bank, anggaran dasar, rencana kerja, kepemilikan, kepengurusan dan sumber daya manusia, merger, konsolidasi dan akuisisi bank, serta pencabutan izin usaha bank; dan
   2) kegiatan usaha bank, antara lain sumber dana, penyediaan dana, produk hibridasi, dan aktivitas di bidang jasa;
b. pengaturan dan pengawasan mengenai kesehatan bank yang meliputi:
   1) likuiditas, rentabilitas, solvabilitas, kualitas aset, rasio kecukupan modal minimum, batas maksimum pemberian kredit, rasio pinjaman terhadap simpanan, dan pencadangan bank;
   2) laporan bank yang terkait dengan kesehatan dan kinerja bank;
   3) sistem informasi debitur;
   4) pengujian kredit (credit testing); dan
   5) standar akuntansi bank;

Selanjutnya penegasan atas pengawasan dan tugas OJK ditentukan melalui Pasal 8 dan Pasal 9, maka sejak UU tersebut terbentuk maka secara mutatis mutandis kewenangan dalam pengelolaan dan pengawasan terkait dengan Lembaga keuangan mutlak menjadi kewenangan Otoritas Jasa Keuangan. Untuk itu dengan jalannya kelembagaan Otoritas Jasa Keuangan, maka selanutnya regulasi yang mengatur tentang segala hal menyangkut terkait dengan pengelolaan, pendaftaran, pembentukan regulator dan pengawasan terkait dengan Lembaga keuangan menjadi kewenang Otoritas Jasa keuangan. OJK menyelenggarakan sistem pengaturan dan pengawasan yang terintegrasi terhadap keseluruhan kegiatan sektor jasa keuangan, maka bisnis Fintech juga merupakan bisnis yang diawasi oleh OJK.

Ketentuan pertama yang dibentuk oleh OJK terkait dengan bisnis *Fintech* di Indonesia pertama kali dikeluarkan melalui Peraturan Otoritas Jasa Keuangan (POJK) No. 77/POJK.01/2016 tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi. Selanjutnya terkait pengaturan dan pengawasan terhadap bisnis *Fintech* juga diatur dalam POJK No. 13 /POJK.02/2018 tentang Inovasi Keuangan Digital di Sektor Jasa Keuangan. Hal ini yang selanjutnya disebut dengan Inovasi Keuangan Digital (IKD). Berdasarkan konsideran menimbang POJK di atas, pembentukan IKD perlu dilakukan sebagai bagian dari mendukung pengembangan IKD yang bertanggung jawab, mendukung pemantauan IKD yang efektif, dan mendorong sinergi di dalam ekosistem digital jasa keuangan. Lebih lanjut Pasal 3 menentukan kewenangan OJK dalam cakupan bisnis *fintech* dibagi menjadi 8 jenis, yang terdiri sebagai berikut:

1. Penyelesaian transaksi, praktiknya penyelesaian transaksi biasa disebut juga dengan *settlement*, seperti yang terkait penyelesaian investasi.

2. Penghimpunan modal, seperti *equity crowdfunding, virtual exchange and smart contract*, serta *alternative due diligence.*
3. Pengelolaan investasi, antara lain *advance algorithm, cloud computing, capabilities sharing, open source information technology, automated advice and management, social trading*, dan *retail algorithmic trading*. Penghimpunan dan penyaluran dana, seperti pinjam meminjam berbasis aplikasi teknologi (*P2P lending*), *alternative adjudication, virtual technologies, mobile* 3.0 dan *third-party application program ming interface.*
4. Perasuransian, antara lain *sharing economy, autonomous vehicle, digital distribution* dan *securiti-zation and hedge fund.*
5. Pendukung pasar, antara lain *artifial inteligence/ machine learning, machine readble news, social sentiment, big data, market information platform and automated data collection and analysis.*

6. Pendukung keuangan digital lainnya, antara lain *social/ eco crowdfunding*, *islamic digital financing*, *ewaqf*, *e-zakat*, *robo advise* dan *credit scoring*.
7. *trading*, *voucher*, *token*, dan produk berbasis aplikasi *blockchain*.

Apabila kita merujuk jenis ketiga yang menentukan bahwa salah satu bisnis *fintech* adalah Penghimpunan dan penyaluran dana, seperti pinjam meminjam berbasis aplikasi teknologi (*Peer to Peer lending/P2P Landing*), sehingga dapat kita ketahui bahwa POJK membuka peluang pelaksanaan penghimpunan dana melalui sistem digital.

Salah satu wujud dari P2P Landing adalah Lembaga pembayaran transaksi digital yang beberapa dalam hal ini kita kenal dengan Dompetku (Bukalapak), Go Pay Service, Shopee Pay, Dompetku Telkomsel, dan lain-lain. Secara keberadaan masing – masing entitas Badan Usaha tersebut merupakan Lembaga dalam bentuk Perseroan terbatas (PT) yang bergerak dalam bidang *Market Place*, Provider telekomunikasi, dan alat pembayaran. Sejatinya alat pembayaran (*payment gateway*) merupakan Lembaga jasa pembayaran transaksi yang memiliki ijin berdasarkan ketentuan Peraturan Bank Indonesia yang memberikan akses Lembaga bukan bank untuk dapat melakukan penarikan dana masyarakat guna kepentingan pembayaran sebuah transaksi digital. Ketentuan Peraturan Bank Indonesia tersebut diatur dalam Peraturan Bank Indonesia Nomor 23/6/PBI/2021 Tahun 2021 tentang Penyedia Jasa Pembayaran. Sesuai dengan ketentuan Pasal 1 angka 3 menentukan bahwa "Lembaga Selain Bank adalah badan usaha berbadan hukum Indonesia bukan Bank. Lebih lanjut pada angka 4 Pasal dan Peraturan yang sama ditentukan bahwa 4. Penyedia Jasa Pembayaran yang selanjutnya disingkat PJP adalah Bank atau Lembaga Selain Bank yang menyediakan jasa untuk memfasilitasi transaksi pembayaran kepada pengguna jasa. Dalam perkembangannnya, terdapat program investasi dengan membayarkan sejumlah uang dalam kurun waktu tertentu, maka investasi uang berubah menjadi emas dengan berat tertentu.

Otoritas Jasa Keuangan pada yang sama mengeluarkan ketentuan yang diberlakukan demi mendorong dan memberikan penguatan terhadap aspek kelembagaan Bank. Peraturan OJK tersebut adalah Peraturan Otoritas Jasa Keuangan Nomor 12 /POJK.03/2021 tentang Bank Umum. Dasar berfikir dalam pembaharuan ketenntuan tentang Bank Umum adalah terdapat dalam konsideran menimbang nomor 3. Hal yang membuat ambigu dalam pengaturan beberapa ketentuan peraturan tersebut di atas yang merupakan payung hukum dalam kehidpan transaksi perbankan, baik transaksi maupun penghimpunan dana masyarakat terjadi pertentangan yang tidak tersurat.

Melalui UU Perbankan khususnya Pasal 16 ayat (1) Menentukan bahwa "Setiap pihak yang melakukan kegiatan menghimpun dana dari masyarakat dalam bentuk simpanan wajib terlebih dahulu memperoleh izin usaha sebagai Bank Umum atau Bank Perkreditan Rakyat dari Pimpinan Bank Indonesia, kecuali apabila kegiatan menghimpun dana dari masyarakat dimaksud diatur dengan Undang-Undang tersendiri". Selanjutnya Peraturan Bank Indonesia juga mengamanatkan melalui Peraturan Bank Indonesia NOMOR: 11/1/PBI/2009 tentang Bank Umum, khususnya pasal 2 menentukan bahwa "Setiap pihak yang melakukan kegiatan penghimpunan dana dari masyarakat dalam bentuk simpanan wajib terlebih dahulu memperoleh izin usaha sebagai Bank dari Pimpinan Bank Indonesia, kecuali apabila kegiatan penghimpunan dana dimaksud diatur dengan undang-undang tersendiri. Hal sama juga diatur dalam Peraturan Otoritas Jasa Keuangan Nomor 12 /POJK.03/2021 tentang Bank Umum khususnya Pasal 2 juga menentukan bahwa Setiap pihak yang melakukan kegiatan penghimpunan dana dari masyarakat dalam bentuk simpanan wajib terlebih dahulu memperoleh izin usaha sebagai Bank dari OJK, kecuali apabila kegiatan penghimpunan dana diatur dengan ketentuan peraturan perundang-undangan tersendiri.

Hal tersebut diatas menjadi kontradiktif dengan Peraturan Bank Indonesia Nomor 23/6/PBI/2021 Tahun 2021 tentang Penyedia Jasa

Pembayaran. Sesuai dengan ketentuan Pasal 1 angka 3 menentukan bahwa "Lembaga Selain Bank adalah badan usaha berbadan hukum Indonesia bukan Bank. Lembaga bukan bank diberikan ijin untuk melakukan penghimpunan dana masyarakat sebagai pelaksanaan program *payment gateway* transaksi keuangan (pembayaran). Pada peraturan OJK melalui POJK No. 13 /POJK.02/2018 tentang Inovasi Keuangan Digital di Sektor Jasa Keuangan khususnya Pasal 2 ayat (1) mengisyaratkan keberlakuan entitas tertentu bukan Lembaga keuangan untuk dapat melakukan penghimpunan dana masyarakat sebagai alur proses system pembayaran transaksi secara digital. Maka dari itu, sesuai amanat Undang Undang Perbankan, bahwa pengecualian Lembaga bukan yang bertindak sebagai penghimpun dana masyarakat wajib diatur dalam Undang Undaang. Namun hingga saat ini pengaturan atas hal tersebut hanya diatur sebatas Peraturan Bank Indonesia dan Peraturan Otoritas Jasa Keuangan. Berdasarkan hal tersebut diatas melalui pendekatan *regulation approach* dan *literatur approach* dapat kita simpulkan bahwa pengaturan penghimpunan dana masyarakat penting untuk segera dibentuk untuk dapat memberikan ijin Lembaga non bank dalam melakukan penghimpunan dana masyarakat. Lebih dari itu, maka perlu dilakukan harmonisasi peraturan perbankan khususnya Undang Undang Perbankan agar dapat mengikuti perkembangan jaman khususnya era digital 4.0.

Pada posisi tertentu, POJK sebagai Lex Specialis sudah sangat tepat, mengakselerasikan perbankan agar selalu berkembang seiring perkembangan dunia digital. Namun juga tidak menjadi sebuah pembenaran, apabila terjadi pembiaran atas pertentangan antar norma terlebih atas peraturan yang lebih tinggi. Terjadinya pertentangan antar norma, dalam Ilmu Hukum terdapat sarana penyelesaian atas pertentangan tersebut, yang dalam permasalahan ini sesuai dengan asas:

a. *Lex Superior Derogat Legi Inferior* (Peraturan yang tinggi mengalahkan peraturan yang lebih rendah). Asas ini keberlakuannya adalah terkait dengan pelaksanaan dilapangan apakah terdapat pertentangan antar hierarki peraturan/regulasi.

b. *Lex Specialis Derogat Legi Generalis* (Peraturan yang Khusus mengalahkan peraturan yang bersifat umum. Asas ini dalam implementasi adalah apabila terdapat ketentuan/regulasi yang sama hierarkinya namun melakukan pembahasan yang sama namun beda dalam isi ketentuan.

Undang-Undang Nomor 4 Tahun 2023 tentang Pengembangan dan Penguatan Sektor Keuangan (UU P2SK) pada prinsipnya tidak memberikan kewenangan umum kepada seluruh penyelenggara financial technology (fintech) untuk melakukan penarikan atau penghimpunan dana masyarakat. Pengaturan tersebut didasarkan pada klasifikasi kegiatan usaha jasa keuangan serta perizinan yang diberikan oleh otoritas berwenang, khususnya Otoritas Jasa Keuangan (OJK) dan Bank Indonesia (BI).

Secara normatif, penarikan dana masyarakat hanya dapat dilakukan oleh lembaga jasa keuangan yang secara tegas diizinkan oleh peraturan perundang-undangan, terutama lembaga perbankan. Hal ini tercermin dalam Pasal 1 angka 22 UU P2SK, yang mendefinisikan bank sebagai lembaga yang menghimpun dana dari masyarakat dalam bentuk simpanan dan menyalurkannya kembali kepada masyarakat.

Lebih lanjut, Pasal 8 UU P2SK menegaskan bahwa seluruh kegiatan di sektor jasa keuangan wajib dilaksanakan berdasarkan prinsip kehati-hatian, perlindungan konsumen, serta stabilitas sistem keuangan. UU P2SK mengklasifikasikan *financial technology* sebagai bagian dari Inovasi Teknologi Sektor Keuangan (ITSK). Pengaturan lebih lanjut terkait kegiatan ITSK diatur dalam Pasal 216 UU P2SK, yang menyatakan bahwa:

"Inovasi teknologi sektor keuangan wajib berada dalam pengawasan dan perizinan Otoritas Jasa Keuangan."

Dalam konteks penarikan dana masyarakat, tidak semua fintech diperbolehkan menerima dana dari pengguna. Fintech yang diperbolehkan menerima dana masyarakat umumnya terbatas pada:

1. Fintech sistem pembayaran, seperti dompet elektronik, yang hanya dapat menerima dana titipan (float);
2. Fintech dengan izin khusus yang ditetapkan oleh OJK atau BI.

Sebaliknya, *fintech peer-to-peer lending* (P2P lending) secara tegas dilarang menghimpun dana masyarakat, karena posisinya hanya sebagai perantara antara pemberi dan penerima pinjaman. Larangan ini diperkuat dalam Pasal 23 ayat (2) POJK Nomor 10/POJK.05/2022, yang menyatakan bahwa penyelenggara P2P lending dilarang bertindak sebagai pihak yang menghimpun dana.

Dengan demikian, setiap aktivitas fintech yang berpotensi menyerupai penghimpunan dana masyarakat harus tunduk pada pembatasan hukum yang ketat.

UU P2SK secara implisit menguatkan prinsip bahwa penghimpunan dana masyarakat tanpa izin merupakan perbuatan melawan hukum. Ketentuan ini selaras dengan Pasal 46 ayat (1) Undang-Undang Perbankan, yang masih berlaku secara sistemik dan menyatakan bahwa:

"Setiap pihak yang menghimpun dana dari masyarakat dalam bentuk simpanan tanpa izin usaha sebagai bank dipidana."

Dengan diberlakukannya UU P2SK, ketentuan tersebut menjadi semakin relevan karena fintech yang tidak memiliki izin perbankan dilarang melakukan kegiatan yang secara substansi menyerupai simpanan.

Kesimpulan

Telah terjadi kontradiktif penerapan aturan dari Undang Undang Perbankan khsusunya Pasal 16 ayat (1) serta Peraturan Bank Indonesia Nomor 23/6/PBI/2021 Tahun 2021 tentang Penyedia Jasa Pembayaran. Sesuai dengan ketentuan Pasal 1 angka 3 menentukan bahwa "Lembaga Selain Bank adalah badan usaha berbadan hukum Indonesia bukan Bank. Lembaga bukan bank diberikan ijin untuk melakukan penghimpunan dana masyarakat sebagai pelaksanaan program *payment gateway* transaksi keuangan (pembayaran) atau yang disebut dengan *peer to peer landing*.

UU P2SK menguatkan prinsip penghimpunan dana masyarakat bahwa penghimpunan dana masyarakat tanpa izin merupakan perbuatan melawan hukum. Ketentuan tersebut menjadi semakin relevan karena fintech yang tidak memiliki izin perbankan dilarang melakukan kegiatan yang secara substansi menyerupai simpanan.

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Peraturan Menteri Perdagangan nomor 36/M-DAG/PER/2007 tentang Penerbitan Surat Izin Usaha Perdagangan

PERSPEKTIF HUKUM

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SOUTH CHINA SEA DISPUTES: CHALLENGES AND OPPORTUNITIES FOR PRESERVING REGIONAL STABILITY

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Article	Abstract
Keywords: South China Sea, Disputes, Regional Stability; **Article History** Received: Sept 05, 2025; Reviewed: Oct 29, 2025; Accepted: Nov 26, 2025; Published: Nov 30, 2025;	*The South China Sea (SCS) is a crucible of overlapping sovereignty claims, strategic rivalry, and valuable maritime resources. This article examines the principal challenges that the SCS disputes pose to regional stability—great power rivalry, ASEAN fragmentation, militarization and gray-zone coercion, and limitations of international law enforcement—and explores opportunities to mitigate tensions through diplomacy, legal instruments, confidence-building measures, and regional capacity-building. The study uses recent empirical evidence on trade flows, energy and fisheries significance, maritime incidents, and legal outcomes (notably the 2016 arbitral award) to assess the prospects for stability. The analysis argues that while legal rulings and multilateral norms provide an essential normative framework, political commitment, robust ASEAN coordination, and pragmatic, enforceable mechanisms (including an effective Code of Conduct) are necessary to transform the South China Sea from a chronic flashpoint into an arena of managed cooperation.*

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Introduction

The South China Sea (SCS) sits at the crossroads of global commerce and regional geopolitics. It hosts vital sea lines of communication, substantial energy resources, and a dense concentration of maritime law and sovereignty disputes among China, the Philippines, Vietnam, Malaysia, Brunei, and Taiwan. This paper synthesizes legal foundations under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), jurisprudential developments stemming from the 2016 arbitral award in Philippines v. China, and the evolving security dynamics across 2023–2025, including intensified coast guard encounters and ongoing ASEAN–China Code of Conduct (COC) negotiations.[1] After mapping risk pathways—from miscalculation to gray-zone coercion—the study proposes a layered stability framework: (i) legal and norms reinforcement; (ii) crisis management and hotlines; (iii) confidence-building measures (CBMs) at sea; (iv) cooperative resource and environmental management; and (v) inclusive, rules-based maritime domain awareness (MDA). The analysis concludes that while strategic competition will persist, pragmatic, incremental arrangements can reduce escalation risks and preserve the SCS as a global commons.

The South China Sea (SCS) is central to the geopolitics and economy of Asia. Roughly one-third of global maritime trade transits the SCS; energy shipments, fisheries, and potential hydrocarbon reserves make the sea strategically and economically vital to coastal and extra-regional states alike. Against this backdrop, overlapping sovereignty claims—most prominently China's "nine-dash line" and competing claims by the Philippines, Vietnam, Malaysia, Brunei, and

[1] Permanent Court of Arbitration, South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China), Award of 12 July 2016.

Taiwan—have produced recurring diplomatic tensions, localized incidents at sea, and accelerated militarization of maritime features.[2]

The South China Sea (SCS) lies at the heart of the Indo-Pacific, bounded by China and Taiwan to the north, the Philippines to the east, Malaysia and Brunei to the south, and Vietnam to the west. The region contains hundreds of features—reefs, rocks, low-tide elevations, and islands—grouped mainly within the Spratly and Paracel archipelagos. Overlapping claims involve sovereignty over maritime features and the delimitation of maritime zones including territorial seas, exclusive economic zones (EEZs), and continental shelves. Beyond sovereignty, the SCS is an arena for competition in norms, law, and strategic influence, with implications for freedom of navigation, regional security architectures, and global supply chains.

This paper examines how legal rulings, economic interdependence, military postures, and regional diplomacy interact to shape stability. Drawing on UNCLOS, the 2016 arbitral award in Philippines v. China, and the latest developments up to 2025, the paper assesses challenges and identifies opportunities to reduce risks while safeguarding the SCS as a rules-based maritime commons.

Method

This study employs a normative juridical research method, which examines law as a normative system by analyzing secondary legal materials, including legal norms, doctrines, and authoritative legal sources.[3] This method is adopted because the main focus of the research lies in the analysis of international legal norms governing maritime regimes and dispute settlement mechanisms, particularly the

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[2] UNCTAD. (2024). Review of Maritime Transport 2024. https://unctad.org/publication/review-maritime-transport-2024

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[3] Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Overview*, RajaGrafindo Persada, Jakarta, 2001. hlm. 13–14.

provisions of the United Nations Convention on the Law of the Sea (UNCLOS) 1982[4] and the South China Sea Arbitration Award in the case of The Republic of the Philippines v. The People's Republic of China 2016.[5]

The statute approach is applied to examine relevant international legal instruments, including UNCLOS 1982, the Declaration on the Conduct of Parties in the South China Sea (DOC) 2002,[6] as well as official ASEAN documents related to the negotiation of the Code of Conduct (COC). This approach aims to identify legal principles, as well as the rights and obligations of coastal States, and the normative framework that underpins governance and regional stability in the South China Sea.

Furthermore, the conceptual approach is employed to analyze key concepts in international maritime law and international relations, such as the exclusive economic zone (EEZ), historic rights, freedom of navigation, and the rules-based maritime order.[7] This approach facilitates a deeper understanding of how divergent interpretations of these legal concepts contribute to disputes and tensions in the South China Sea.

The case approach is conducted through an in-depth analysis of the 2016 South China Sea Arbitration Award, including the tribunal's legal reasoning (*ratio decidendi*) and its implications for the maritime claims of the parties concerned. This analysis is essential to assess the role of international law as a normative framework for maintaining regional stability, despite its inherent limitations in terms of enforcement. The legal materials used in this research consist of primary legal materials, including international treaties, judicial and

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[4] United Nations, *United Nations Convention on the Law of the Sea*, 1982.

[5] Permanent Court of Arbitration, *South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China)*, Award of 12 July 2016.

[6] ASEAN, *Declaration on the Conduct of Parties in the South China Sea*, 2002.

[7] Malcolm N. Shaw, *International Law*, 9th ed., Cambridge University Press, Cambridge, 2021.

arbitral decisions, and official documents issued by international organizations.

Result and Discussion

A. Strategic and Economic Significance

Maritime Trade and Chokepoints. The SCS is among the world's busiest waterways. Estimates commonly hold that roughly one-third of global maritime trade transits these waters. Energy flows are particularly salient, linking the Indian Ocean via the Strait of Malacca to Northeast Asia's manufacturing hubs. The SCS thus functions as a critical artery for energy security, manufacturing value chains, and just-in-time logistics.[8]

Energy Resources. While the densest hydrocarbon prospects lie along continental margins, the SCS as a whole is believed to contain significant proved and probable resources, with additional undiscovered potential. These resources drive exploration interests and can sharpen jurisdictional disputes over seabed rights. Environmental Stakes.[9] Coral ecosystems, fisheries, and biodiversity face mounting pressure from overfishing, land reclamation, and climate-related stressors. Cooperative environmental governance is a low-politics entry point for confidence-building and crisis avoidance.

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[8] Center for Strategic and International Studies (CSIS). (n.d.). How much trade transits the South China Sea? https://chinapower.csis.org/much-trade-transits-south-china-sea/

[9] EIA. (2024, March 21). Regional Analysis Brief: South China Sea. https://www.eia.gov/international/content/analysis/regions_of_interest/South_China_Sea/south_china_sea.pdf

Figure 1. Estimated share of global maritime trade via the South China Sea (illustrative).

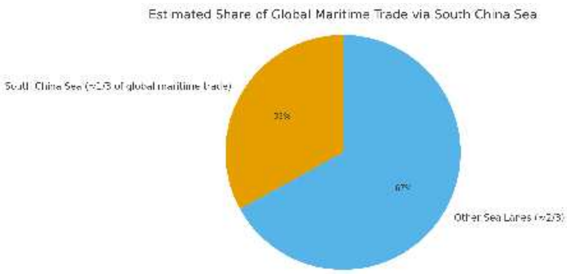


Figure 2a. Oil resource estimates (proved+probable vs. undiscovered).

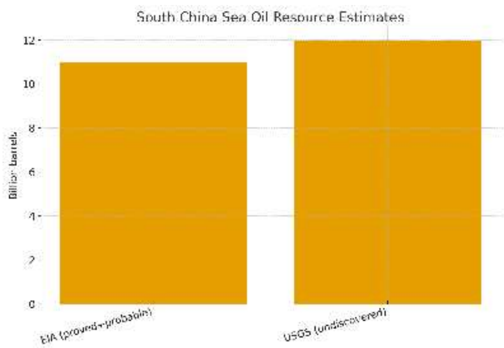
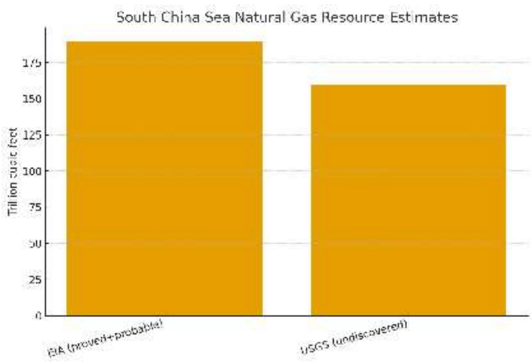


Figure 2b. Natural gas resource estimates (proved+probable vs. undiscovered).



B. Parties and Claims

The principal claimants are China, the Philippines, Vietnam, Malaysia, and Brunei; Taiwan maintains claims largely aligned with those of the Republic of China prior to 1949. China's dashed-line claim—now depicted as a "ten-dash line" in some official representations—overlaps extensively with the exclusive economic zones (EEZs) generated from the coastlines of Southeast Asian states under the United Nations Convention on the Law of the Sea (UNCLOS).[10] Indonesia does not claim any features in the Spratly Islands but faces recurring Chinese fishing and coast guard activities within its EEZ around the Natuna Islands.[11]

At the core of these disputes lies a fundamental divergence in the basis of maritime claims. Southeast Asian claimant states predominantly ground their positions in UNCLOS-based entitlements derived from coastlines and recognized maritime zones, whereas China emphasizes a combination of historical narratives, cartographic representations, and administrative practice. This divergence has generated persistent legal ambiguity and competing interpretations of maritime rights, complicating efforts to establish a shared framework for dispute management.

The Philippines' claims focus on maritime entitlements within its EEZ and continental shelf, as well as sovereignty over specific features such as Scarborough Shoal. The 2016 arbitral award in Philippines v. China significantly strengthened Manila's legal position by clarifying that maritime rights must derive from land features consistent with UNCLOS and by rejecting claims to historic rights that

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[10] Breaking Defense. (2023, Sept. 1). New Chinese 10-Dash map sparks furor across Indo-Pacific. https://breakingdefense.com/2023/09/new-chinese-10-dash-map-sparks-furor-across-indo-pacific-vietnam-india-philippines-malaysia/

[11] Saputra, Niko Riyan, Fauzan Arif Ramadhan, and Albiz Raditya Susilo. "Sengketa Wilayah Perairan Laut Natuna antara Indonesia dan China dalam Perspektif Hukum Internasional." *Jurnal Gagasan Hukum* 6, no. 1 (2025). https://doi.org/10.31849/jgh.v6i01.18427

exceed convention-based limits. Despite the legal clarity provided by the award, enforcement challenges remain, limiting its practical impact on the ground.[12]

Vietnam asserts sovereignty over both the Paracel and Spratly Islands, relying on historical administration and continuous state presence, while simultaneously emphasizing UNCLOS-consistent EEZ and continental shelf rights. Hanoi has been particularly vocal in opposing expansive dashed-line claims and has sought to modernize its maritime law enforcement capabilities in response to increasing incidents involving foreign vessels. Vietnam's approach reflects a dual strategy of legal assertion and capacity enhancement aimed at protecting its maritime interests.

Malaysia and Brunei adopt comparatively lower-profile approaches, concentrating primarily on maritime entitlements rather than sovereignty over disputed features. Malaysia's claims in the southern Spratlys are closely linked to its continental shelf rights, as demonstrated by its extended continental shelf submission to the United Nations in 2019. Brunei, by contrast, limits its claims to maritime zones off its coastline and avoids asserting sovereignty over contested features, reflecting a preference for minimizing diplomatic confrontation.

Taiwan's position adds an additional layer of complexity to the disputes. Although it administers Itu Aba (Taiping Island), the largest natural feature in the Spratlys, Taiwan is not a party to UNCLOS and is largely excluded from regional diplomatic processes. Nevertheless, its claims mirror those of pre-1949 China, creating overlapping legal and political positions that complicate comprehensive dispute resolution.

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[12] Sari, Dessy Kartika, and Levina Yustitianingtyas. "Pelaksanaan Putusan Arbitrase Internasional terhadap Penetapan Kepemilikan Pulau Scarborough Shoal di Laut Cina Selatan." *Perspektif Hukum* 18, no. 2 (2025). https://doi.org/10.30649/ph.v18i2.146

Overall, the multiplicity of claimants and the diversity of legal justifications underscore the fragmented nature of the South China Sea disputes. Overlapping EEZs, contested feature status, and divergent interpretations of international law have produced a highly complex maritime landscape. This fragmentation not only heightens the risk of incidents at sea but also underscores the need for cooperative mechanisms and confidence-building measures that can manage disputes pragmatically in the absence of comprehensive settlements.

A simplified summary of salient claims is provided in Table 1. Specific baselines, the legal status of individual features, and maritime zones remain subject to dispute and, in some cases, adjudicative findings.

Claimant	Nature of Claim (high-level)	Key Areas	Notes
China (PRC)	Dashed-line claim; sovereignty over various features; maritime zones derived therefrom	Paracels, Spratlys, Scarborough Shoal	Non-acceptance of 2016 award; expanding coast guard law enforcement presence
Philippines	Sovereignty over certain Spratly features & Scarborough; EEZ/CS entitlements from archipelagic baselines	West Philippine Sea; Second Thomas Shoal; Scarborough Shoal	Prevailed in 2016 arbitration on key submissions

Vietnam	Sovereignty over Paracels/Spratlys; EEZ/CS entitlements	Paracels, Spratlys	Opposes dashed-line claim; modernizing maritime law enforcement
Malaysia	EEZ/CS entitlements; sovereignty over select features	Southern Spratlys	2019 CS submission (extended shelf) contested by China
Brunei	EEZ/CS entitlements	Luce Bay (off NW Borneo) & adjoining areas	Claims maritime zones, not features
Taiwan (ROC)	Claims mirroring historical ROC claims; administers Itu Aba (Taiping) Island	Taiping/Itu Aba	Not party to UNCLOS; de facto control of largest natural feature in Spratlys
Indonesia	No feature claim; EEZ around Natuna Islands	North Natuna Sea	Rejects dashed-line overlaps; frequent fisheries/CG incidents

C. Legal Framework: UNCLOS and the 2016 Award

Beyond its specific findings, the 2016 arbitral award holds broader significance for the interpretation and application of UNCLOS in semi-enclosed seas with overlapping claims. By affirming that maritime entitlements must derive from land features in accordance with the Convention, the tribunal reinforced the primacy of treaty-based rights over unilateral historical assertions. This clarification has contributed to greater legal certainty regarding the limits of lawful maritime claims, even in the absence of universal acceptance by all parties involved.

The rejection of the award by China underscores one of the central limitations of international adjudication in the maritime domain, namely the absence of compulsory enforcement mechanisms. UNCLOS relies largely on state consent and good faith compliance, meaning that legal rulings, while authoritative, do not automatically translate into changes in state behavior. As a result, the South China Sea illustrates the tension between the normative strength of international law and the realities of power politics, where strategic considerations may outweigh legal obligations.

Nevertheless, the continued invocation of UNCLOS and the 2016 award by regional and extra-regional actors demonstrates the enduring influence of legal norms in shaping diplomatic discourse and state practice. Coastal states in Southeast Asia have increasingly framed their positions in terms of UNCLOS-consistent entitlements, while external powers have cited the arbitral ruling to reinforce arguments in support of freedom of navigation and the rules-based maritime order. In this sense, the award functions as a legal benchmark against which competing claims and actions are assessed internationally.

Moreover, the interaction between UNCLOS and the 2016 arbitral jurisprudence highlights the role of law as a stabilizing, albeit indirect, factor in the management of maritime disputes. While legal instruments alone cannot resolve sovereignty conflicts, they provide a common framework that constrains excessive claims and facilitates dialogue. This framework is particularly important in preventing the normalization of unlawful practices and in supporting confidence-building measures grounded in shared legal principles.

In sum, UNCLOS and the 2016 arbitration collectively form the legal backbone of the South China Sea dispute management architecture. Their significance lies not only in the specific rights and obligations they articulate, but also in their capacity to shape expectations of lawful conduct over time. When complemented by political will, diplomatic engagement, and regional cooperation mechanisms, this legal foundation remains essential for transforming the South China Sea from a zone of persistent contention into one of managed coexistence and stability.

D. Security Dynamics and Recent Developments (2023–2025)

The 2023 release of China’s 'Standard Map' with a 10-dash line energized diplomatic protests. In 2024–2025, coast guard and maritime militia encounters intensified, especially near Second Thomas Shoal and Scarborough Shoal. Water-cannoning, ramming risks, and non-lethal force escalations became frequent, raising concerns about inadvertent escalation. Parallel to these pressures, regional and extra-regional navies sustained presence operations and combined exercises. These dynamics underscore an entrenched pattern of lawful navigation assertions, law enforcement pushback, and reputational signaling, all beneath the threshold of overt armed conflict.

Figure X illustrates key milestones that have shaped the security dynamics of the South China Sea (SCS) from 2002 to 2025, highlighting the gradual transformation of the region from a diplomacy-oriented environment toward one characterized by persistent strategic tension and gray-zone confrontation. The signing of the Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002 marked an early collective commitment by ASEAN member states and China to manage disputes peacefully and to exercise self-restraint in activities that could escalate tensions. As shown in Figure X, this milestone represented a normative foundation for confidence-building, although it lacked legally binding enforcement mechanisms.[13]

A major inflection point occurred in 2016 with the issuance of the arbitral award in Philippines v. China by the Permanent Court of Arbitration, which is also indicated in Figure X. The ruling clarified key legal questions regarding maritime entitlements under UNCLOS and rejected claims to historic rights that exceeded convention-based limits. While the award strengthened the normative clarity of international maritime law, its rejection by China limited its practical enforcement and contributed to a widening gap between legal norms and on-the-ground security practices.

The period after 2023, as depicted in Figure X, reflects a marked intensification of security tensions. The release of China's Standard Map featuring the so-called ten-dash line signaled a renewed assertion of expansive maritime claims and triggered strong diplomatic protests from several Southeast Asian states. This development coincided with a rise in maritime incidents, particularly around sensitive features such as Second Thomas Shoal, where repeated confrontations involving coast guard vessels and resupply missions were reported. These incidents illustrate a shift toward the normalization of gray-zone coercive tactics, including water-cannon use, dangerous maneuvering, and obstruction, aimed at altering the status quo without resorting to armed conflict.

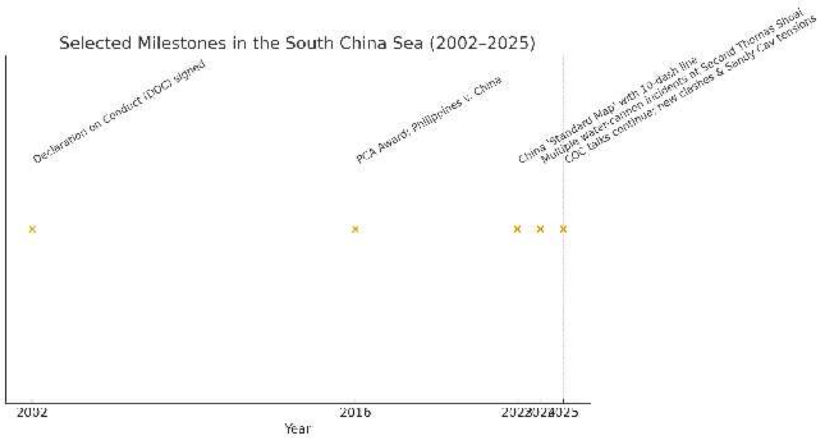
Figure X further demonstrates that by 2024–2025, the South China Sea had entered a phase of sustained low-intensity

[13] ASEAN. (2002). Declaration on the Conduct of Parties in the South China Sea. https://asean.org/declaration-on-the-conduct-of-parties-in-the-south-china-sea-2/, accesed August 25, 2026.

confrontation. Despite ongoing negotiations toward a Code of Conduct (COC), new clashes and persistent frictions—such as those around Sandy Cay—underscore the limitations of existing diplomatic instruments in constraining unilateral behavior. The coexistence of continued COC talks with escalating maritime encounters suggests a condition of managed instability, in which escalation is deliberately contained but structural tensions remain unresolved.

Overall, the timeline presented in Figure X underscores the evolving nature of security dynamics in the South China Sea: from early normative optimism, through juridical clarification, to an era dominated by strategic competition and gray-zone operations. This trajectory highlights the urgent need for more robust crisis-management mechanisms and operationally effective rules of behavior at sea if long-term regional stability is to be preserved.

Figure 3. Selected milestones in the South China Sea (2002–2025).



E. ASEAN Diplomacy: From DOC to a Prospective Code of Conduct

ASEAN has long positioned itself as a central diplomatic actor in managing tensions in the South China Sea (SCS), emphasizing dialogue, restraint, and peaceful dispute settlement. Given the asymmetry of power between claimant states and the sensitivity of sovereignty issues, ASEAN diplomacy has focused on confidence-building and norm-setting rather than legally binding dispute resolution. This approach reflects ASEAN's broader diplomatic culture, which prioritizes consensus, non-interference, and gradualism in addressing complex regional security challenges.

A foundational milestone in this diplomatic effort was the adoption of the Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002. The DOC represented a political commitment by ASEAN member states and China to exercise self-restraint, refrain from actions that could escalate disputes, and promote cooperative activities such as marine environmental protection and scientific research. Although the DOC was not legally binding, it established an important normative framework that acknowledged the need for collective management of tensions in the SCS.

Despite its symbolic significance, the DOC has faced persistent implementation challenges. Its lack of enforcement mechanisms and vague language have limited its effectiveness in constraining unilateral actions, particularly as maritime activities and strategic competition intensified in subsequent years. As incidents at sea continued to occur, questions emerged regarding ASEAN's ability to uphold the principles enshrined in the DOC and to prevent the gradual erosion of trust among parties.

In response to these limitations, ASEAN and China initiated discussions toward the development of a more substantive and potentially binding Code of Conduct (COC). The COC was envisioned as a means to translate the broad principles of the DOC into concrete rules governing behavior at sea, crisis management, and dispute avoidance. Negotiations formally accelerated in the mid-2010s, reflecting growing recognition of the need for clearer and more operational norms amid rising tensions.

However, progress toward a finalized COC has been slow and uneven. Divergent interests among ASEAN member states, differing interpretations of international law, and disagreements over the legal status, geographic scope, and enforcement provisions of the COC have complicated negotiations. Some states advocate for a legally binding instrument aligned with UNCLOS, while others prioritize flexibility and political accommodation, reflecting internal divisions that weaken ASEAN's collective bargaining position.

External geopolitical dynamics have further influenced the COC process. Intensifying strategic competition among major powers in the Indo-Pacific has heightened the stakes of the South China Sea, making consensus more difficult to achieve. At the same time, concerns persist that an inadequately designed COC could inadvertently legitimize excessive maritime claims or constrain the involvement of external actors, thereby altering the regional balance in ways that undermine broader security interests.

Nevertheless, the COC negotiations continue to serve an important diplomatic function by providing a sustained platform for dialogue between ASEAN and China. Even in the absence of a finalized agreement, the negotiation process itself contributes to crisis management by institutionalizing communication channels and reinforcing expectations of peaceful engagement. In this sense, the COC process reflects ASEAN's preference for incremental progress rather than abrupt or confrontational solutions.

Ultimately, the transition from the DOC to a prospective Code of Conduct underscores both the strengths and limitations of ASEAN diplomacy in the South China Sea. While ASEAN has succeeded in keeping dialogue alive and preventing large-scale conflict, its consensus-based approach constrains the speed and ambition of institutional outcomes. The effectiveness of a future COC will depend not only on its legal form, but also on the political will of the parties to implement and uphold it. Strengthening ASEAN unity and aligning the COC with international legal principles remain essential for ensuring that ASEAN diplomacy contributes meaningfully to long-term stability in the SCS.

F. External Stakeholders and Great-Power Competition

Extra-regional actors—including the United States, Japan, Australia, India, the European Union, and the United Kingdom—frame the South China Sea (SCS) as a critical test of the rules-based international order and freedom of navigation. Freedom of Navigation Operations (FONOPs), joint patrols, capacity-building for Southeast Asian coast guards, and the expansion of maritime domain awareness (MDA) networks have intensified in recent years. While these initiatives aim to deter unilateral changes to the status quo, they also risk reinforcing strategic polarization and provoking counter-measures. Consequently, calibrated engagement that supports regional autonomy and ASEAN centrality remains vital.

Beyond normative considerations, extra-regional involvement in the SCS is driven by tangible strategic and economic interests. The uninterrupted flow of global trade and energy shipments through the region directly affects the economic security of these actors. As a result, their engagement extends beyond military activities to include diplomatic coordination, legal advocacy, and institutional support for international maritime governance grounded in the principles of the United Nations Convention on the Law of the Sea (UNCLOS).

The United States has assumed a leading role through regular FONOPs designed to challenge what it considers excessive maritime claims and restrictions on lawful passage. These operations are accompanied by official statements emphasizing adherence to international law and freedom of navigation. However, from China's perspective, such actions are often interpreted as strategic containment rather than neutral legal enforcement, thereby contributing to a persistent security dilemma and mutual distrust between major powers operating in the SCS.[14]

Japan and Australia have adopted a complementary approach by prioritizing maritime capacity-building and law-enforcement cooperation with Southeast Asian states. Through the provision of patrol vessels, training programs, and surveillance assistance, both countries seek to enhance regional states' ability to protect their maritime rights and enforce domestic law within their exclusive economic zones. Although these initiatives strengthen regional resilience, they also deepen strategic alignments that may complicate ASEAN's efforts to maintain neutrality.

India and the European Union represent a more normative dimension of extra-regional engagement. India's involvement is embedded within its broader Indo-Pacific strategy, emphasizing freedom of navigation and opposition to coercive changes to the status quo. Similarly, the European Union has articulated its interest in the SCS through policy frameworks and limited naval deployments that stress respect for UNCLOS and peaceful dispute settlement, reinforcing the legal foundations of maritime order without seeking a dominant security role.

The United Kingdom's renewed presence in the Indo-Pacific, including naval deployments and participation in multinational exercises, further underscores the growing internationalization of the South China Sea disputes. While such involvement signals collective support for international norms, it also increases the density of naval

[14] Reuters. (2024, June 16). China coast guard says Philippine supply ship bumped Chinese ship in South China Sea. https://www.reuters.com/world/asia-pacific/china-coast-guard-says-philippine-supply-ship-illegally-intruded-waters-second-2024-06-16/

and coast guard operations in contested waters. This heightened operational environment raises the risk of incidents and miscalculation, particularly in the absence of robust crisis-management mechanisms.

Ultimately, the contribution of extra-regional actors to stability in the South China Sea depends on their ability to balance deterrence with reassurance. Engagement that is perceived as confrontational or exclusionary risks undermining ASEAN unity and provoking counter-balancing behavior. In contrast, support that reinforces ASEAN-led processes, respects regional sensitivities, and complements diplomatic initiatives—such as the ongoing negotiations toward a Code of Conduct—can help preserve the SCS as a shared maritime domain governed by international law rather than zero-sum power politics.

G. Risk Pathways and Escalation Dynamics

Frequent miscalculation and close-quarters encounters constitute one of the most immediate risk pathways toward escalation in the South China Sea (SCS). Interactions among coast guard vessels, maritime militia, and naval forces often occur in congested and contested waters, where unclear jurisdictional boundaries and overlapping enforcement claims prevail. The ambiguity surrounding rules of engagement and domestic legal mandates can incentivize brinkmanship, as actors seek to assert presence and resolve without triggering direct military confrontation.

Closely related to this risk is the growing reliance on gray-zone coercion as a strategic tool. Non-kinetic tactics—such as maritime blockades, water-cannoning, laser dazzling, and dangerous maneuvering—are deliberately calibrated to impose operational and psychological costs while remaining below the threshold of armed conflict. Although such measures reduce the likelihood of immediate warfare, their normalization erodes mutual trust and increases the probability of accidents that could rapidly escalate beyond intended limits.

Legal and narrative contestation further complicates the security environment in the SCS. States increasingly employ lawfare strategies, selectively invoking international law, domestic legislation, and historical narratives to legitimize their actions. Simultaneously, information campaigns aimed at domestic and international audiences shape perceptions of legality and victimhood. These competing narratives harden negotiating positions and reduce political space for compromise, making de-escalation more difficult even in the presence of diplomatic channels.

Environmental degradation and fisheries stress represent an additional, often underappreciated, source of persistent tension. Overfishing, coral reef destruction, and habitat loss have significantly depleted fish stocks, intensifying competition between artisanal and industrial fishing fleets. In contested waters, fisheries enforcement frequently becomes entangled with sovereignty assertions, transforming resource management disputes into security incidents involving coast guards and maritime law enforcement agencies.

The interaction among these risk factors produces a reinforcing cycle of instability. Gray-zone coercion and legal contestation exacerbate mistrust, while environmental stress increases the frequency of encounters at sea. Each incident, even if minor in isolation, contributes cumulatively to an atmosphere of strategic suspicion and operational fatigue, thereby raising the likelihood of misjudgment and escalation.

Despite these challenges, the persistence of these risks also highlights the importance of preventive mechanisms. Enhanced communication protocols, incident-at-sea agreements, and standardized rules of behavior for coast guard interactions could significantly reduce the dangers associated with close-quarters encounters. Similarly, cooperative fisheries management and joint environmental protection initiatives offer pragmatic avenues to address non-traditional security drivers of conflict without prejudicing sovereignty claims.

Ultimately, managing escalation risks in the South China Sea requires a comprehensive approach that integrates military, legal, environmental, and informational dimensions. Addressing miscalculation, gray-zone coercion, and resource stress in isolation is insufficient; instead, these challenges must be understood as interconnected components of a broader security ecosystem. Strengthening crisis-management mechanisms, reinforcing shared legal norms, and promoting cooperative resource governance are therefore essential to preventing localized incidents from evolving into broader regional instability.

H. Opportunities and Practical Confidence-Building Measures

Despite persistent tensions, the South China Sea (SCS) also presents meaningful opportunities for de-escalation through practical confidence-building measures (CBMs). Given the complexity of sovereignty disputes and the low likelihood of comprehensive legal settlements in the near term, CBMs offer a pragmatic approach to managing risks and preventing escalation. These measures do not require resolution of underlying claims, but instead focus on regulating behavior, enhancing transparency, and fostering cooperation in areas of shared interest.

One of the most immediate opportunities lies in strengthening communication and crisis-management mechanisms among maritime actors. The institutionalization of real-time hotlines between coast guards and naval authorities, supported by standardized incident-reporting procedures, can significantly reduce the risk of miscalculation during close-quarters encounters. Effective communication channels are particularly critical in the SCS, where multiple actors operate in congested waters under ambiguous jurisdictional conditions.

Another important confidence-building avenue involves the expansion and operationalization of rules of behavior at sea. The Code for Unplanned Encounters at Sea (CUES), originally designed for naval forces, could be adapted and extended to cover coast guard and maritime law enforcement vessels, which are more frequently involved in frontline interactions. Clear guidelines on maneuvering, signaling, and the use of non-lethal measures would help establish predictable patterns of conduct and reduce the likelihood of accidental escalation.

Cooperative fisheries management represents a further practical opportunity for confidence-building. As fish stocks in the SCS continue to decline, competition among fishing fleets has become a recurrent source of friction. Joint fisheries management arrangements, including shared stock assessments, seasonal fishing moratoria, and coordinated enforcement against illegal, unreported, and unregulated (IUU) fishing, can mitigate tensions while addressing food security and livelihood concerns. Importantly, such arrangements can be designed without prejudice to sovereignty claims.

Environmental protection and marine scientific cooperation also offer low-politics entry points for collaboration. Joint initiatives focused on coral reef preservation, marine pollution response, and climate resilience can foster trust among claimant states while addressing shared environmental challenges. Because environmental degradation poses long-term risks to all coastal states, cooperation in this domain can generate mutual benefits and reinforce norms of peaceful coexistence.

Maritime domain awareness (MDA) cooperation constitutes another key confidence-building measure with significant stabilizing potential. Information-sharing on vessel movements, weather conditions, and maritime incidents—supported by satellite data and regional information fusion centers—can enhance transparency and reduce uncertainty. Capacity-building initiatives that assist smaller

Southeast Asian states in developing MDA capabilities are particularly important for promoting equitable participation and reinforcing ASEAN centrality.

Ultimately, the effectiveness of confidence-building measures in the South China Sea depends on sustained political commitment and institutional support. While CBMs cannot substitute for legal or diplomatic solutions to sovereignty disputes, they play a crucial role in managing day-to-day interactions and preventing crises. By incrementally building trust, enhancing predictability, and promoting cooperation in functional areas, practical confidence-building measures can help transform the SCS from a zone of persistent tension into one of managed competition and relative stability.

Conclusion

First, regional conduct in the South China Sea should be firmly anchored in the legal framework of the United Nations Convention on the Law of the Sea (UNCLOS) and the jurisprudence established by the 2016 arbitral award in Philippines v. China. While acknowledging the political realities and varying degrees of acceptance of international rulings, regional actors should avoid legal maximalism that could harden positions and undermine dialogue. Instead, UNCLOS should function as a shared normative baseline that constrains excessive claims, guides state behavior, and supports peaceful dispute management without forcing immediate resolution of sovereignty disputes.

Second, there is a pressing need to formalize coast guard–to–coast guard operational protocols through an expanded "CUES-Plus" framework. Given that most frontline interactions now involve coast guards and maritime law enforcement vessels rather than naval forces, extending and institutionalizing rules for communication, maneuvering, and the use of non-lethal measures is essential. Incorporating accountability mechanisms—such as penalties for non-compliance and third-party facilitation for incident investigations—

would enhance credibility and reduce the risk of miscalculation during close-quarters encounters.

Third, ASEAN should establish a standing South China Sea Environmental Peacebuilding Forum to address shared ecological challenges that transcend sovereignty disputes. Coordinated efforts in coral reef restoration, pollution response, and the enforcement of measures against illegal, unreported, and unregulated (IUU) fishing can serve as confidence-building tools while addressing urgent environmental degradation. By framing cooperation around environmental protection and human security, ASEAN can promote functional collaboration without prejudicing legal claims or territorial positions.

Fourth, joint development arrangements (JDAs) should be piloted in carefully selected areas, with a focus on gas resources and emerging carbon management initiatives such as carbon capture and storage (CCS). To minimize political sensitivity, such arrangements should be supported by escrow mechanisms, neutral technical operators, and clear legal safeguards ensuring that participation does not imply recognition of sovereignty claims. Properly designed JDAs can reduce incentives for unilateral exploitation while delivering shared economic and environmental benefits.

Fifth, pragmatic cooperation in maritime domain awareness (MDA) should be scaled up through regional information-fusion centers, data-sharing arrangements, and transparent capacity-building programs. Enhancing situational awareness improves safety at sea, supports law enforcement, and reduces uncertainty among maritime actors. Importantly, these initiatives should preserve ASEAN centrality, ensure open access to information, and avoid exclusive security architectures that could exacerbate strategic polarization.

Finally, regional and extra-regional actors should actively promote narrative de-escalation as part of broader crisis-management strategies. Public communication and strategic messaging should be aligned with de-escalation objectives rather than domestic political mobilization or reputational signaling. By reducing inflammatory rhetoric and emphasizing restraint, transparency, and legal consistency, states can lower domestic escalation pressures and create greater diplomatic space for compromise and cooperation.

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