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# THE DEVELOPMENT OF ECONOMIC AND SOCIAL LAW IN AN EDUCATION ATMOSPHERE TOWARDS A SOCIAL REVOLUTION

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# PROCEEDING BOOK

## THE DEVELOPMENT OF ECONOMIC AND SOCIAL LAW IN AN EDUCATION ATMOSPHERE TOWARDS A SOCIAL REVOLUTION

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## UNTAG SEMARANG INTERNATIONAL SEMINAR PROCEDURE

"The Development of Economic and Social Law in an Education Atmosphere Towards a Social Revolution"

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This book contains the proceedings of the International Conference on Law, Social Science, Economics, on September 24, 2022 in Indonesia. This conference was held in collaboration between those organized by: Students of Batch XII and the Law Study Program of the Doctoral Program of the University of 17 August (UNTAG) Semarang, Indonesia. The papers from the conference are collected in a proceedings book entitled: Proceedings of The International Conference on Law, Social Science, Economics, 2022. The presentation of such a conference covering multi-disciplines will contribute a lot of inspiring input and new knowledge about current trends in the field of Law, Social Sciences, Economics. As such, it will contribute to the next generation of young researchers to produce innovative research findings. It is hoped that scientific attitudes and skills through research will encourage the development of knowledge produced through research from various scholars in various regions. Finally, we would like to express our deepest gratitude to all the colleagues of the steering committee for their cooperation in managing and organizing the conference. Hopefully, these seminars and conferences can continue in the coming years with more insightful articles from inspiring research. We would also like to thank the invited speakers for their invaluable contributions and for sharing their vision in their talks. We look forward to seeing you again at the next international conference.

Semarang, August 2022

The Writer

**DAFTAR ISI**

# THE RIGHT TO EXCLUSIVE BREASTFEEDING TO IMPROVE THE WELFARE OF CHILDREN IN INDONESIA

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**Abstract**

Exclusive breastfeeding is breast milk given to newborns after going through a continuous early initiation process of breastfeeding without additional food and drink from zero to six months of age. Exclusive breastfeeding coverage in Indonesia has not yet reached the predetermined target. This study aims to describe the rights of children to get exclusive breastfeeding to improve the welfare of children in Indonesia. The research method used is library research. The material used is data from government regulations, books, journals, research reports, and other literature that supports the theme of this research. The results of this study indicate that the legal basis for exclusive breastfeeding in Indonesia is contained in Law no. 36 of 2009 concerning Health, Joint Regulation of the State Minister for Women's Empowerment, the Minister of Manpower, and the Minister of Health of 2008 concerning Increasing Breastfeeding During Working Time in the Workplace. In addition, it is also listed in Government Regulation No. 33 of 2012 concerning Exclusive Breastfeeding. Exclusive breastfeeding is beneficial to improve the optimal health status of children, while the ultimate goal is to improve the welfare of children by fulfilling the inner and outer needs of Indonesian children. The advice given is that close cooperation is needed between various parties, both between mothers, families, communities, government, and related institutions to realize the success of the exclusive breastfeeding program policy.

***Keywords:*** *Children's rights, breastfeeding, welfare*

## A. INTRODUCTION

The ideals of the Indonesian people are to realize prosperity for all people as enshrined in Pancasila and the 1945 Constitution of the Republic of Indonesia, one of the important elements in building welfare including public health. Improving the degree of public health is very important in the context of the formation of superior and globally competitive Indonesian human resources (Nurcahyo, 2018). Currently, Indonesia needs a quality young generation to be able to compete and at the same time become a generation of a nation that excels in facing competition between nations in the world considering the increasingly competitive competition. Therefore, the quality of the nation's generation is realized if children from the womb, at birth, and during their growth period can be properly nourished, so that they can grow and develop healthily, strongly, and intelligently (Kemenkes RI, 2017). The first three years of toddlerhood are a golden period of physical, intellectual, mental, emotional, and spiritual growth for children. In fact, to improve and optimize the quality of life of children so that they become intelligent generations, they should receive full attention in the first three years, including exclusive breastfeeding, good nutrition, immunization, vitamins, and quality health services, as well as love and stimulation. adequate.

Breast milk is the staple food for babies from birth to 6 months of age. Breastfeeding is not only beneficial for the baby, but also for the mother who is breastfeeding. Because the benefits of breastfeeding are so great, the World Health Organization (WHO) and UNICEF (the United Nations International Children's Emergency Fund) recommend that mothers give exclusive breastfeeding, namely only breastfeeding without complementary foods until the baby is 6 months old. After 6 months, the baby can be given complementary foods which of course will meet the baby's daily calories. Due to the low level of knowledge in the community about breastfeeding and its benefits, it is necessary to have socialization or counseling about breastfeeding in the community. In addition to increasing the coverage of exclusive breastfeeding for infants aged 0 months - 6 months (Sari, 2017).

Government Regulation of the Republic of Indonesia number 33 of 2012, concerning Exclusive Breastfeeding is stated in Article 2 paragraph 1 which contains guarantees for the right of babies to receive exclusive breastfeeding from birth to 6 months of age by taking into account their growth and development. Based on article 4 of Law No. 23 of 2002 concerning child protection, it is mandated that every child has the right to live, grow and

develop and participate fairly in accordance with human dignity and protection from violence and discrimination. One of them is the right to obtain exclusive breastfeeding. The achievement of exclusive breastfeeding has always been an indicator of nutrition program performance. However, the achievements from year to year have not met the targets and expectations.

## B. METHODOLOGY

This research method is library research. The object of this research was obtained through various library information in the form of scientific journals, books, newspapers, magazines, and other documents. The journal or book was chosen by the author based on the relevance of the journal to the formulation of the problem in this study. The documentation method is a data collection method used in this study. The focus of this literature research is a descriptive analysis using secondary data sources. Source selection is based on: Provenance, Objectivity, Persuasiveness and Value

## C. DISCUSSION

The Indonesian government has also issued policies related to breastfeeding and prohibiting the advertisement of infant formula milk which is regulated in Law Number 36 of 2009 concerning Health and Government Regulation Number 33 of 2012 concerning the Provision of Exclusive Breastfeeding. The purpose of regulating exclusive breastfeeding in Government Regulation Number 33 of 2012 concerning Exclusive Breastfeeding is to ensure the fulfillment of the baby's right to receive exclusive breastfeeding from birth to 6 (six) months of age by taking into account its growth and development, providing protection to mothers in give exclusive breastfeeding to the baby; and Increasing the role and support of families, communities, local governments, for exclusive breastfeeding. Things to consider are the need for regulations that regulate exclusive breastfeeding for infants, namely: (1) Exclusive Breastfeeding is the best food for babies because it contains the most suitable nutrients for a baby's growth and development; (2) In order to achieve optimal growth and development

of infants, breastfeeding should be given exclusively until the age of 6 (six) months and can be continued until the child is 2 (two) years old;

Exclusive breastfeeding is the provision of breast milk to infants aged 0-6 months without being given additional food or drink. Breast milk has great benefits for babies because it has a positive effect on growth and development. Babies who get breast milk will be healthier and avoid various infectious diseases. This is what can reduce the Infant Mortality Rate. From the legal aspect, exclusive breastfeeding means fulfilling the child's right to live a healthy, physically and mentally prosperous life. Based on this, the government issued regulations that guarantee the right of children to get breast milk, as stated in Law Number 36 of 2009 concerning Health and Government Regulation Number 33 of 2012 concerning Exclusive Breastfeeding (Zainafree, 2016).

However, in the current era of technological development, many formula milk companies offer their products for infant consumption. This can lead to a conflict of interest between the law's order that requires exclusive breastfeeding for infants within a certain age period and the need for formula milk marketing companies to market their products for infant consumption. Article 129 of Law no. 36 concerning health states that the Government is responsible for establishing policies in order to guarantee the right of infants to obtain exclusive breast milk.

Every mother who gives birth is obliged to provide exclusive breastfeeding to her baby, but this obligation has exceptions as regulated in Article 7 PP No. 33 of 2012 concerning Exclusive Breastfeeding. The obligation to provide exclusive breastfeeding to infants does not apply if there are any of the following: (1) Medical indications exist; (2) the Mother is not present; or (3) The mother is separated from the baby. If the baby cannot be exclusively breastfed based on these three considerations, then it has one of two options, namely infant formula milk and/or exclusive breastfeeding through breast milk donors. What is meant by "medical indication" is the baby's medical condition and/or the mother's medical condition that does not allow exclusive breastfeeding (Explanation of Article 7 letter an of PP No. 33 of 2012).

Prohibition for Producers or Distributors of Formula Milk and/or other baby products in order to support exclusive breastfeeding optimally, producers or distributors are prohibited from carrying out activities that can hinder the exclusive breastfeeding program in the form

of (1) Providing samples of Infant Formula Milk products and/or other baby products free of charge or in any form to Health Service Facility Operators, Health Workers, pregnant women, or mothers who have just given birth; (2) Offering or direct selling of Infant Formula Milk to households; (3) Providing price or additional assistance or anything in any form for the purchase of Infant Formula Milk as an attraction from the seller; (4) Use of Health Workers to provide information about Infant Formula Milk to the public; and/or (5) Advertising of Infant Formula Milk published in mass media, both print and electronic, and outdoor media (Nurcahyo, 2013).

To be able to apply administrative sanctions for producers or distributors of Infant Formula Milk and/or other baby products who carry out advertising activities for Infant Formula Milk which are published in mass media, both printed and electronic, and outdoor media as referred to in Article 19 letter e must be implemented by an agency that carries out government duties in the field of drug and food control (BPOM).

The impact of babies not getting exclusive breastfeeding, one of which is pneumonia, pneumonia is inflammation that occurs in the alveolar walls by the bacterium Dipcoccus pneumonia, a study in Brazil showed that the risk of being treated for pneumonia was 17 times higher in infants who did not receive exclusive breastfeeding, compared to infants who received exclusive breastfeeding. Exclusive breastfeeding. Breast milk also provides protection against diarrhea. Not fully exclusive breastfeeding for 4 to 6 months. Infants who are not breastfed are at greater risk for diarrhea than babies who are fully breastfed and are more likely to suffer from dehydration. In newborns, full breastfeeding has 4 times greater protection against diarrhea than breastfeeding accompanied by formula milk (Sari, 2017).

The constraining factors that prevent babies from getting exclusive breastfeeding include: (1) Mothers do not understand the correct management of lactation; (2) Insufficient milk production, the baby has already received prelacteal feeding (sugar water or formula) on the first day of birth; (3) Maternal nipple abnormalities; (4) Baby's difficulty in sucking; (5) The mother becomes pregnant again while still breastfeeding; (6) Mothers work so they have to leave their babies at home; (7) Desire to be called modern; and (8) The influence of formula milk advertising that is increasingly intense (Nurlaili Susanti, 2011).

## D. CONCLUSIONS AND SUGGESTIONS

1. Conclusions

The State of Indonesia has issued a series of national policies related to the protection of exclusive breastfeeding for infants so that babies in all regions of Indonesia can grow and develop into a healthy and intelligent generation. The national policy has been stated in the form of norms, standards, procedures, and criteria set by the Minister. Indonesia has taken a responsible role in the exclusive breastfeeding program properly. The legal protection provided in the exclusive breastfeeding program for infants is public legal protection. get exclusive breastfeeding to prevent all health risks.

2. Suggestions

Health workers are expected to be able to: create programs to increase exclusive breastfeeding for breastfeeding mothers, provide counseling to pregnant women about preparation for breastfeeding and monitoring breastfeeding after mothers give birth, and increase parental participation in exclusive breastfeeding support groups. Health workers should provide counseling on exclusive breastfeeding for pregnant women, regarding the meaning of exclusive breastfeeding, the benefits of breastfeeding, signs of the baby's adequacy of breast milk, and how to store breast milk. Carry out early initiation of delivery assistance and monitor the implementation of exclusive breastfeeding for breastfeeding mothers.

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# A PROVISION OF FREE LEGAL SERVICES FOR POOR PEOPLE BY NOTARY IN INDONESIA

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**ABSTRACT**

Notaries as public officials appointed by the state do not receive an honorarium from the state; instead, they receive an honorarium for legal services provided in accordance with their obligation and authority to provide free services to poor people. This study aims to describe the legal arrangement regarding the obligations, benchmarks and problems of Notaries to provide free social services to the poor. The research method used was library research which examines secondary data in the form of primary and secondary legal materials. The results showed that Notaries in Indonesia have the obligation to provide legal services in the notarial field for free to poor people. The provision of legal services is influenced by several factors including humanitarian factor, the client's frankness to the Notary, and the Notary's own belief, morality and integrity as well as knowledge of the provisions that exist in the Law on the Position of Notary of the Republic of Indonesia. There are no problems in implementing this free legal service as long as it complies with the specified requirements. Violation of the provision of this service will lead to sanctions in the form of administrative sanctions and the Indonesian notary code of ethics.

***Keywords:*** *Notary, free legal services, poor people*

## A. INTRODUCTION

Notary is one of the professions in the field of law. The notary profession was born from the interaction among fellow members of the community and was developed and created by the community itself (Adjie, 2008). In carrying out their duties, notaries as ordinary people can make mistakes or violations. Notaries, who are evidenced to have violated the Notary obligations and prohibitions as regulated in Articles 16 and 17 of the UUJN, may be subject to sanctions in the form of civil sanctions, administrative sanctions, code of ethics sanctions and even criminal sanctions. Civil sanctions are generally sanctions given for violations of private law, namely the law that regulates interpersonal relationships in fulfilling the interests (Mardiyah, 2017).

Notary, according to the Law of the Republic of Indonesia No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of a Notary hereinafter referred to as UUJN-P, is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws. Serving as public officials, Notaries have the authority, obligations and prohibitions that must be obeyed in accordance with the provisions of the existing legislation for the official position of the notary. The authority of a notary as a public official is contained in Article 15 UUJN-P No. 2 of 2014 consists of three powers, namely general authority, special authority and authority determined later by law (Segondo, 2013).

Based on the provisions of Article 36 UUJNP No. 2 of 2014 mentioned above, it can be said that the honorarium received by a notary both economically and sociologically is quite large but is quite heavy for the poor. Notary honorariums are generally affordable to upper middle class people who have an interest in legal actions as outlined in an authentic deed. Therefore, notaries are also required to provide legal services in the field of notary for free to people who can't afford it as stipulated in the provisions of Article 37 UUJNP No. 2 of 2014.

This study aims to describe the legal arrangements regarding the obligation of a notary to provide free social services to the poor, to describe the benchmarks for a notary in determining legal services in the notary field for free and the criteria for underprivileged persons as referred to in Article 37 Law on Notary Positions, and to describe the problems

of the implementation of free legal services by a Notary and its sanctions according to article 37 paragraphs 1 and 2.

## B. METHODOLOGY

The approach method used in this paper is normative-juridical. The steps taken are through library research which examines secondary data in the form of primary legal materials and secondary legal materials.

1. Primary Legal Materials are binding legal materials in the form of Law of the Republic of Indonesia Number 2 of 2014 concerning Notary Position and other legal documents.
2. Secondary Legal Materials are legal materials obtained through research findings, books, scientific journals, and other library materials that discuss legal substance that discusses the legal aspects of the position of a notary and the authority of a notary.

## C. DISCUSSION

1. Legal Arrangements Regarding the Obligation of Notaries to Provide Free Social Services to the Community

   The obligation of a notary is something that must be done by a notary in which, if not done or violated, the violation will lead to sanctions against the notary (Notodisoerjo. 1993). In connection with the obligations and strength of proof of the authentic deed made by or before a notary mentioned above, Habib Adjie concludes 2 (two) things as follows:

   a. The job of a notary is to formulate the wishes/actions of the parties in an authentic deed, taking into account the applicable legal provisions.
   b. A notarial deed as an authentic deed has perfect evidentiary power, so it does not need to be proven or supplemented with other evidence. In case of assessment or statement made by other people/parties showing that the deed is not right, the people/parties are assigned to prove the truth of their assessment or statement in accordance with the applicable legal provisions.

> One of the obligations of a notary above can be seen in article 16 letter k stating that a notary is obliged to have a stamp or seal containing the State Emblem of the Republic of Indonesia, namely the Garuda Bird, where the shape and size of the stamp with the Garuda symbol is regulated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia number M.02.HT.03.10 of 2007.

Notaries are also obliged to keep the content of the deed secret and even to keep all the conversations of their customers' secret during the preparations for making the deed. Notaries are also obliged to provide free assistance to underprivileged communities as stated in Article 37 of the UUJN. There are other matters where the Notary is obliged to refuse to provide assistance, for example in the case of making a deed whose contents are contrary to public order or decency or where there are no witnesses who cannot be recognized by the Notary or cannot be introduced to him (Anshori, 2009).

Position of a notary refers to function, task, and government work area in general or the supporting body in particular. The term or title of position is used to represent function or task or work area in the government. In addition, notaries are required to always be ready to serve the community in their working area (Buko, 2017). Notaries are required to provide legal services to people who need their services. In this case, the services are not interpreted narrowly as only making deeds, legalizing under-handed deeds, providing legal consultation/counseling concerning the notarial field but also involving several aspects ranging from the ease of public access to information regarding the requirements for making authentic deeds and the friendliness of notaries and their employees in serving clients, all of which are part of the activities in carrying out the notary profession. Legal services in the notary world must continue to refer to and comply with the UUJN and the notary code of ethics in order that the conduct of the notary profession in the community does not reduce the dignity and status of the notary profession (Anshori, 2009).

Notary professional services still refer to and comply with the law on the position of a notary and the notary code of ethics aiming that a notary does not degrade his character and dignity as a public official in carrying out his profession in the community (Buko, 2017).

The description above provides an understanding of what is called a service and how the service process supports the success of the work process of a notary. The position of the notary profession as a public official in providing legal services in the field of notary is authorized to give free legal services, especially to clients belonging to the poor. However, the requirements to get free services from a notary are not regulated in details in the UUJN (Buko, 2017).

Article 37 of the UUJN explains that notaries are obligated to provide legal services in the notarial field for free to poor people. Thus, the implementation of this article in carrying out notary profession depends on the notary concerned, which is influenced by humanitarian factors, the client's frankness and the notary's own beliefs (Jamil 2014).

The provision of free legal services in the field of notary by a notary is based on the belief factor due to the assumption that initially emerged based on the notary's assessment regarding the appearance and legal services needed by clients who come to see him. Accordingly, the notary can make decisions to provide free legal services (Adjie, 2008).

2. The Benchmark for Notaries in Determining Free Legal Services in the Notarial Field

The need for legal services in the field of notary can be provided to the public and does not consider social status. Both the wealthy and underprivileged groups who need legal services must receive the same services from a notary. Every time carrying out the authority and obligation to provide legal services to clients, a notary must do the tasks professionally in the sense that if the legal services are provided to the client without collecting an honorarium, then the notary concerned is obliged to do so. However, if indeed the legal services cannot be provided for free, then the notary must explain the reason to the client so that it can be understood (Sari, 2016).

According to the results of research by Sari (2016), several factors may prompt a notary to provide free services to clients who are classified as the poor, namely:

a. Human factor

The provision of free legal services in the field of notary is based on humanitarian factors because of the moral impulse of the notary to help fellow humans, in this case, a client from an underprivileged group who comes to ask for help in making a deed without giving

compensation or honorarium to the notary. This situation reflects the high moral integrity of the notary in carrying out one of his obligations professionally.

b. The client's frankness factor to the notary

The provision of free legal services in the field of notary is based on the client's frankness factor to the notary because of the honesty expressed by the client regarding the inability to pay the honorarium for a legal service he needs, so it inspires the notary social spirit to provide services for free.

c. The belief factor of a notary that the client who faces him is indeed classified as an underprivileged person.

The provision of free legal services in the field of notary is based on the belief factor related to the assumption that initially emerged in the notary's assessment regarding the appearance and legal services needed by the client who comes to see him. Thus, from this assessment the notary can make a decision to provide free legal services

d. The provision of services in the notary field is influenced by humanitarian factors based on the morality and

integrity of a notary and is also supported by knowledge factor regarding the provisions contained in the UUJN, one of which concerns the obligation to provide free legal services to the underprivileged groups. Without sufficient knowledge of the provisions of one of their obligations, these notary obligations will not be applied in the community (Sari 2016).

The implementation of the provisions of the notary obligations contained in Article 37 of the UUJN and Article 3 paragraph (7) of the notary code of ethics will increase the dignity of the notary and increase public trust in the notary regarding the provision of legal services in the notary field. The totality of the notary in carrying out his duties and positions will increase the credibility of the notary so that the notary will reach a happy and prosperous life.

UUJN has regulated that notaries as professional public officials are required to always improve the quality, both the quality of knowledge, moral quality, and social quality, and always uphold the overall dignity of the notary. Moreover, the provisions of services to the community are always guided by the professional code of ethics and ethics. UUJN.

According to Suseno (1989), to carry out a profession in accordance with the demands of professional ethics, a notary must have 3 (three) moral characteristics, namely: (1) being a person who is not deviated from his determination by all kinds of feelings of fear, laziness, shame, emotion, and so forth; thus, a notary must have a strong moral personality; (2) awareness that maintianing the demands of professional ethics is a heavy obligation; (3) possession of idealism.

2. Problems with the Implementation of Notary Free Legal Services and Its Sanctions

Nowadays, notaries are known as people who serve the community to make authentic deeds or documents. In addition, notaries are responsible to the community, meaning that the notary is willing to provide the best possible service according to his profession, without discriminating clients between the rich and the poor, and services with a large amount of honorarium are prioritized over the lesser fees but produce quality services, which give positive impacts on society. The services provided are not only motives for profit, but also devotion to fellow human beings (Sari, 2016).

Everyone who comes to the notary's office, either capable or not, has the same right to obtain legal services in the notary field, as long as it complies with the requirements that have been stipulated in article 39 of the UUJN, namely:

a. The appearer must meet the following requirements: at least aged 18 (eighteen) years old or married, and capable of taking legal actions
b. The appearer must be known by a notary or introduced to him by 2 (two) identifying witnesses who are at least 18 (eighteen) years old or have been married and are capable of carrying out legal actions or introduced by 2 (two) other appearers.
c. The identifier as referred to in paragraph (2) is stated explicitly in the deed.

Based on the description above, apart from the requirements of the appearers that have been fulfilled based on the law and the completeness of the documents needed in the provision of notarial legal services, there are no obstacles for a notary in providing legal services in the notarial field.

Thus, a notary cannot refuse an application from his client to make an authentic deed since it is one of the main duties of a notary. A notary can be given a sanction that has been

regulated in the law if he refuses to make a deed without a clear reason because the obligation to make documents is mandated by law. Any refusal means violation toward the law.

Sanctions given to notaries who do not carry out their obligations are:

a. Law no. 2 of 2014 article 37 of Law no. 2 of 2014 concerning the position of notary explain notary sanctions as follows:

1.) Notaries are obliged to provide free legal services in the notarial field to underprivileged people.
2.) Notaries who violate the provisions as referred to in paragraph (1) may be subject to sanctions in the form of: verbal warning, written warning, temporary dismissal, honorable discharge and dishonorable discharge

The provision of services in the notary field is influenced by humanitarian factors based on the morality and integrity of a notary and is also supported by knowledge regarding the provisions contained in the UUJN, one of which concerns the obligation to provide free legal services to the underprivileged group. Without sufficient knowledge about the provisions of one of his obligations, the obligation will not be applied in the community. The implementation of provisions contained in article 37 UUJN and artcile 3 paragraph (7) of Notary code of ethics will raise the notary dignity and increase public trust in the notary regarding the provision of legal services in the notary field. The totality of the notary in carrying out his duties and positions will increase the notary credibility which will bring him a happy and prosperous life (Waluyo, 1996).

b. Notary administrative sanctions

In addition to civil sanctions, notaries can also be subject to administrative sanctions. The definition of sanctions in state administrative law is a tool of power which represents public law, used by the government as a reaction to non-compliance with obligations in state administrative law norms (Ridwan, 2006). Administrative sanctions include:

1.) Government coercion (bestursdwang). It is a real action of the authorities aimed at ending a situation that is prohibited by a rule of administrative law.

2.) Revocation of profitable decisions (permits, payments, subsidies). The application of sanctions based on the withdrawal or invalidation of a previous decision, and issuing a new decision.
3.) Imposition of administrative fines . It is applied to anyone who violates the law with a certain amount of money based on the legislation.
4.) Imposition of forced money by the government (dwangsom).

It aims to add a definite punishment, in addition to the fines specified in the legislation.

Based on the Law on Amendments to the UUJN, there are several administrative sanctions that are spread in several articles. These sanctions include verbal warnings, written warnings, temporary dismissals, respectful dismissals and dishonorable discharges. The sanctions apply in stages ranging from reprimand sanctions, which are considered light, to the heaviest, that is dishonorable dismissal (Buko, 2016).

c. Sanctions in the Notary Code of Ethics

Sanctions in the Code of Ethics are listed in article 6, imposed to members who violate the Code of Ethics in the form of: reprimand, warning, schorsing (temporary dismissal) from association membership, onzetfing (dismissal) from association membership, dishonorable discharge from association membership. The sanctions as described above for members who violate the code of ethics are adjusted to the quality of the violations committed by the members. In this case, a sanction is a punishment intended as a means, effort and tool to enforce obedience and discipline of association members and other people who hold and carry out the position of a notary in enforcing the code of ethics and organizational discipline. The imposition of sanctions on members violating the code of ethics of notary is carried out by the Honorary Council which is a tool of associations authorized to conduct examinations for violations of the code of ethics, including sanction imposition on violators in accordance with their respective authorities (contained in article B) (Liliana, 2003).

## D. CONCLUSIONS AND SUGGESTIONS

1. Conclusions
    a. Article 37 of the Law on Notary Positions and Article 3 paragraph (7) of the Notary Code of Ethics are legal arrangements regarding the obligation of a notary to provide free social services to underprivileged communities.
    b. The meaning of article 37 paragraph (1) UUJN to notaries who provide free services to underprivileged people contains spiritual, economic, and sociological values.
    c. The application of article 37 paragraph (1) of the UUJN faces no legal obstacles if the client who comes to the notary's office has met the requirements as an appearer based on article 39 of the UUJN and fulfills complete documents in making a deed. Thus, there is no reason for the notary to make it difficult for the client.
    d. Notary administrative sanctions are given in the form of: Government coercion (besturssdwang), withdrawal of decisions, imposition of administrative fines, and imposition of forced money by the government (dwangsom). Meanwhile, the sanctions of the notary code of ethics according to article 6 of the Notary Code of Ethics are imposed in the form of: reprimands, warnings, temporary dismissal from association membership, dismissals, and dishonorable dismissals.
2. Suggestions
    a. It is hoped that notaries provide free services to the underprivileged, as stated in article 37 paragraph (1) of the UUJN that notaries are required to provide free legal services in the notarial field to poor people. Moreover, it is expected that legal arrangements regarding Notary Obligations get more attention in relation to the Law on Notary Positions and the Notary Code of Ethics which sufficiently regulates Notary social services.
    b. The government is expected to provide socialization to the public about the provision of free services in the notarial field for the poor and information about reporting procedures. In addition, the Regional Supervisory Council should carry out more careful supervision of notaries who do not provide services to the poor and provide strict sanctions. Notaries are expected to comply with existing regulations, in order not to be sanctioned in accordance with article 37 paragraph 2 of the Notary position law.

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# JOKOWI'S EFFECT ON INDONESIA'S LAND RIGHTS POLICY

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**ABSTRACT**

President Joko Widodo's eight-year administration has produced many legacy that can be enjoyed by many people. President Jokowi's partiality, especially in the Nine Programs, is called Nawa Cita. This program was initiated to show the priority of the path of change towards a politically sovereign Indonesia, as well as being independent in the field of economics and cultural personality. The essence of the nine programs is Indonesia as an agricultural country, of course, its people in meeting their living needs are very dependent on the use of land in their daily lives. The purpose of this study is to provide an explanation of the extent to which the actualization of Nawacita Jokowi point 5 "encourages the existence of a landreform and land ownership of 9 million hectares" to the community, especially in terms of policies regarding agricultural land stewardship. The research method used is a normative juridical approach method, namely doctrinal legal research that is usually only used by secondary data sources, namely laws and regulations, court decisions, legal theories, and the opinions of leading legal scholars. The results of the study explained that the actualization of Jokowi's nawacita related to the encouragement of landreform or agrarian reform and land ownership covering an area of 9 million hectares contained in the 2015-2019 National Medium-Term Development Plan (RPJMN) document is still being carried out until the next period, namely 2020-2024. the achievement of agrarian reform in terms of asset legalization almost reached the goal of 4.1 million hectares from the initial target of 4.5 million hectares while the achievement of agrarian reform in terms of land redistribution still needs to be improved again because not half of the target has been achieved, namely 1.4 million hectares for total land redistribution from the target of achieving 4.5 million hectares.

***Keywords:*** *Jokowi Effect; Landreform; Nawacita*

## A. INTRODUCTION

The Jokowi Effect in the land sector is a term coined by the media to describe Indonesian politics and the economy. The agrarian reform policy intensified by President Joko Widodo (Jokowi) since the beginning of the reign is considered capable of solving people's land problems. This has a positive impact because conflicts over land ownership can be avoided. Jokowi's policy of agrarianism is able to unravel the tangled threads of agrarian problems in the country. The reason is, since the era before Jokowi, agrarianism seems to have become a scourge that is difficult to overcome. Land reform is a term of movement relating to land rights, the nature, power, and distribution of such land holdings. Land reform is often assumed to be the same as agrarian reform. Agrarian reform is an emerging answer to the problems of inequality of agrarian structures, poverty and food security and regional development. Land reform is more regulating the rights that a person has to his land ownership where there is a legal basis that binds the owner of the right to the land he owns.

The legal umbrella for the implementation of landreforms is Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Law Number 2 of 1960 concerning Profit Sharing Agreements and TAP MPR No.IX of 2001 concerning Agrarian Renewal and Natural Resources Management. Indonesia once ran a landreform in the early 1960s. The effective implementation of the landreform took place between the period 1961 and 1965. Its main activities are in the form of land registration and the determination of excess land and its distribution to communities that do not own land. The inequality of land ownership in Indonesia is getting higher day by day. Credit Suisse's Global Wealth report ranks Indonesia as the fourth country with the most unequal economic inequality in the world. Where the richest 1 percent control 49.3 percent of the national wealth. The needs and circumstances of The Indonesian people continue to develop in line with the development of the civilization of the Indonesian people themselves. Meanwhile, on the other hand, the area of land and natural wealth it contains is relatively fixed and limited when compared to the high percentage of population movement and the increasing number of residents.

One of Jokowi-Jk's promises contained in nawa Cita point 5 is to encourage the existence of a landreform and land ownership of 9 million hectares contained in the 2015-2019 National Medium-Term Development Plan (RPJMN) document. The important thing to ask, because Nawa Cita is not just a political promise but a political contract between the President and

Vice President and his people. According to data from the Central Statistics Agency in February 2022, the number of labor force in Indonesia reached 144.01 million people. This number reaches 69.06% of the total working-age population of 208.54 million people. As many as 42% of the workforce have an elementary education background. Meanwhile, 31.9% of Indonesians work in the agricultural, forestry, hunting, and fisheries sectors. The first two so-called sectors are closely related to land availability. In the last four decades, the ratio of land ownership in Indonesia has been in the range of 0.50 to 0.72. The latest data from the Central Statistics Agency, in 2013 the gini ratio reached 0.68. The figure reads, 1% of the population groups control 68% of the land in Indonesia.

Many parties are pessimistic about what Jokowi promised in Nawacita in the agrarian sector. Because it really takes a lot of guts to be able to realize agrarian reform in today's era of land liberalization. The form of agrarian reform chosen by the Jokowi administration is not very frontal. The thing that stole the most public attention was the certificate sharing program in Kompasiana.com with the title "Jokowi Government Policy in the Agrarian Sector", concerning the Rules of National Land Law. The right to control from the state is a designation given by Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles (Basic Agrarian Law) to legal institutions and concrete legal relations between the state and Indonesian land. State control over land and all its contents is an embodiment of Article 33 Paragraph (3) of the 1945 Constitution which states that the earth, water, and space including the natural wealth contained therein, at the highest level are controlled by the state as the organization of the whole people. Through this latest regulation, namely the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (Permen Agraria) Number 11 of 2016, there are 4 important points that need to be considered when someone encounters land problems in the future, including:

First, land cases distinguish definitions related to disputes, cases, and conflicts. Land disputes are disputes between individuals, legal entities, or institutions that do not have a broad impact. Land cases are land disputes that handle cases and resolve them through the judiciary. Meanwhile, land conflicts over land disputes, both people, groups, organizations, legal entities that have a tendency or have had a wide impact.

Secondly, in this rule, the handling of dispute and conflict resolution is distinguished based on the arrival of reports. Article 4 of the Agrarian Regulation Number 11 of 2016

distinguishes the types of reports based on two avenues, namely initiatives from the ministry and community complaints. The two mechanisms of the report are distinguished, respectively, the administrative process and recording the handling of incoming complaints. However, the subsequent mechanism is no difference after the findings and complaints are registered. The findings and complaints carried out an in-depth analysis to measure and find out whether the land case is the authority of the ministry. Article 11 paragraph (3) of the Agrarian Regulation Number 11 of 2016 mentions disputes or conflicts that are the authority of the ministry, in this case the Ministry of Agrarian affairs and Spatial Planning, among others, procedural errors in the process of measuring, mapping, and/or calculating the area, procedural errors in the registration process and/or recognition of rights to former customary land, procedural errors in the process of determining and/or registering land rights, procedural errors in the process of determining abandoned land, overlapping rights or certificates of rights to land for which one of the rights is clearly an error. The Ministry of Agrarian affairs and Spatial Planning may take the initiative to facilitate the resolution of disputes or conflicts through mediation channels. The mediation path in this rule is also taken for the type of dispute or conflict, either the authority of the ministry or what is not the authority of the ministry. A settlement through mediation can be reached if the parties agree to negotiate with the principle of deliberation for consensus for the good of all parties. If one of the parties alone refuses, then the settlement is settled in accordance with the provisions of the legislation.

Third, decisions on dispute or conflict resolution are implemented by the Head of the Land Office. The decision shall be implemented unless there is a valid reason to delay its execution. Article 33 paragraph (2) of the Agrarian Regulation Number 11 of 2016 states that there are three valid reasons for delaying the implementation. All three, namely certificates that will be confiscated by the police, prosecutors, courts or other law enforcement agencies, land that is the object of cancellation becomes the object of dependent rights, and land has been transferred to other parties.

Fourth, the handling of cases carried out in cases in civil or state administrative courts (TUN) where the Ministry of Agrarian affairs and Spatial Planning is a party. If the ministry loses a case, the Ministry can pursue legal remedies including resistance (verzet), appeals, appeals, and judicial review. In addition, litigants may request expert testimony or expert witnesses

from the Ministry through the Head of the Land Office, Head of the BPN Regional Office, or the Minister. Meanwhile, in the event that a case in the Court does not involve the Ministry as a party but the case concerns the interests of the Ministry, then the Ministry can intervene The implementation of a court decision that has the force of law must still be carried out unless there is a valid reason to be postponed, including the object of the judgment there are other judgments that are contrary, against the object of the judgment being in the status of being blocked or confiscated by the police, prosecutors, courts or other law enforcement agencies, as well as other reasons stipulated in the provisions of laws and regulations. The purpose of this study is to provide an explanation of the extent to which the actualization of Nawacita Jokowi point 5 "encourages the existence of a landreform and land ownership of 9 million hectares" to the community, especially in terms of policies regarding agricultural land stewardship.

## B. RESEARCH METHODS

The research method used is a normative juridical approach method, namely doctrinal legal research that is usually only used by secondary data sources, namely laws and regulations, court decisions, legal theories, and the opinions of leading legal scholars. Normative juridical research can also be referred to as literature research because sources and references are found in written regulations or other legal materials. This research will focus on Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles (Basic Agrarian Law) to legal institutions and concrete legal relations between the state and Indonesian land, Article 33 Paragraph (3) of the 1945 Constitution, Job Creation Law, Agrarian Regulation Number 11 of 2016, and other legal rules that have a connection with the research objectives.

## C. DISCUSSION

Jokowi's landreform is stated in the Job Creation Law. A revolutionary move in land rights that has long been a topic . This concept regulates land ownership in communities that do not own it. The state gives the right to use it. The land comes from land that was once controlled by capitalists but the permit is no longer renewed. Not only that, but the state will also survey no man's land as well as wasteland. The entire land was collected in the form of a Land Bank, then part of it was distributed to the community to manage it. The intended society is a small people not a giant corporation as has been the case all along. Cohen (1978) gave a presentation related to landreform, namely "change and land tenure, especially the distribution of land ownership thereby of achiefing the objective of more equality" the essence of landreform activities is land redistribution as an effort to improve the structure of land tenure and ownership in the community so that economic progress can be achieved and better ensure justice. The purpose of the landreform organized in Indonesia specifically is to increase the income of the living standards of farmers, as a foundation and prerequisite for organizing economic development towards a just society. To achieve this goal, one of the efforts that can be made by holding a fair distribution of the source of life of the peasant people in the form of land and a fair distribution of proceeds also implements the principle of land for farmers and protection against weak economies.

As stipulated in Presidential Regulation Number 26 of 2016, the implementation of this landreform targets four categories of land, namely: (1) Lands for legalization of assets that are objects and at the same time an arena for conflicting claims between community groups and companies and government agencies, and lands that have been controlled by the community but whose legal certainty has not been obtained by them as rights holders; (2) Land Objects of Agrarian Reform (TORA) to be redistributed to the rural poor; (3) State forests allocated to villages and village communities through Customary Forest and Social Forestry schemes including Community Forests (HKm), Village Forests (HD), People's Plantation Forests (HTR), and so on; (4) Management and acquisition of village asset land to be cultivated by poor farmer households together. The government has determined that TORA covering an area of 9 million hectares is obtained from four types of land acquisition, namely (a) Uncertified Transmigration Land (0.6 Million Hectares), (b) Asset Legalization (4.5

Million Hectares), (c) Exhausted HGU and Abandoned Land (0.6 Million Hectares), (d) Release of Forest Areas (4.1 Million Hectares).

Land can be used as agricultural land, housing, and various other livelihoods. The amount of land to be distributed according to Agrarian Minister Sofyan Djalil is at least 25% and land tenure will be maximized for people's lives. In the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 2 of 2013 concerning the Delegation of Authority to Grant Land Rights and Land Registration Activities article 11 states that the Head of the Land Office gives a decision regarding the determination of state land to become landreform object land and as article 6 related to cooperation permits and land acquisition permits, the head of the land office gives a decision regarding: (1) granting permission for cooperation of management rights holders with third parties, if required in the decree granting management rights and (2) granting land acquisition permits for Social and Religious Bodies, if required in the decree of approval that the legal entity can own land with property rights.

Agrarian reform will be implemented on 9 million hectares divided into two, namely the legalization of assets and the redistribution of land, which is 4.5 million hectares each. Legalization The assets of 4.5 million hectares, half of the Agrarian Reform program, are considered to have nothing to do with Agrarian Reform. The target of Agrarian Reform for 2 years (2014-2016) carried out by the Ministry of Agrarian and Spatial Planning / National Land Agency is a redistribution and legalization program (until August 31, 2016). The following is the scheme for implementing Agrarian Reform:

Source: Google

The Agrarian Reform Policy is an arena. It is considered successful if it is carried out collaboratively by being boosted from below (by leverage) by the community and managed from above by the government, not as a generosity (by grace) but as an arena that is fought for and orchestrated by various institutions within the government body. As of September 23, 2022, the achievement of agrarian reform from the release of forest areas reached 4,140,028 Ha (92.00%) for total asset legalization and 1,490,416.65 Ha (33.12%) for total land redistribution. This confirms that the 2015-2019 National Medium-Term Development

Plan (RPJMN) is still being implemented during Jokowi's leadership period in 2020-2024, as explained in the following scheme:

Source : Land Geographic Information System objects of Agrarian Reform (SIGTORA)

Based on SIGTORA data on September 23, the achievement of agrarian reform in terms of asset legalization has almost reached the goal of 4.1 million hectares from the initial target of 4.5 million hectares while the achievement of agrarian reform in terms of land redistribution still needs to be improved again because not half of the target has been achieved, namely 1.4 million hectares for total land redistribution from the target of 4.5 million hectares.

## D. CONCLUSIONS AND SUGGESTIONS

Jokowi's effect in the policy related to the granting of land rights in Indonesia in Nawacita point 5 of the first period (2014-2019) launched a program to encourage land reform or agrarian reform and land ownership covering an area of 9 million hectares contained in the 2015-2019 National Medium-Term Development Plan (RPJMN) document is still being carried out until the next period, namely 2020-2024. Based on the Agrarian Reform Object Land Geographic Information System (SIGTORA) on September 23, 2022, the achievement of asset legalization has occupied a percentage of 92.00%, which means that there is still another 8% left to achieve the fulfillment target of 4.5 million hectares while the land redistribution achievement still occupies a percentage of 33.12%, which means that it is still halfway to achieve the achievement target of 4.5 million hectares. The achievement of land redistribution needs to be improved again until Jokowi's term ends in 2024. If at the end of Jokowi's term of office the achievement of agrarian reform has not reached the target, it is better if agrarian reform is still carried out in the next period because Agrarian Reform is designed to solve the severity of agrarian problems in the form of, first, neglect of land formerly the main right of HGU, and the spread of agrarian conflicts.

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# DYNAMICS OF ISLAMIC LAW IN INDONESIA IN THE FRAMEWORK OF THE CONTEXTUALIZATION OF THE PROPOSED AMENDMENT TO LAW NO. 1 OF 1974

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**ABSTRACT**

The family is a miniature of society, nation and state. Families are formed through marriage, a bond between two people of the opposite sex with the aim of forming a family. The husband and wife bond based on the intention of worship is expected to grow into an eternally happy family (household) based on God Almighty and can become a society of faith, piety, knowledge, technology and insight into the archipelago. To maintain and protect as soon as improve the welfare and happiness of the family, laws governing marriage and family were drafted. The desire of the Indonesian people to have a written marriage law whose contents are a manifestation of the marriage law that has been in force in the community, both customary marriage law and marriage law according to existing religious provisions. Japanese occupation, and so on until independence. The hope of having a written marriage law could only be realized in early 1974, with the enactment Act of Law Number 1 in 1974 concerning Marriage. In the implementation Act of Law Number 1 in 1974, it turned out that legal problems were found with the development of society so that legal regulations must immediately answer these problems so that there is no legal vacuum so that public order and security are maintained. In this paper, the author will try to explain about the history of marriage law in Indonesia, from the pre-independence period then post-independence and the reformation period at this time in terms of Islamic Law Politics in Indonesia

## A. DISCUSSION

1. History of Law no. 1 of 1974 in the Frame of Legal Politics

a. The Period of Kingdoms in Indonesia

In Indonesia there were once established Hindu kingdoms that had influence on the islands of Java, Sumatra and Bali, while in other areas they were influenced by the Malayo Polynesian (an era where our ancestors still hold the original customs that are influenced by the supernatural nature). During this Hindu era, several kingdoms grew that were influenced by Hindu religious law and Buddhist law brought by traders (especially from China).

Among these kingd Khoiruddin Nasution, Hukum Perdata (Keluarga) Islam Indonesia dan Perbandingan Hukum Perkawinan di Dunia Islam, (Yogyakarta: Academia & Tazzafa, 2009), hal. 57-59oms are the kingdoms of Sriwijaya, Singosari and Majapahit. During the Majapahit , customary law received attention thanks to the efforts of Mahapatih Gajah Mada, among the efforts made by the governor of Gajah Mada, namely dividing the fields of government and state security. For example, the matter of marriage, the transfer of power, the state army. The court's decision at that time was called: Jayasong (Jayapatra), Gajahmada issued a law book, namely: "The Book of Gajah Mada Law".

After the Hindu and Buddhist kingdoms collapsed, then in the archipelago stood the Islamic style kingdoms. Islam entered Indonesia peacefully in the 7th century AD or coinciding with the 1st century Hijri, there are also those who argue in the 30th year of Hijri or coinciding with the year 650 AD. When the territory of the archipelago was controlled by the sultans, Islamic law was enforced in their territory and the sultan himself was in charge. The sultan plays an active role as a piñata of Islam by appointing a penghulu as a sharia qadi and giving religious fatwas. The manifestation of this provision can be seen from the form of government at that time, namely the existence of a square which surrounded by the district pavilion, the Great Mosque and the Penitentiary.

Islamic law as an independent law has become a living reality in Indonesian society. That the Islamic kingdoms that stood in Indonesia have implemented Islamic law in their respective powers. In the 13th century AD, the Samudra Pasai Kingdom in North Aceh adopted the Islamic law of the Syafi'i School. Then in the 15th and 16th centuries AD on the north coast of Java, there were Islamic kingdoms, such as the Kingdoms of Demak, Jepara, Tuban, Gresik and Ngampel. The function of maintaining religion is assigned to the penghulu with its

employees who are tasked with serving the needs of the community in the field of worship and all matters included in family/marriage law. Meanwhile, in the eastern part of Indonesia, there were also Islamic kingdoms such as Gowa, Ternate, Bima and others. It is estimated that the Islamic community in the area also adheres to the Islamic law of the Shafi'i School.

b. Colonialism in Indonesia

The Dutch entered Indonesia in 1596 through the Verenigde Oost Indische Compagnie (VOC), the policies that had been implemented by the sultans were still maintained in their areas of authority so that the legal position (family) of Islam existed in society so that in when it was fully recognized by the VOC authorities. In fact, in many cases the VOC provided convenience and facilities so that Islamic law could continue to develop as it should. The forms of convenience provided by the VOC were publishing Islamic law books to serve as a guide for Religious Court Judges in deciding cases. The books published are "al-Muharrar" in Semarang, "Shirathal Mustaqim" written by Nuruddin ar-Raniry in the City of Raja Aceh and this book was given a syarah by Sheikh Arsyad al-Banjary with the title "Sabilul alMuhtadin" which intended for Judges at the Kadi Density in Banjar Masin, later the book “Sajirat al–Hukmu” used by the Syar'iyah Court in the Sultanates of Demak, Jepara, Gresik and Mataram . At first the Dutch through the VOC entered Indonesia with the laws of their country to solve problems among themselves. To further strengthen their position, they also tried to subjugate the colonized people to the law and the judiciary that they formed. But in reality the judiciary formed by the Dutch could not work, so finally the Dutch let the original institutions that existed in society continue to run, so that for almost 2 centuries during the VOC period the law of marriage and Islamic inheritance law in Muslim society worked as it should.

The VOC period ended with the entry of England in 1800-1811. After the British handed back their power to the Dutch government, the Dutch colonial government again tried to change and replace the law in Indonesia with Dutch law. However, seeing the reality that developed in Indonesian society, an opinion emerged among the Dutch, pioneered by LWC Van Den Berg that the law that applies to native Indonesians is the law of their religion, namely Islam. This theory became known as the "Recepcio in Complexu" theory which since 1855 has been supported by the Dutch East Indies legislation through articles 75, 78 and 109 RR 1854 (Stbl. 1855 No.2).

In his journey, it turned out that Cristian Snouck Hurgronje did not agree with this theory, according to him the law that developed in the midst of Indonesian society was not Islamic law, but customary law. Hurgronje's theory is known as the "Receptie" theory.

The impact of this theory is that the Dutch colonial government no longer recognizes Islamic law that applies to Indonesian society, but rather recognizes customary law. In the Indesche Staatsregeling article 131 paragraph 6 it is written: "Before the law for the Indonesian nation is written in the law, for they will continue to apply what is now applicable to them, namely customary law".

At that time, although the authority of the Penghoeluegerecht (Religious Court) in the field of munakahat (marriage) was not removed, the issuance of this regulation was clearly very detrimental to Indonesian Muslims. If the teachings of Islam have become customary in an area, then of course it will not be too much of a problem. A Muslim can still get married through Penghoeluegerecht. But what about a Muslim or Muslim woman who lives in a non-religious environment or lives in an area where the majority of the population is non-Muslim, then does it also have to be married according to the local customs which may be contrary to Islamic law?

In the Indesche Staatsregeling (IS) article 131 paragraph 2 it is written; "For the native Indonesians and the foreign-Eastern groups, if it turns out that their social needs demand it, then the regulations for the Europeans (Burgerlijk Wetboek/BW/ the Civil Code) are declared to apply to them, either completely or with amendments..." . Then in verse 4 it is stated; "Indigenous Indonesians and foreigners, as long as they have not been subject to a common rule with Europeans, are allowed to submit to the laws that apply to Europeans..."

According to this rule, anyone can submit to European law, either of their own free will or collectively. This means that a Muslim or Muslim woman may marry using the BW as the legal basis, while the BW/KUH-Perdata itself does not regulate the law of interfaith marriage. So it can be concluded that the existing law was not protective of Muslims, because it opened up opportunities for interfaith marriages and apostasy through marriage, both for Muslims and Muslim women. If we observe carefully from the two articles above, it is clear how the efforts. The Dutch colonials tried to subjugate the people with their laws, but they couldn't

by force because it was feared that there would be a big uprising, so a smooth way was sought.

Although the authority of the Penghoeluegerecht (Religious Court) in the field of munakahat (marriage) is not removed, there are no binding and compelling regulations that Muslims must take care of their marriage problems through penghoeluegerecht. In fact, there is only leeway to submit to Dutch law/BW/The Civil Code itself is a law book that was originally made for non-native (Indonesian) citizens, namely for groups of citizens who come from China and Europe where the legislation is in accordance with the laws in force in the Netherlands. In the Indesche Staatsregeling article 131, it reads; "For the European group, the legislation in force in the Netherlands is adopted (the principle of concordance)".

Meanwhile, the majority of the population in the Netherlands are Christians, so that either directly or indirectly, their legal policies must be influenced/supported by Christian teachings. An example is found in Chapter IV (Regarding Marriage) in the Civil Code, Part Two (regarding events that must precede marriage), article 53 reads; "…Announcements cannot be made on Sundays; with Sunday in this respect it is equated: New Year's Day, Easter and the second Pentecost, both Christmas and the day of Mikhrad the Prophet". Another example is in article 27 in the same chapter in the first part (about the conditions of marriage) which essentially prohibits polygamy altogether.

At the First Indonesian Women's Congress on 22-25 December 1928 in Yogyakarta, it was proposed to the Dutch government to immediately draft a marriage law, but it encountered obstacles and interfered with cohesiveness in expelling the invaders.

At the beginning of 1937 the Dutch East Indies Government prepared a preliminary plan for a registered Marriage Ordinance (onwerpordonnantie op de ingeschrevern huwelijken) with the following main points: Marriage is based on the principle of monogamy and the marriage is dissolved because one party dies or disappears for two years and divorce decided by the judge.

According to the plan, the draft ordinance is only intended for groups of Indonesians who are Muslim and those who are Hindus, Buddhists and Animists. However, the draft ordinance was rejected by Islamic organizations because the contents of the ordinance contain things that are contrary to Islamic law. The voices of the women's associations who agreed were

not strong enough so that the ordinance plan was not discussed in the Volksraad (People's Council). Until the end of the colonial period, the Dutch East Indies government had not succeeded in enacting a law containing material law on marriage that was applicable to all Indonesians. Material legal regulations regarding marriage that were made and abandoned by the Colonial Government, were only in the form of marriage law regulations that were applicable to certain groups, namely: Christian Marriage Ordinance (HOCI) which applied to native Indonesians who were Christians, the Code of Law Civil Code (BW) which applies to citizens of European and Chinese descent, then the Mixed marriage regulation (Staatsblad 1898 No. 158) or GHR. While the marriage law regulations for Muslims that had been abandoned by the Colonial Government were only in the form of formal legal regulations governing marriage procedures as contained in fiqh books written by scholars among Muslims.

c. The Period After Indonesian Independence

The post-independence government was the government under the leadership of the old order (1945 – 1965), in this era of the old order the desire to have a marriage law that applies to all Indonesians, has not yet materialized. Several legal regulations on marriage inherited from the Dutch colonial government are still applied to the Indonesian people according to their respective groups. The marriage laws that apply are as follows:

- For Native Indonesians, customary law applies
- For Indonesians who are native Muslims, Islamic marriage laws apply
- For Indonesians who are native Christians, the Christian Marriage Ordinance (HOCI)
- For residents Countries of European descent and China apply the Civil Code (BW)
- For mixed marriages, mixed marriage regulations apply (Staatsblad 1898 No. 158) or GHR

Because Christian groups and citizens of descent (European and Chinese) have codified marriage laws, in practice, difficult problems are rarely encountered in their marriage. This is different from the Islamic group which does not yet have a codified marriage law. Marriage laws that are guided by Muslims are still scattered in several fiqh munakahat by mujtahids from the Middle East, such as Imam Shafi'I for example. The understanding of Indonesian

Muslims towards the fiqh books of munakahat is often not uniform, resulting in cases of marriage such as child marriage, forced marriage, and abuse of divorce rights and polygamy.

This situation apparently received attention from the government of the Republic of Indonesia, so that in 1946 or exactly one year after the independence of Indonesia, the Government of the Republic of Indonesia enacted Law no. 22 of 1946 concerning the Registration of Marriage, Divorce and Reconciliation which applies to the Java and Madura regions, then by the Emergency Government of the Republic of Indonesia in Sumatra it is also declared to apply to Sumatra. In the implementation of the Law, the Minister of Religion Instruction No. 4 of 1947 was issued which was intended for Marriage Registrars (PPN). Instruction also contains the obligation of VAT to try to prevent marriage of children who are not old enough, explain the obligations of husbands who are polygamous, seek peace for troubled couples, explain ex-husbands to ex-wives and children. If the child is forced to divorce, during the idah period, the VAT will seek the divorced spouse to reconcile. Then in 1954 through law no. 32 of 1954, Law no. 22 of 1946 was declared valid for all of Indonesia.

In August 1950, the Women's Front in Parliament, urged the Government to review the marriage regulations and draft a marriage law. Because of this pressure, the Indonesian government finally, at the end of 1950 with the Minister of Religion's Order No. B/2/4299 dated October 1, 1950, a Committee to Inquire about the Rules and Laws of Marriage, Divorce and Reconciliation for Muslims was formed. This committee compiles a Draft Marriage Law that can accommodate all the legal facts that live and develop in society at that time. Because its membership consists of people who are considered experts in general law, Islamic and Christian law from various sects chaired by Tengku Hasan.

In late 1952, the committee made a draft of the Marriage Law which consisted of general regulations, which applied to all groups and religions and special regulations governing matters concerning each religious group. Subsequently, on December 1, 1952, the committee submitted the Draft General Marriage Law to all central and local organizations with a request that each of them give their opinion or views on these issues by February 1, 1953. At the latest .has also tried to improve the condition of society by stipulating among others:

- Marriage must be based on the unanimous will of both parties, to prevent forced marriages, age limits are set for 18 for men and 15 for women.
- Husband and wife have equal rights and positions in domestic life and social life together in society.
- Polygamy is permitted if it is permitted by the religious law that applies to the person concerned and is regulated in such a way that it can meet the requirements of justice.
- Congenital assets and assets acquired during the marriage become joint property.
- Divorce is regulated by the decision of the District Court, based on certain reasons, regarding divorce and reconciliation as stipulated in the regulations of Islamic Law.
- The position of the child is legal or not, the recognition of the child, the adoption and legalization of the child, the rights and obligations of the parents towards the child, the revocation of parental powers and guardianship.

On 24 April 1953 a hearing was held by the Marriage, Divorce and Reconciliation Committee with community organizations, which in its meeting in May 1953 the Committee decided to draw up a Marriage Law according to the prevailing system:

- Basic Law which contains all regulations applicable to the public together (uniform), without mentioning
- Organic Law, which regulates marriage according to their respective religions, namely for Muslim, Catholic, and Protestant Christian groups
- Laws for neutral groups, namely those that are not included in the law. a religious group

In 1954 the committee finally succeeded in making a Draft Law on Muslim Marriage which was then submitted by the Minister of Religion to the Cabinet at the end of September 1957 with an explanation that there would still be amendments to follow. But until the beginning of 1958 there had not been any action from the government regarding the marriage law.

The government also did not respond for many years until in 1958 several women members of parliament under the leadership of Soemari, submitted drafts of the most important initiatives including, at least: whether or not for the Indonesian Islamic world is a shocking issue that in the proposed initiative it has been stipulated that it is mandatory to practice monogamy. The government at that time had already reacted by putting forward a draft that only regulated Islamic marriages. In fact, from traditional Islam there are doubts whether for

Muslims a marriage law is needed. Aren't the rules that were once given by God, as carefully revealed in the Shari'a for all ages and countries. New material for discussion is that these plans were never discussed further.

One and a half years after the proposal was submitted, in October 1959, the Soemari Bill was withdrawn by its proponents, despite the great attention of a number of members of the DPR, the Draft did not seem likely to be discussed. The members of the Islamic Party held a resistance, especially against the monogamy principle contained in the Draft. Of course as a women's organization protested the arguments used to justify polygamy. This is an internal factor that causes the failure of the bill to be promulgated. In addition to these factors, there were also external factors that later emerged, namely the change in the Indonesian state administration system as a result of the Presidential Decree 5 July 1959.

Until the end of the old order government, the marriage law that was aspired by the Indonesian people had not yet been formed, even though demands to immediately form a marriage law continued to emerge, both from the government itself and from social organizations such as the Congress. Indonesian Women, National Conference for Social Workers (1960), Family Welfare Conference (1960), and Central BP4 Conference (1962).

During the new order period, during the 1967-1971 session, the Parliament (DPR-GR) re-discussed the marriage bill, namely:

- Marriage Bill from the Ministry of Religion, which was submitted to the DPR-GR in May 1967
- The Bill on Basic Marriage Provisions from the Ministry of Justice, which was submitted to the DPR-GR in September 1968. The discussion of these two bills eventually stalled,

Because the Catholic faction refused to discuss a bill concerning religious law. According to the Catholic faction, the "main ideas regarding the Marriage Bill" were published in the edition of the Daily Operation (14 to 18 April 1969). “...The procedure for regulating marriage as determined by the two provisions of the law is not in accordance with the nature of the Pantjasila State, which means that there is a change in the basis of the State. The state is no longer based on Pancasila but based on religion; which matters relate to the principles contained in the Djakarta Charter”. The establishment of the Catholic faction received responses from Muslims, including from Hasbullah Bakry (at that time serving as the Head

of the Islamic PUSROH of the Indonesian National Police) in daily Guidelines (1-8-1969) as follows: “And if this law is not enacted, then the Catholic party will not achieve its political goals as well. The law that regulates marriage with the predicate of the religion adopted by its citizens has indeed existed since before the Pantjasila was inaugurated and has been strengthened by the Pantjasila State. And this does not need to mean that the Indonesian public has turned into a religious state. On the other hand, with the rejection of the Catholic party, Indonesian citizens with common sense can think that this attitude will betray the social interests of the Indonesian people, against improving the fate of mothers who happen to be Muslim.

In July 1973, the government through the Ministry of Justice, which had formulated the Marriage Bill, re-submitted the Bill to the DPR as a result of the 1971 general election, which consisted of 15 chapters and 73 articles. Then President Soeharto with his mandate withdrew the two marriage bills that were submitted to the DPR-GR in 1967 mentioned above.

The 1973 marriage bill was met with resistance from Islamic circles. All Islamic organizations and figures who have long been involved in matters relating to religion, are of the opinion that the Marriage Bill is against religion and therefore also contradicts the Pancasila and the 1945 Constitution. as well as long. According to Amak FZ, judging from the strength composition of the factions in the DPR, the PPP faction is the only faction that opposes the bill because it contradicts Islamic teachings. Waves of rejection and reactions to the Marriage Bill came from various communities, including the community, ulama and the government itself. The reaction in the spotlight came from the head of the PPP faction, KH. Yusuf Hasyim, who has noted various errors in the Marriage Bill and contradicts the Marriage Law, namely in a country based on Pancasila which has one and only God, marriage has a very close relationship with religious and spiritual elements.

What was said by KH. Yusuf Hasyim is not without reason, in fact the refusal stems from the mandate of the President of the Republic of Indonesia Number R.02/PU/VII/1973 regarding the withdrawal of the draft Marriage Bill from the DPR which aims to pay more attention to the benefit of the people. In line with the opinion of KH. Yusuf Hasyim, Buya HAMKA also strongly rejected the draft Marriage Bill which was considered contrary to Islamic teachings. HAMKA considers that the main teachings of tasyriul Islamy are that there are five things

that are preserved in the Shari'a, namely maintaining religion, soul, mind, lineage and property.

In the context of nurturing offspring, maintaining that the human species continues to develop and reproduce, do not let it perish because of human futility. Therefore, marriage is the sunnah of the apostle and adultery is a very heinous act. Even though in Islamic law it is forbidden to marry a mother-of-breed, but if the draft Marriage Bill is ratified, then such a marriage is legalized by the state. Children conceived out of wedlock because of engagement and courtship before marriage, with the draft of the bill may become legitimate children, even though Islam views the child as an adulterous child.

Of the 73 articles of the Marriage Bill, there are a number of articles that are considered contrary to Islamic teachings according to some Ulama at that time. ,legally, the state is not in absolute conflict because it still sees the benefit of the people, among others, the author cites article 2 paragraph (1) of the Marriage Bill which is now a polemic in the midst of Indonesian society, article 2 paragraph (1) of the Marriage Bill reads: "Marriage is a it is valid if it is carried out in the presence of a marriage registrar, recorded in the marriage registrar by the employee, and carried out according to the provisions of this Law and/or the provisions of the marriage law of the parties conducting the marriage, as long as it does not conflict with this law."

In the view of the theologian, the validity of marriage is at the time of the marriage contract in the form of consent and acceptance by the guardian of the bride and groom and witnessed by two witnesses. determine whether a marriage is valid or not.

Then, the provisions of Article 49 paragraphs (1), (2), and (3) of the Marriage Bill which reads: "1) Children born out of wedlock only have a civil relationship with their mother. 2) The child referred to in paragraph 1 of this article can be recognized by his father. 3) The child referred to in paragraph 2 of this article can be legalized by marriage." Responding to the draft of the Marriage Bill, the government's initiative, in the deliberations of the scholars on 24 Rajab 1393 H/22 August 1973 in Denanyar Jombang on the initiative of KH. M. Bisri Sjansuri, decided on the proposed amendment to the Marriage Bill.

A bill that is clearly contrary to Islamic law if it is forced to become law, the risk is that the law is difficult to be effective in a society where the majority is Muslim: because Muslims

obey a law that is contrary to Islamic law. , tantamount to doing unlawful. In addition, when viewed from the point of view of constitutional law, a law that is contrary to Islamic (religious) law is a denial of the guarantee that has been given by the 1945 Constitution in Article 29, namely a guarantee for the Indonesian people to carry out the teachings of their respective religions. On this basis, Muslims rejected the Marriage Bill.

The rejection of Muslims on the bill, apparently received attention from the government. President Soeharto himself when receiving a delegation from the United Development Party/Faction (F-PP) led by KH. Bisri Syamsuri (Chairman of DPP-PPP) and KH. Masykur (Chairman of F-PP), as reported in the Abadi daily (26-11-1973), paid attention to the main ideas of this group. A series of lobbies were then organized by high-level authorities with the United Development Faction together with the ABRI Faction as a realization of the meeting between the delegation from the PP Faction and the President Suharto. As a result, a consensus was reached between the two factions.

The consensus which basically contains that all Islamic religious laws that have been contained in the bill will not be reduced, then as a consequence all implementing regulations will not be changed, not only that all things that are contrary to Islam and are impossible adjusted in the bill is omitted. With this consensus, the draft of the bill must inevitably be amended by referring to the things that have been agreed upon in the consensus.

This view is in accordance with the doctrine of the Church, which adheres to the notion of separation between religious affairs (church) and state affairs. State affairs are regulated by state law and religious affairs (church) are regulated by religious law (church).

The debate over the marriage bill, at which time the discussion on the bill was a very hot topic, from all circles, from Islam, Christianity, Community Organizations, Youth Organizations, Women's Organizations and high-level figures paid great attention before the bill. was passed into law.

After undergoing changes to the amendments that were included in the working committee, the bill on marriage proposed by the government on December 22, 1973 was forwarded in the Plenary Session of the DPR-RI, as discussed at the fourth level above, to be passed into law. In the session, all factions expressed their opinion, as well as the government represented by the Minister of Justice gave the final word. On the same day, the bill on

marriage was ratified by the DPR-RI after three months of discussion. On January 2, 1974, it was promulgated as Law Number 1 of 1974 concerning Marriage. LN Number 1 of 1974, an additional LN Number 3019/1974.

For the implementation of the law, the government issued PP No. 9/1975 as the implementing regulation of the marriage law. In the following years it turned out that the Religious Courts as a juridical institution that handled marriage problems between Muslims turned out to be in many disparities in applying the law, because there were things that were not covered in the marriage law and PP implementing regulations, to handle matters Therefore, through Presidential Instruction Number 1 of 1991 concerning the implementation of the Compilation of Islamic Law as a standard reference for judges of the Religious Courts in deciding cases.

In 1998 the New Order regime ended, with the resignation of President Soeharto as President, due to pressure from students. Since the fall of the old order government, the next government has been termed the "reform era" until now. In the era of marriage law reform, there was a phenomenal change with the amendment of Article 43 paragraph (1) of the Marriage Law Number 1 of 1974 by the Constitutional Court.

Precisely Friday, February 17, 2012 AD, coinciding with the date 24 Rabiul Awal 1433 Hijri, the Constitutional Court (MK) issued a revolutionary decision throughout the history of the Constitutional Court in this Republic. As reported by vivanews.com, Mahfud views the Constitutional Court's decision as very important and revolutionary. Since the Constitutional Court knocked the hammer, all children born outside of legal marriages have blood and civil relations with their fathers. Outside of official marriage, Mahfud meant this includes unregistered marriage, infidelity, and living together without marriage ties or samen leven.

Previously, the Petitioners (Hj. Aisyah Mochtar alias Machica bint H. Mochtar Ibrahim and Muhammad Iqbal Ramadhan bin Moerdiono) also submitted a judicial review of Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage which was considered contrary to Article 28B paragraph (1) and paragraph (2) as well as Article 28D paragraph (1) of the 1945 Constitution, thus causing constitutional losses for the Petitioner. However, the Court only granted part of the Petitioner's petition.

In the view of Prof. Mahfud MD, Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage, as long as it is interpreted to eliminate civil relations with men which can be proven based on science and technology and/or other evidence according to the law that turns out to have blood relations as the father , so that the verse must be read, "Children born out of wedlock have a civil relationship with their mother and their mother's family as well as with a man as their father which can be proven based on science and technology and/or other evidence according to the law having blood relations, including civil relationship with his father's family.

This decision then invites pros and cons from various parties, both from legal practitioners, academics, NGOs, MUI, and even the community. The Constitutional Court's decision regarding the recognition of children out of wedlock was "shocking". Although it relieves some parties, there will be new problems arising from the decision of the constitutional court. In addition, Mahfud MD's statement in the mass media is as stated above.

Marriage sirri  and divorced his wife by SMS, which resulted in the dismissal of Aceng Fikri from the seat of the Regent. The problem according to some legal experts is not a criminal act because there is no element of adultery in it as regulated by the Criminal Code, but why is Aceng Fikri still fired from the position of Regent.

According to the authors, the existing marriage laws are not in accordance with the times in this country. Therefore, reformulating the revision of the Marriage Law is a necessity in the present context where the law is dynamic and always changes in space and time.

Therefore, the government as the initiator since six years ago has proposed a Bill on the Material Law of Religious Courts in the field of Marriages and has just been included in the 2010 National Legislation Program (Prolegnas). and 156 articles, which basically regulate marriage, in this bill there will be significant changes because there are several things that are not regulated in Law Number 1 of 1974 in conjunction with PP Number 9 of 1975 but are regulated in the bil.

2. The birth of the Compilation Islamic Law

The Compilation of Islamic Law (Inpres Number 1 of 1991) is only a temporary shortcut, with the hope that one day a more permanent Islamic Civil Code will be born. It is said to be a

shortcut because it is very urgent and needed, where the Religious Courts (PA) institutions which are declared legitimate stand on equal footing with other judicial bodies through Law Number 14 of 1970 concerning the Principles of Judicial Power, and later confirmed through Law Number 7 of 1989, it turns out that it does not have a uniform (unificative) material law nationally, so that it can lead to different decisions between religious courts from one another even though in similar cases, besides that it also makes the presence of PA as one of the judicial powers unfulfilled.

To meet these needs, there is a discourse to take the formal route in accordance with the provisions of Article 5 paragraph 1 in conjunction with Article 20 of the 1945 Constitution, thus the material law to be possessed is in the form of positive law which is equal to the law and its validity is truly legalistic (Legal law). However, you can imagine how far the distance will be. Various stages must be taken, starting from drafting the bill to discussing it in Parliament. Not only that, non-technical factors are also very difficult to penetrate, such as the unfavorable political climate, as well as psychological factors. Indeed, in one aspect the presence and existence of the Religious Courts has been recognized by all parties, but on the other hand, perhaps the allergic and emotional attitude that is very reactive to the necessity of an Islamic Civil Law in a short period of time, if the path taken is through the formal channels of legislation Invitation.

Responding to and also paying attention to these conditions, as well as being associated with very urgent needs on the other hand, an agreement was reached between the Minister of Religion and the then Chief Justice of the Supreme Court to find a solution by taking a short route in the form of a compilation, then a Joint Decree (SKB) was born. between the Chief Justice of the Supreme Court and the Minister of Religion dated March 21, 1985 No.07/KMA/1985 and No.25 of 1985 which assigned the committee to formulate positive Islamic Civil Law in the Compiled Code of Law, with the provision that it must explore and study as deeply and as widely as possible sources of Islamic law contained in the Qur'an and Sunnah, in addition to the fiqh books of the Imam Madhab which were then used as orientation, even had time to conduct comparative studies in various Islamic-based countries

To legalize it, the compilation was engineered in the form of a Presidential Instruction on June 10, 1991. And the statement of its validity was confirmed by Decree of the Minister of

Religion Number 154 of 1991, dated July 22, 1991. Since then the Book of the Compilation of Islamic Law (KHI) has officially taken effect as the law used and applied by government agencies and the community who need it in solving problems related to marriage, grants, waqf and inheritance.

The description above has shown a common thread as an illustration that the factors causing the birth of the KHI include:

1. Legal Emptiness
2. Mandate of Law Number 1 of 1974
3. here are many schools of jurisprudence adopted in Indonesia and there is no common perception in defining Islamic law, between sharia and fiqh
4. The politics of Islamic law in Indonesia

Marriage of Pujiono Cahyo Widianto alias Syekh Puji, a successful businessman in Semarang, with a girl underage, Lutfiana Ulfa, had invited controversy. He has not only violated Law (UU) No. 1 of 1974 concerning Marriage but also Law No. 23 of 2002 concerning Child Protection. However, unlike the Child Protection Law, the Marriage Law does not include strict legal sanctions for violators. According to the expert on religious courts, Dr. Jaenal Aripin, because there are no unequivocal sanctions in the law, he suggested that the law be amended immediately. "The Marriage Law is an old product and is still conventional in nature so it needs to be revised, especially regarding the legal sanctions,"

According to Islamic law, Sheikh Puji's marriage does not violate. There is only a fact in Islamic history that the Prophet Muhammad also married Siti Aisyah who was younger. But because Sheikh Puji lives in Indonesia while the law used is not Islamic law but conventional Western law, he must also obey the Marriage Law No. 1 of 1974. So if Sheikh Puji claims to be a citizen, he must obey that law. In the context of the marriage between Sheikh Puji and Lutfiana Ulfa, it did not violate Islamic legal norms, but he had violated positive legal norms in Indonesia. The only problem is, even though there is a law in Indonesia, there are actually many marriage violations whose law enforcementis very weak. Examples in this case are cases of young marriage and polygamy. Both cases were mostly done by certain people. According to the law, a person who wants to practice polygamy must obtain permission from the

religious court. However, the fact is that many do not do that. Even if it was clear that there were violations, no action was taken. This is where the problem lies.

According to the Marriage Law, the minimum age limit for a woman to be married is 16 years. In this law what is seen is not the aqil baligh, but the age. This has been confirmed by the Compilation of Islamic Law. Aqil baligh is the standard norm of Islamic law. In Indonesia, the case of Islamic norms, if they want to be applied and/or made into law, must go through a legislative process in the DPR. So, if anyone wants to marry underage, they must get dispensation from the religious court.

That the age limit for marriage must be aqil baligh is actually determined by the scholars. However, at the time the cleric determined, the condition of women in the past was different from now, especially from the psychological aspect. It might be, for example, 10 years old when it was an adult, but not necessarily now. Therefore, Indonesian law stipulates that the minimum age for marriage is 16 years. So what is meant by Islamic norms is not the Qur'an or hadith but what is agreed upon by the scholars. Because the age limit itself is not explicitly mentioned in the Qur'an or hadith, but by scholars, especially the Shafi'i school.

Of course, the two factors (age and aqil baligh) cannot be separated. Maturity can be seen from several indicators, such as age, psychic, and emotional maturity or being able to distinguish between positive and negative ones and can already be responsible.

Optimal implementation by the community, should also accommodate the legal values that live in the community. For example, in Madura, early marriage is considered normal, so they don't want to obey the Marriage Law. There is indeed a gap between the legal norms made in the Marriage Law and the legal norms that exist in society. Therefore, many regions do not want to use the law because they do not agree with the age limit for marriage.

Sanctions for violating the law should be carried out seriously. If someone violates law enforcementmust be enforced and implemented. Because if not, there will be a tendency for people to take it for granted. The weakness of the law is in sanctions.

The sanctions are not imperative, they do not force people to obey the law. There are still many loopholes for people to evade the law. Therefore, the solution is that religious courts are given the authority to try cases of violations of this law. After all, the religious court is

also within one of its powers, in certain cases, can also adjudicate criminal matters for violations of the law.

The law is full of polemics. Because it has been implemented for more than 30 years, it needs to be reviewed again by amending it. The government and the DPR need to review and amend the law so that it can actually be implemented in the community, especially regarding the legal sanctions.

The decision of the Constitutional Court (MK) which recognizes the legal status of children out of wedlock and has a relationship with their biological father, which was conveyed by the Chief Justice of the Constitutional Court Mahfud MD, Friday (17/02/2012) at the Constitutional Court building, related to the Judicial Review of Article 43 paragraph (1) of the Law.to Islamic law.

contraryproven based on science and technology and/or other evidence according to the law, it turns out to be related by blood as his father,"

the decision of the Constitutional Court (MK) is an interesting and proud thing from one side and scary and worrying from the other side, thus attracting the author. to make this simple paper from the aspect of sharia law and Islamic legislation.

So far, Islamic Fiqh law only recognizes and enjoins children out of wedlock to the mother and the family of her biological mother only. The reasons put forward by Islamic law scholars or fiqh scholars are the close emotional relationship and blood relationship between the mother and the baby she has ever conceived; mothers who conceive, give birth, wean and care for them throughout the ages. All of these are just psychological and biological reasons which should also be reasons for assigning children out of wedlock biological

fathers whose truth can be determined through DNA testing or other modern sophisticated technological equipment.

In addition, Fiqh scholars forbid children (boys) out of wedlock to marry their mothers and on the contrary allow children (girls) out of wedlock to be married by their biological fathers. This opinion legitimizes the relationship of a child out of wedlock with his mother, as if he had atone for the sin of being willing to conceive, conceive and wean the child obtained by

the extramarital relationship. While his biological father is considered to bear all legal and social sins, so he must be responsible for his actions.

However, one of the muftis in Malaysia allows fornicating children to be given to a man who marries his mother before giving birth to a baby born out of wedlock, provided that the man does not refuse to be the father of the child he is carrying (the result of the decision of Mufti Perlis 4 November 2008, Dr. . Mohd Asri bin Zainul Abidin).

Apart from all the problems above, the author would like to offer a reposition of the Islamic marriage law in Indonesia as an administrative rule and not a religious rule whose truth has been plotted by certain individuals or religious elite groups. With regard to this adulterous child, the drafter of the law should think about the benefits and future of the poor child out of wedlock. They are neither guilty nor sinful, as the Prophet said that "every child is born in a state of purity". Both parents (adultery offenders) are sinners and should bear all the consequences of the sins they committed.

In Islamic law, children and wives who are legal according to Islam have the right to receive a living from their husband or father. While the adulteress child has no clarity about the guarantee of life and education. In fact, it is not uncommon for children out of wedlock to be marginalized, lack respect, lack of attention, and seem unkempt. Therefore, the author offers social sanctions for both parents to be given the responsibility to bear the cost of living and education costs so that the child gets life insurance and education guarantees. Even if both parents are unable to bear on them, then the family from the father's side and or the family from the mother's side must share responsibility for the grandchildren born out of wedlock.

In addition, the Marriage Law No. 1 of 1974 should have been amended to include a fine or imprisonment or both for couples who do not register their marriage under the supervision of the Office of Religious Affairs (KUA). Thus, all marriages that are considered detrimental to women and children such as mut'ah marriages, sirri marriages and others can be prevented and can guarantee security and administrative order, thus determining their social and legal status.

## B. CONCLUSSION

After the end of the colonial period or after independence the marriage law received attention from the government, especially for Muslims because a year after independence, precisely in 1946 the government made marriage regulations by stipulating Law no. 22 of 1946 concerning the Registration of Marriage, Divorce and Reconciliation applicable to the Java and Madura regions, which in the end was based on Law no. 32 of 1954 declared valid for national.

In 1950, to be precise, the Old Order government began to initiate the National Marriage Bill, because the Women's Front in Parliament urged the Government to review the marriage regulations and draft a marriage law plan. The government's bill of ideas turned out to have drawn a lot of debate from all levels of the Indonesian people. As a result, until 1965 or the end of the old order regime, the national marriage law that the Indonesian people aspired to did not materialize.

During the New Order era, the desire to realize a representative law rose again, which culminated with the submission of a marriage bill by the Minister of Justice as a representative of the government to the DPR in 1973. However, it turned out that the draft bill drew a lot of criticism, especially from among Muslims who considered that the bill was not in accordance with Islamic law. With a winding journey and a hard struggle, finally on January 2, 1974 the Marriage Bill was ratified as a Law.

In its journey to the reformation era, it turned out that the Marriage Law, the nature of its regulation was considered lacking by the community, as evidenced by the amendment of Article 43 paragraph (2) by the public. The Constitutional Court in response to the request of Hj. Aisyah Mochtar or Macicha Mokhtar. The change in the article turned out to be not peaceful for some people, because after the amendment of the article there were some people who did not agree because it was considered not in accordance with the values that live in society.

With the emergence of the amendment to the article, it opens the door that the marriage law does not rule out the possibility of being revised, because it is considered less in line with the times and is less able to protect legal problems that occur in society.

Marriage is a bond that gives birth to the family as an element in social and state life, which is regulated by legal rules in written law (state law) and unwritten law (customary law).

The state law that regulates the issue of marriage is Law Number 1 of 1974 concerning Marriage. On the other hand, the customary law governing marriage from the past until now has not changed, namely the customary law that has existed since the time of the ancestors until now which is an unwritten law.

According to Law Number 1 of 1974 marriage and its objectives are as follows: "The inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead".

To be able to realize the purpose of marriage, one of the conditions is that the parties to the marriage have matured in mind and body. Therefore, in Law Number 1 of 1974, the minimum age limit for marriage is determined.

Currently the implementation of Marriage Law no. 1 of 1974 in society is quite good, where this law does not recommend underage marriage to occur in the community.

The provisions regarding the minimum age limit are in Article 7 paragraph (1) of Law No, 1 of 1974 which states that "Marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years". From this it is interpreted that Law no. 1 of 1974 does not want the implementation of underage marriages.age limit for marriage for citizens is in principle intended so that people who are about to get married are expected to have mature thinking, mental maturity and adequate physical strength. The possibility of a marital breakdown that ends in divorce can be avoided, because the couple has a more mature awareness and understanding of the purpose of marriage which emphasizes aspects of inner and outer happiness.

However, underage marriages can be forced to do because of Law no. 1 of 1974 still gives the possibility of deviation. In Article 7 paragraph (2) of Law no. 1 of 1974, namely with a dispensation from the Court for those who have not reached the minimum age limit.

The family as the smallest institution in a society plays an important role in the formation of a quality young generation. Marriage is intended to achieve happiness and peace in human life. It is through the door of marriage that a man and woman can fulfill their biological needs.

In a shar'i manner, through this command to marry, Allah also shows how great his love for humans is and how vast Allah's knowledge of human needs is. Humans who are born with the potential for lust for the opposite sex need a means to channel this potential, if this potential is not channeled in a directed manner, it will cause various vulnerabilities. To form a harmonious and prosperous family and full of eternal happiness as it aspires, each party who will enter into a marriage should have matured both psychologically and biologically, and be able to take responsibility for the family he formed.

The government has issued a form of the National Marriage Law that has long been aspired by the entire Indonesian nation on January 2, 1974, namely Law Number 1 of 1974 concerning Marriage, which then for the sake of smooth implementation was issued a Government Regulation concerning the Implementation of the Law. Law Number 1 of 1974 concerning Marriage, namely Government Regulation of the Republic of Indonesia Number 9 of 1975 which states that Law Number 1 of 1974 shall be effective on October 1, 1975.

Law Number 1 of 1974 contains very broad contents, namely regulating the issue of marriage, divorce, the position of the child, rights and obligations between parents and children, and also regulating the issue of guardianship and regulating the problem of proving the origin of the child.

Law Number 1 of 1974 adheres to the principle that the prospective husband and prospective wife must be mature in mind and body to be able to carry out a marriage, with the aim that they can realize the purpose of marriage properly without ending in divorce and to get good and healthy offspring. Therefore, in Article 7 paragraph (1) of Law Number 1 of 1974, the age limit for marriage for men and women has been determined, namely 19 years for men and 16 years for women.

The age limit for carrying out marriages is intended as a precaution against underage marriages. In addition, it is also intended to support the success of the National Program in the field of Family Planning. This is also desired by the community with a tendency to delay the age of marriage. However, in reality, underage marriages are still common in our society. Even though if you think about it further, marriages that are still underage will cause various unfavorable consequences, such as the inability of the husband or wife in overcoming

problems that arise in the family they form, besides that, there is also a fairly high fertility rate for married women. young age which causes the population explosion problem.

If it is indeed difficult to revise the law, at least the Bill on the Material Law of Religious Courts in the field of Marriage which was proposed by the government since 6 years ago is immediately discussed by the DPR and ratified into law, with the aim that anything that enacted

has not beenregulated in the marriage law can be covered and able to resolve legal problems that arise in society.

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# JUSTICE ANALYSIS OF GOVERNMENT REGULATION INCOME TAX ON INCOME FROM BUSINESSES RECEIVED OR OBTAINED TAXPAYERS THAT HAVE CERTAIN GROSS CIRCULATION

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**Abstract**

Government Regulation Number 23 of 2018 concerning Income Tax on Income from Businesses Received or Received by Taxpayers Who Have a Certain Gross Turnover , is a regulation that was issued to replace Government Regulation number 46 of 2013, which is a regulation issued with consideration of simplifying tax calculations by Taxpayers. This regulation states that taxpayers with a turnover of less than IDR 4,800,000,000 are subject to a tariff of 0.5% of the turnover or gross turnover.

This study uses a normative juridical research method by collecting legal materials in the form of legislation, book literature, research journals or articles and other legal materials, with qualitative analysis methods.

The results of this study indicate that Government Regulation no. 23 of 2018 concerning Income Tax on Income from Businesses Received or Received by Taxpayers Who Have a Certain Gross Turnover, is not in accordance with the concept of tax justice, namely vertical justice and horizontal justice because this regulation is only fair to taxpayers who experience profits. or income only net , but for taxpayers who experience losses, they will be harmed because they have to pay income tax from losses suffered . _ In the Income Tax Law, the tax base is net income. This regulation makes it easier to calculate taxes but is far from fair, especially to businesses that are experiencing losses. Society can just conduct a judicial review in the Supreme Court of Government Regulation Number 23 of 2018 concerning Income Tax on Income from Businesses Received or Received by Taxpayers Who Have a Certain Gross Circulation and have solid foundation _ for approved in the Supreme Court.

***Keywords:*** *Justice, Gross Turnover/Turnover, Income Tax, Taxpayer, Gross Turnover*

## A. INTRODUCTION

Tax is a levy that is mandatory because of the law, so that taxpayers are required to pay their taxes appropriately in accordance with the applicable regulations in the country. Taxes have an important role in national development and in running the government, so the government continues to strive to increase state revenue from the tax sector.

The government itself has made various ways and efforts to increase state revenue from the taxation sector by issuing various policies that are expected to increase tax revenue in Indonesia. Instead of reaching the target , but In the last 10 years, Indonesia's state revenue in below the achievement of national targets from the tax sector . One of the most important sectors and involves many people at large is the micro, small and medium enterprise (MSME) tax.

Micro, Small and Medium Enterprises or often called MSMEs are productive businesses owned by individuals or entities that meet the criteria or size as stipulated in Law Number 20 of 2008 about Micro, Small and Medium Enterprises (MSMEs) have a very important role in economic development in Indonesia. MSMEs play a role in increasing economic growth and employment, besides that MSMEs also play a role as a forum for community creativity, especially from the millennial generation.

Until now, MSMEs have contributed greatly to the Gross Domestic Product (GDP) and employment in Indonesia. At the end of 2018, the number of MSME business units registered with the Ministry of Cooperatives and Small and Medium Enterprises was 64,194,057 units which were divided into 63,350,222 micro business units, 783,132 small business units and 60,702 medium business units. While the workforce absorbed is 107,376,540 people in the micro business sector, 5,831,256 people in the small business sector and 3,770,835 people in the medium business sector (Khairiyah and Akhmadi, 2019) .

on Income from Businesses Received or Obtained by Taxpayers with a Certain Gross Circulation or known as the Micro, Small and Medium Enterprises (MSME) tax and came into force on July 1, 2018. In this rule, the maximum gross turnover limit applicable to the MSME Final PPh rate is 4.8 billion. This regulation replaces the previous rule, namely Government

Regulation Number 46 of 2013 concerning Income Tax on Income from Businesses Received or Gained by Taxpayers Having a Certain Gross Turnover with a Maximum Gross Circulation Limit of 4.8 billion.

In the concept of a welfare state, the state has a responsibility to equalize income and wealth. In this case, tax reform requires the government to "return" tax collection to the people in the form of public services, fulfilling basic needs: clothing, food, housing, health and education. State revenue from taxes is not small and it must be realized by the government that it comes from its own people's money.

Justice is a very interesting legal crown to discuss , in this case is tax justice. Tax justice is often associated with justice, where tax justice is divided into two, namely vertical justice and horizontal justice. Justice is very important in tax collection because without tax justice it can backfire for the country itself as a policy maker because it will result in economic and social joints and ultimately burden and burden the people in a country.

Government Regulation of the Republic of Indonesia Number 46 of 2013 concerning Income Tax on Income from Businesses Received or Obtained by Obligatory Persons with Certain Gross Circulation , was issued on the consideration that in order to provide convenience to individual taxpayers and For companies that have a certain gross turnover, it is necessary to provide separate treatment for provisions regarding the calculation, deposit and reporting of Income Tax payable ('Justice Analysis of Government Regulation Number 46 of 2013.pdf', no date )

Several studies concluded that the tax rate for MSMEs of 1% of turnover is quite burdensome for MSME actors. In addition to the size of the tax rate, other problems are:

1. Their misunderstanding of tax obligations and the limited human resources they have to manage taxation are also obstacles for them in complying with their tax payment obligations.
2. MSME actors appreciate the new tax rate for MSMEs of 0.5% of the turnover as stated in PP No. 23 of 2018. Their statement of willingness to pay taxes strengthens the potential for tax payment compliance for MSME actors in the Surabaya area.

3. Respondents who are MSME actors in the Surabaya Region expect socialization and assistance to obtain more detailed information regarding the latest tax regulations for MSMEs.
4. For taxpayer compliance, it is more dominant to agree, which means that taxpayer compliance is a condition where the taxpayer fulfills all tax obligations and exercises his tax rights.
5. For the understanding of taxpayers, it is more dominant to agree that understanding of tax regulations is a process where taxpayers know about taxation and apply that knowledge to comply with paying taxes.
6. For sanctions, it shows that MSME actors are more dominant in agreeing, which means that sanctions in taxation are well applied to create taxpayer compliance in carrying out tax obligations. And in accordance with applicable regulations, anyone who violates or occurs delays in paying or delays in submitting SPT and so on will be subject to sanctions, namely fines. (Zedadra et al. , 2019) .

The change in Government Regulation of the Republic of Indonesia Number 46 of 2013 to Government Regulation Number 23 of 2018 is a change in regulations that does not heed the law as the basis for thinking in a regulation. The change in the Government Regulation was due to the pros and cons of some Indonesians, so it was changed by lowering the tax rate, with the assumption that the government would be happy with the change. But the problem is the ability to pay taxes on the basis of tax calculations from income gross ( turnover ) as Government Regulation Number 46 of 2013 and Law 23 of 2018.

## B. LITERATURE REVIEW

The French definition, contained in Leroy Beaulieu's book entitled Traite de la Science des Finance , "Tax is assistance, either directly or indirectly imposed by public power from the population or from goods to cover government spending." The definition of Deutce Reich Abgaben Ordnung (RAO-1919), reads: Tax is periodic cash assistance (with no contra-achievement), which is collected by a general agency (state), to obtain income, where there is a tatbestand (tax target) , which because of the law has created a tax debt. Dr. Soeparman Soemahamidjaja in his dissertation entitled "Taxes Based on Mutual Cooperation Principles",

Padjadjaran University, Bandung, 1964 said, Taxes are mandatory contributions, in the form of money or goods, which are collected by the authorities based on legal norms, in order to cover the cost of producing goods and services. collective services in achieving the general welfare". (R. Santoso Brotodihardjo, 2008)

Compulsory understanding of tax regulations is a mandatory way of understanding existing tax regulations. Taxpayers who do not understand the tax regulations clearly tend to become non - compliant Taxpayers . The conclusion that can be drawn is that it is mandatory for P to have a true understanding of administrative sanctions and criminal sanctions if they do not fill out a Notification Letter (SPT) and do not have a TIN. (Hardiningsih and Oktaviani, 2013)

Justice is one of the most studied topics in philosophy. Natural law theories that prioritize the searc for justice from Socrates to Francois Geny still maintain justice as the crown of law . (Theo Hujbers, 1995) The issue of justice is a problem that is always interesting to be studied more deeply because there are many things involved in it, both for morality, the state system and social life.

Justice in essence is treating someone or another party according to their rights. What is the right of every person is to be recognized and treated in accordance with the dignity and worth, the same degree, and the same rights and obligations, regardless of ethnicity, rank, lineage and religion. Plato divides justice into individuals is the ability of a person to control himself by using ratio. (Jan Hendrik Raper, 1991). While Aristotle justice is divided into four forms, namely:

1. Cumulative justice, namely the treatment of a person in accordance with the services he has done.
2. Distributive justice, namely the treatment of someone in accordance with the services that have been made.
3. Natural justice, which is to give something according to what other people have given us.
4. Conventional justice, namely someone who has tried to restore the reputation of others who have been tainted,

Justice Theory

a. Stream of Natural Law

According to Friedman, the history of natural law is human beings in their efforts to find what is mandated by absolute justice in addition to the history of mankind's failure to seek justice. The understanding of natural law will change according to changes in society in political circumstances. (Sutikno, 1976). Looking at the source, natural laws can be:

1. Natural law that comes from God.
2. Natural law that comes from human ratio.

Natural law that comes from God was adopted for example by medieval Scholastics such as the thoughts of Thomas Van Aquino, Gratius (Deceretum), John Salisbury, Dante Pierre Dubois, Marsilius Padua, and Johannes Huss and others.

b. Positive Law Stream

This legal thought has developed since the Middle Ages and has had a lot of influence in various countries, including Indonesia. This school identifies law with law. The only source of law is the law.

HLA Hart describes the characteristics of the understanding of positivism in legal science today as follows:

1. understanding that the law is an order from humans.
2. understanding that there is no absolute/important relationship between law ( law ) and morals on the law as existing and the law ought to be. (HLA Hart, 1975).

The understanding that the legal system is a logical, permanent and closed system and correct/correct legal decisions can usually be obtained by means of logic from the legal regulations that have been carried out. Moral judgments cannot be made or defended as statements of fact to be proved by rational argument, proof or experiment.

Justice According to Taxation

1. Approach to Justice

The principle of equity (fairness) says that taxes must be fair and equitable. Taxes are imposed on individuals in proportion to their ability to pay the tax and also according to the benefits they receive from the state. However, although it is recognized that the principle of justice is an absolute necessity, there are various opinions in an effort to implement it (Rosdiana, Haula, 2012).

In implementing the equity principle , there are two approaches, namely the benefit received principles and the ability to pay principles . Due to limitations in the application of the benefits received principles , the concept of the ability to pay principle is an alternative that is constantly being developed. In the application of the ability to pay principle , it can be done by using vertical justice and horizontal justice.

2. Vertical Justice

Vertical justice means that the higher the economic capacity of the taxpayer, the higher the tax burden imposed. This concept underlies the progressive imposition of income tax, as adopted by the Indonesian tax system and can be used.

The requirements for vertical justice in a tax collection can be said to be fulfilled if (Jan Hendrik Rape, 1991):

a. Taxpayers who are in different “conditions” (taxable income) are treated differently (unequal treatment for the unquals ).
b. In the "condition" (taxable income) that is not the same will result in the tax payable which is not the same as well. The amount of tax that must be paid is greater, in proportion to the greater the ability of the taxpayer to pay.

The vertical justice approach above can be used to see the fulfillment of the principle of justice in the collection of Rural and Urban Land and Building Taxes (PBB) and other types of taxes.

3. Horizontal Justice

Horizontal justice is in the same "condition" (taxable income), taxpayers who have the same taxable income will be subject to the same tax. Horizontal justice in the tax perspective means that taxpayers with the same ability or income condition must be subject to the same amount of tax.

Horizontal justice requirements in a tax collection can be said to be fulfilled if ( Chairil A. Pohan, 2011 ):

a. Taxpayers who are in the same “condition” (taxable income) are treated equally ( equal treatment for the equals ).
b. Everyone who has the same additional income with the same dependents regardless of the type or source of income, must pay tax in the same amount.

The vertical justice approach above can be used to see the fulfillment of the principle of justice in the collection of rural and urban land and building taxes and other types of taxes.

## C. RESEARCH METHODS

This research is a type of qualitative research using literature studies, where this study aims to understand the fairness aspect of Government Regulation Number 23 of 2018 in Indonesia and what are the legal consequences of the issuance of government regulations. The analysis carried out in this study is for the initial stage of data collection and data. The data analysis technique in this study is a descriptive technique with an interactive model. (Maiti and Bidinger, 1981)

## D. ANALYSIS

Government Regulation Number 23 of 2018 concerning Income Tax From Businesses Received or Obtained by Taxpayers with a Certain Gross Turnover is an amendment to Government Regulation Number 46 of 2013, issued with consideration of simplification and providing convenience to individual taxpayers and an entity that has a certain gross turnover, so it is necessary to provide treatment consisting of provisions regarding the calculation,

deposit and reporting of Income Tax payable. This Government Regulation is a derivative of the Income Tax Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax on Income from Businesses Received or Gained by Taxpayers with a Certain Gross Turnover.

A rule, be it a law or a rule under the law itself, must be in accordance with and not conflict with the rules above. In Government Regulation Number 23 of 2018 concerning Income Tax on Income from Business Received or Gained by Taxpayers Having a Certain Gross Turnover, Article 2 states: "On income from business received or obtained by domestic Taxpayers having a certain gross turnover shall be subject to Tax Final income within a certain period of time. The final Income Tax rate as referred to in paragraph (1) is 0.5% (zero point five percent). Article 3 explains excluding income from businesses that are subject to final Income Tax as referred to in paragraph (1) as follows:

a. income received or earned by an individual Taxpayer from services in connection with independent work;
b. income received or earned abroad for which tax is payable or has been paid abroad;
c. income that has been subject to Income Tax which is final in nature with the provisions of separate taxation laws; and
d. income that is excluded as a tax object.

Services in connection with independent work as referred to in paragraph (3) letter a include:

a. experts who do independent work, consisting of lawyers, accountants, architects, doctors, consultants, notaries, PPAT, appraisers, and actuaries;
b. music players, presenters, singers, comedians, movie stars, soap opera stars, commercials, directors, film crews, photo models, model/models, playwrights, and dancers;
c. sportsman;
d. advisors, teachers, trainers, lecturers, extension workers, and moderators;
e. authors, researchers, and translators. (Andri, 2018)

From P origin 2 of Government Regulation Number 23 of 2018 concerning Income Tax on Income from Businesses Received or Gained by Taxpayers Having a Certain Gross Turnover, it is clear that the change in government regulations is the MSME tax rate which was

previously in Presidential Regulation Number 46 of 2013 which is 1% to 0.5%. This means that with the enactment of the new tax rules for Micro, Small and Medium Enterprises, it has decreased by 0.5% from the original.

As we know that income tax is a tax on an income or a tax percentage of net income (gross income - net income) so it is clearly not appropriate if there are government regulations under the General Provisions of Taxation Act or the Income Tax Law that has already been implemented. define the income tax.

Article 3 paragraph (1) Government Regulation of Taxpayers having a certain gross turnover which is subject to Final Income Tax as referred to in Article 2 paragraph (l) is:

a. individual taxpayers; and
b. Corporate Taxpayer in the form of cooperative, limited partnership, firm, or limited liability company, which receives or earns income with a gross turnover not exceeding Rp.4,800,000,000.00 (four billion eight hundred million rupiah) in 1 (one) Fiscal Year.

Article 2 paragraph (2) : Excluding the Taxpayer as referred to in paragraph (1) in terms of: a. The Taxpayer chooses to be subject to Income Tax based on the tariff of Article 17 paragraph (1) letter a, Article 17 of the Income Tax Law ; Article 3 paragraph (2) of Government Regulation Number 23 of 2018 explains that taxpayers are allowed based on these laws and regulations to return to the old rules using the rates of Article 17 of the Income Tax Law. Where the public is given the opportunity to choose which rules are most convenient for the taxpayer. From these rules, it can be seen that Government Regulation Number 23 of 2018 seeks to be more perfect and more in favor of the community in the process of selecting which regulations to choose, using the calculation of Government Regulation Number 23 of 2018 or using the rules of article 17 of the Income Tax Law which valid before the issuance of Government Regulation Number 46 of 2013 which was amended by Government Regulation Number 23 of 2018.

It should be noted that ordinary people do not recognize exceptions in Government Regulation Number 23 of 2018 which can choose which article or rule is most convenient for the community or the taxpayer. So that people continue to carry out as they wish, namely Government Regulation Number 23 of 2018 with the calculation of turnover multiplied by a 0.5% tax rate by calculating taxes more easily. Meanwhile, in Article 17 of the Income Tax

Law, it uses more calculation methods even though it turns out to be more profitable if it is calculated. MSME tax subjects usually have simple tax knowledge and very rarely use the services of a tax consultant to run their business.

We need to know that Income Tax is a tax on non-tax income from turnover or gross income, because the costs of running and operating a business, especially for startup businesses, must be very large. The costs that are usually incurred by the company or business activity that cause net income to decrease or even experience losses are: 1. Cost of basic needs; 2. Operational Costs; 3. Employee salary costs; 4. Unexpected Costs and others.

The author acknowledges that with Government Regulation Number 23 of 2018 amendments to Government Regulation Number 46 of 2013 concerning Income Tax from Businesses Received or Obtained by Taxpayers with Certain Gross Turnovers, it is a regulation that simplifies the responsibilities of Taxpayers whose business turnover does not exceed Rp4. 800,000,000 to calculate and calculate the tax that the taxpayer must pay, but on the other hand the taxpayer can be harmed if the taxpayer suffers a loss because he has to pay taxes as well even though he suffers a loss and does not know that there are exceptions in the government regulation to vote for the old regulation is Article 17 of the Income Tax Law. The principle of equity (fairness) says that taxes must be fair and equitable , tax is imposed in proportion to the ability of the Taxpayer to pay the tax as the principle of the ability to pay principle which can be implemented using vertical justice. The higher the economic capacity of the taxpayer, the higher the tax burden imposed.

It should be noted that the Government Regulation is a government regulation that is pleasing to the Micro, Small and Medium Enterprises community, but on the basis of the regulation it has violated the rules in on it, namely the Income Tax Law. It is not appropriate to pay income tax based on the amount of turnover but must be based on net income (net). This is in line with the government's desire, namely the ease of doing business in Indonesia in this case is the ease of doing business for the MSME community .

## E. CONCLUSIONS AND RECOMMENDATIONS

The description above produces several conclusions as follows, in general MSMEs, in this case both entities and individuals whose turnover is below Rp. Income, i.e. Individuals using progressive Article 17 rates and corporate ie rates of 25% of net profits or net income, the Taxpayer must pay more than using this Government Regulation. MSME actors will not be observant to see that the facility can return to using Article 17 if the company is experiencing a loss, because MSME actors do not use the services of a consultant to calculate taxes. Do not let people be afraid to start a business because they are forced to pay taxes even though the business is still in a period of loss.

Legally, Government Regulation Number 23 of 2018 which is a Amendments to Government Regulation Number 46 of 2013 concerning Income Tax from Businesses Received or Acquired by Taxpayers with Certain Gross Circulation may be requested the cancellation _ to The Supreme Court , because it is not in accordance with the above Law, namely the Income Tax Law , where Income Tax is a tax from a net income ( net ) not a tax from a turnover ( gross ) . Thus, the community can take legal action for judicial review to the Supreme Court to obtain justice in the community.

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# THE STABILITY OF A WORLD PEACE ORDER IN THE ATMOSPHERE OF LEGAL EDUCATION TOWARD A NEW CIVILIZATION

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**ABSTRACT**

We all know that global citizens are followed because nations have mutual attachments. There is intense competition in a competition. The world tends to develop towards competition for impact between nations, regionally or globally. But in reality, there are many disputes between one country and another, which causes strife and problems with world peace. Disputes are generally triggered by social, economic, political, religious, and cultural issues. Disputes arise because of greed and a lack of mutual respect and understanding between each other. This paper aims to understand Indonesia's involvement in realizing world peace; and the appropriate form of legal teaching in maintaining World Peace. This testifies to the role of official teaching/schools and universities that play a role in transmitting the knowledge, skills, and attitudes that have been acquired in the family. Schools and colleges are descriptions of small people. In it, there are several individuals with various characters and cultures. Here it is relevant and appropriate to introduce and practice the multiple values that support peace.

Keywords: Global Society, World Peace, Legal Education

## A. Background

A country can not stand alone like a person as a social being. The state will, of course, need the state or other elements. Some countries have attachments to economic, social, and political factors. There is a good relationship if there is an attachment between a country

and another country. One of them is our country, Indonesia, and several other countries. Given the name global citizen, it is followed by mutual attachment between nations, there is intense competition in a competition, and the world tends to develop towards competition for impact between nations, whether regional coverage or global coverage. But in reality, there are many conflicting threads between countries, which causes strife and disruption of world peace. Disputes are generally triggered because of social, economic, political, religious, or cultural problems. Disputes occur because of greed and a lack of mutual respect and understanding between each other.

From the problems above, this paper will review identifying what world peace means, the steps to realize world peace, and Indonesia's involvement in world peace. A country can not stand alone, like a person as a social being. The State will, of course, need the State or other elements. Even countries have attachments to economic, social, and political factors. There is a good relationship if there is an attachment between the State and other countries. One of them is our country, namely the State of Indonesia and several other countries are named global citizens, followed by mutual attachment between nations, there is intense competition in a capability, and the world tends to develop leading to competition for impact between nations, both regional coverage or global coverage. But in reality, there are many opposing relationships between countries, which causes disputes and disruption of world peace. Disputes are generally triggered because of social, economic, political, religious, or cultural problems. Disputes occur because of greed and a lack of mutual respect and understanding between each other. From the problems above, this paper will discuss what is meant by world peace itself, how to realize world peace and Indonesia's participation in it, and what forms of legal education are appropriate for maintaining world peace.

B. Formulation of Problems

Based on the description of the background above, the formulation of the problem that can be raised in this paper is as follows:

1. How is Indonesia's participation in the realization of world peace?
2. What is the appropriate form of legal education for maintaining World Peace?

## C. Purpose of Writing

Based on the formulation of the problems above, the writing objectives that can be raised are as follows:

1. Understanding Indonesia's participation in the realization of world peace.
2. Understand the appropriate form of legal education in maintaining World Peace.

## D. Discussion

### *1. The Importance of World Peace for the Progress of a Country*

World peace has a special meaning for the development of a country. World peace is the idea of good conditions of happiness, freedom, and comfort within and between all the people and nations of the world. International Day of Peace, commonly known as World Peace Day, is observed every September 21. The International Day of Peace was decided in 1981 by the General Assembly of the Federation of Nations. Some countries in the world need peace for the state's survival. If world peace is formed, the future of a country will be better. A good relationship between other international countries is needed to make world peace. Through international relations, a country can fulfill its needs, guarantee its survival, and drive the formation of stability. World peace affects the development of a country. This is because, in peaceful conditions, a country can concentrate on making and obtaining requirements to prosper its people. The Indonesian people must participate in efforts to realize world peace. World peace is the main point for the development of the country. This idea can make one corner of the world through various sectors until life is safe and far from riots.

The special meaning of world peace for the development of a country has an important role. This is the driving force behind the prosperity of every nation. If world peace is formed, the future of a country will be better. World peace can be made through international relations. So that stability can be developed that can be a driving force for each country's economy. If a country does not have international relations, it won't be easy to meet its needs and ensure its continuity. The Indonesian people must participate in efforts to realize world peace.

At the same time, there are many special meanings of world peace for the state, namely, the connection of good international relations, support for state change, political stability, economic stability, and support for state security. 1) Connected Good International Relations, the importance of world peace for the development of a country is the connection of good international relations between countries. Through international relations, a country can meet its needs in various sectors. 2) Providing support for State Change and world peace is essential for the development of a country as a necessary requirement for the implementation of the development of a country. Without world peace, a country cannot carry out its development program. 3) Political stability and the importance of world peace for the development of a country influence the political situation. Political stability will positively affect the fabric of countries that work together. Until there are no political problems that can disturb the relations between countries. 4) Economic Stability: A country must support its economic stability in world peace. Thus, development can be achieved by a country. With world peace, every country can equally support its economic movement. Without world peace, a country cannot have a stable economy. 5) Providing support for State Security is essential for world peace for developing a country that is related to state security. Countries without comfort will be prone to war. War is real and has many risks.

a. Indonesia's Participation for World Peace.

Not only agencies that help in the realization of world peace, but some that help in the realization of world peace include ASEAN, EEC, BENELUX, APEC, IBRD, IMF, UNDP, IDA, and many others. Indonesia has a role in world peace, and Indonesia's role in the plan to realize peace is the instructions for the Preamble of the 1945 Constitution, namely in the plan to realize world peace based on independence, eternal peace, and social justice. On the other hand, the transitional form of the world will influence the sustainability of the Indonesian state and nation. A peaceful and safe world is the desire of all humankind, including the Indonesian government. As a country with a population of the top five, it is proper for the Indonesian people to be a real contributor to world peace. Indonesia's participation in the maintenance of world peace is nothing new. According to the constitution's instructions, since the first decade of independence, Indonesia has sent personnel to actively participate in world order through various visions of peace under the banner of the Federation of Nations (UN). Indonesia's seriousness in participating in the image of world peace has

undergone a transformation, which means, along with changes in the tactical environment and the nation's loyalty, to be more proactive in responding to disputes that occur. The actions and professionalism of some peace fighters, whether they are members of the Garuda Contingent or civilian experts, have become evident that the Indonesian people have gained confidence in carrying out this noble vision.

Without reducing the high interest in Indonesian civilian experts currently working in the UN vision, this paper only describes the actions of the Indonesian Army in its connection and service to world peace and a roadmap toward world-class peacekeepers. The desire to live in peace still seems to be a difficult dream for some nations in some territories. The end of World War II and the Cold War, which followed the dissolution of the Soviet Union in 1991, apparently did not make the world free from disputes over weapons. The big war between the 2 (two) giant countries - the United States and the Soviet Union - did not happen, but small wars and disputes were chaotic everywhere. In the Balkans, Baltics, the Rest of the Soviet Union, Africa, and the Middle East, wars and other types of strife continue to be chaotic.

b. The Realization of Indonesia in World Peace

According to Cipto Wardoyo, what must be done to achieve world peace, among others:

a.) Through a Cultural Approach

To realize peace, we must know the culture of every citizen or country. If not in vain, all our efforts. By knowing the culture of each citizen or country, we can understand the character of that citizen or country. Based on the culture and character of the citizens of one country, we can take appropriate and efficient steps to realize peace there. This cultural approach is the most efficient step in realizing peace in Indonesian society and the world.

b.) Through Social and Economical Approach

This social and economic approach relates to welfare issues and social factors in society that also influence efforts to realize world peace. Less prosperous people can undoubtedly create disputes and violence in them. Citizens or countries that are less prosperous will generally be "ignorant" to rumors and calls for peace. Therefore, to support the realization of world

peace, what needs to be done first is to increase the distribution of the welfare of all citizens and countries on this earth.

c.) Through a Political Approach

Realizing world peace through cultural and socio-economic approaches alone is not efficient enough. It requires getting involved in politics because there is a political schedule prioritizes and says the realization of world peace. In addition, some developed countries must, at certain times, dare to use their power to put a slight emphasis on several countries that share the same conflict so that they are ready to make peace again. Not even to make things hotter, with the desire that their weapons continue to be purchased. This must once again require mutual awareness and commitment. The question is that if all countries love peace, why keep competing to make super great and deadly weapons of war that are mass? However, each country still has to make peace between the two. If there is a country that experiences a dispute and problem, therefore the country that does not participate in the dispute or problem must help those countries so that they can make peace, so that a big problem does not take place which will cause significant loss to the country and can also make the lives of citizens in the country will be crushed.

d.) Through a Religious Approach

In essence, religious people in the world want peace. Because no religion teaches crime, violence, or war, all countries or religions teach kindness, one of which is about caring and peace. Therefore, everyone who professes to be religious and believes in God must be concerned about participating in realizing peace in society or the world arena. Some religious leaders who are seen as having charisma and a significant impact on society must take an active part in promoting peace in all countries.

***2. Peace Education In Schools and Universities Through Legal Education***

To realize peace through teaching, it is necessary to teach peace at every level of education. Humans naturally develop through the learning process. The first stage of a child's learning is what is around him. In this case, the family is the first learning medium. Furthermore, the next stage is obtained from the School and College/official teaching. Until teaching to provide peace, support can be given to children or adults both formally and informally. Why

do Schools and Colleges offer support for the establishment of peace? This witnessed the role of official teaching / Schools and Colleges, which played a role in passing on the knowledge, skills, and attitudes acquired in the family. School and College is a description of a small community. In it, there are individuals with various types of characters and cultures. The following places are relevant and suitable for introducing and practicing the multiple values supporting peace. In addition, the teaching mechanism is a facility for making developments in the community. Every citizen needs an educational institution to educate the "new generations."

In this framework, Schools and Colleges are institutions that prepare individuals for life and enable them to improve themselves and expand their discourse. As the nation's next generation's capital, children need to be worked on with their intellectual, religious, and emotional intelligence. It is on their shoulders that the fate of their nation is determined. In some mass media, we often see incidents of students destroying universities, fights between students, information about juvenile delinquency, feuds, and various other disputes. The teaching of peace in Schools, Universities, and Colleges aims to deal with this imbalance. The purpose is none other than to help realize a harmonious, safe, calm, and free-living situation. Giving an insight into another life if our citizens can live in harmony with everyone and the whole earth. Those hopes are still there. It's just how we process it. Schools and Colleges as a place for each child to gain knowledge and other skills can contribute.

There are many great attitudes to develop and make a good citizen and world. These attitudes include: respecting ourselves, tolerance, empathy, fairness, honesty, not being suspicious of each other, friendship, cooperation, mutual understanding, and fairness/equity. In the end, everyone must make his contribution to world peace. The problem that seems to dominate in our society is the ongoing dispute that begins with a lack of understanding and an irritable character. Sometimes this kind of dispute leads to physical confrontations. Here people seem to have no respect for us. It's easy to put your life at stake because you just can't control your emotions. Therefore, in my opinion, the teaching of peace in Schools, Universities, and Colleges is more prioritized on teaching the values above.

In addition to some of the attitudes above, teaching peace must also be able to improve skills, for example: able to speak, listen, understand the views of others, able to work together, problem-solving, critical thinking, decision making, division of disputes, and social

responsibility. It seems that these skills have been far from the children of the nation's next generation. In addition to teaching an attitude of values that are mandatory in making peace, according to Harris (1996), as noted by Father Jaime J; Quezada, Reyes in Peace Education (Zamroni, 2008: 47), teaching peace is an evaluation effort that contributes and makes good citizens in the world. What needs to be presented are alternatives by introducing the causes of violence and informing students of knowledge about basic problems in teaching peace, including keeping and making peace.

At the school and campus level, basic and continuation can provide support for the 3 (three) issues just now. At the stage of maintaining peace at all levels of schools and colleges, there must be strict provisions that dare to expel students if they participate in the act of violence. This method can be by hiring a security guard. Efforts to make peace can be carried out by incorporating the program into the School and College curriculum by taking several programs to promote evaluation tactics in dispute resolution, mediation, dispute management, cultural awareness, and inclusive teaching. This peacemaking program in Schools and Colleges is hoped to help reduce verbal experiences, physical abuse, riots, attacks, vandalism, fights, insults, and some injuries. And can give the heart of belonging to a group of students, increase social awareness, and make the power to increase cooperation. It is hoped that the peacemaking program can provide opportunities for positive discussion and communication and make young people flexible. Making peace can be difficult because it is associated with a shift in personal attitudes towards violence and racism. The aim is to advance further and look for positive peace patterns that can include cooperation, trust, and open communication as facilities related to global citizens.

For the sake of keeping, making, and making peace, what needs to be prepared are several things related to human resources who have the knowledge and skills to advance the teaching of peace in the classroom. Problems in the field of the teacher factor are associated with the difficulty of teachers finding the correct pattern to promote and provide peaceful teaching. So far, the government has not made the teaching of peace a material that must be given in schools, universities, and colleges. The role of government is essential in making peace through teaching institutions or schools and colleges. In the School and College curriculum, from elementary to advanced, there has been no material teaching peace.

Teaching that aims to increase faith and piety (imtaq), for example, is still used as a hidden curriculum. The implications of teaching peace in schools and colleges include:

1. First Alternative

The concentration of teaching is to provide support for peace through teaching institutions (schools and colleges), in particular, to deal with necessary problems in the community. Three factors make it when teaching peace in schools and colleges: what is the material? And how is the learning process? Many teachers do not understand what peace teaching is. What did the writer experience at a meeting to construct social studies teaching program in which the course design included a peace teaching course? There are many comments, such as; what is peace teaching? What kind of material do you want to give? What paths continue to teach alums? And some other questions need answers.

Peace teaching materials must be related to the direction of peace teaching to be achieved. In an area where there is a constant dispute/war between the ranks of the community, for example. Therefore, in the teaching institutions located in that area, the most pressing is teaching to eliminate the culture of war and violence. Another case is where there are many violations of human rights. Therefore schools and colleges must promote teaching to uphold human rights. The outbreak of disputes/wars with backgrounds because each has a different culture. Thus material to create togetherness across cultures needs to be given in teaching peace. Of course, the material is not only what is most mastered at the local level. It could be that another material is included so that students' knowledge is broad and they can consider disputes outside of specific arguments. Other materials can be related, for example, teaching to live justly and lovingly, caring for the environment, and preparing for individual comfort. In general, the material in teaching peace is how to give some attitudes to being a good citizen. Perspectives can handle the imbalance between their desires and reality (by watching and analyzing signs that occur in society, both local and global). Here the importance of the teacher is always to increase knowledge about social rumors.

Peace teaching materials are given with the final direction to create a culture of peace among the citizens. Remember that some material does not have to be delivered in certain subjects. It would even be better if all the materials were included in all the subjects given in the curriculum. In teaching peace, as in the process of learning to understand other knowledge,

it is necessary to make a happy process. Learners may be able to learn according to what is needed, and is aimed at making peaceful individuals. The learning process can be done by studying in detail. What is concluded here is that the complete evaluation process involves thinking, heart, and spirit. Becoming a learner lives and understands what he is studying to increase his thinking, knowledge, and compassion. Complete here has the meaning of including all factors in life from the personal level to the level of the nation, state, or world. Involve all fields in the community. Worked at all levels of teaching, from elementary to the highest level, and took the form of formal, non-formal, or informal education. Besides, it is complete regarding the attachment of all knowledge sectors. Teaching peace through the process of learning by communicating.

This form is between teachers and students of similar status and learning together. The discussion trains students and teachers to appreciate each other because an element of "listening well" opens the discourse of students and teachers so that they can receive some new ideas. In addition, a democratic situation is maintained through discussion, and opportunities are opened for all parties to participate actively in the evaluation process. Peace teaching is planned to stimulate students' critical thinking, which is expected to generate loyalty from students to participate in changing life forms to a better one and play a role in creating a culture of peace.

Loyalty can be at the individual level but can also include in the broader environment. In the end, this teaching of peace will produce a culture of peace that may be extracted from local culture and can also be a new formation called a collective agreement. In this relationship, what is essential to pay attention to is that the positions of teachers and students are the same and equal. Both play a role as a source of knowledge and skills, but the second role is as a person who learns. The teacher acts more as a facilitator in this evaluation process. Who teaches peace teaching materials? I think it depends on what kind of learning tactics are. Anyone can convey this material with the condition that it should have attention to social rumors. This requirement must be met if the teaching of peace is given as a particular subject in Schools and Colleges. So it is not placed into the curriculum of specific subjects, or all subjects must contain peaceful teaching materials. If peace teaching materials are placed in the curriculum of all subjects, then the relevant subject teacher should teach the material.

2. Second Alternative.

Peace education is taught in Schools and Universities. Schools and Universities can be taught separately in one subject, or it can also be given through existing subjects. In the book Managing Conflict, examples are given of topics taught in certain subjects in Schools and Universities, such as:

a. Religious education can contain teachings about peace in every religion, b. History, by providing examples of non-violent action and peace-building, c. Geography teaches how to overcome prejudice and show interaction/relationships between humans, d. Literature, for example, by reading and analyzing literary works about peace. In other subjects such as e. Sociology, teachings on socio-cultural change and the factors that cause conflict and how to prevent it f. Citizenship Education, teachings related to law, democracy, and human rights. There is a lot of education for peace implemented in various places in the world, both formally and informally, for children and adults. Some have been named Peace International, Conflict Research and Problem Solving Management, Dispute Resolution, Peace and Justice, and many more that number more than two hundred. Whatever the name, the most important thing is the content and the method to be developed as a solution to the existing problem and for preventive action. The success of education for peace, in addition to the two factors above, also depends on other factors, such as teachers. Teachers and other leaders must learn and increase the ability and awareness together about racial, religious, gender, regional, community, and ethnic discrimination in society.

3. Third Alternative.

Peace teaching, in my opinion, can be given through extracurricular activity groups. Generally, in schools and universities, schools and colleges (commonly in continuing schools and colleges) have several extracurricular activities such as sports, soap operas, arts, scientific ranks, etc. The pattern and material are equated according to the type of extracurricular activity. In extracurricular sports, it can be used to improve several attitudes such as honesty, emotional regulation, friendship, respect for someone, etc. For soap operas, for example, making soap operas that carry a narrative has several anti-violence, anti-war attitudes, upholding human rights, and so on. Soap operas are more flexible and easier to provide some pro-peace stance. Other activities, I think, have the same steps

according to their respective skill sectors. For these skill ranks, of course, there can be given not only extracurricular ranks at official teaching institutions but also info teaching clubs.

### *3. The Most Visible Alternative for Peace Education.*

All forms of expression of peace teaching in schools and colleges have their respective advantages and disadvantages. It is more appropriate if teaching about peace is given as a particular subject in schools and colleges. If only placed into the curriculum of specific subjects, there are shortcomings in the allotment of time and materials. Because the character is only riding, materials that aim to increase some pro-peace attitudes will be given after the subject matter he enters so that the quota is only a little. If it's a little, it's impossible to hit and bleed. What is clear is that the priority is the core subject matter. Unfortunately, suppose the teacher forgets to include material related to the teaching of peace. In that case, the risk is that if it is given as a particular subject, the related teacher must be able to relate it to other subjects.

The relationship between social studies (history, geography, sociology, and anthropology in schools and colleges continues above), and social studies subjects, teaching religion, and others, such as what and how. Teachers must be competent to find links to peace teaching materials with other subjects. I consider it normal because various dimensions are related and dependent on the framework of human life. The most important thing is that the teacher comes to class with a sincere heart to share the love. Teaching without a soul, therefore students also learn without a heart. Instilling some of the attitudes and skills above into some students must also be given religious values. Teaching is not just making a curriculum; more than that, what is noteworthy is making spirituality. This is what needs to be attached and developed in students. The teaching of religiosity is related to a person's appreciation of a life experience, knowledge of the meaning of life, how to live life, and the purpose of God in his life. This appreciation develops in children, adolescents, to adults. According to the rate of change. (Welwood, 1993: same as taken by Gamayanti, IL, 2008) If a religious person is good, that person will do good deeds and do what is best for his family, school and campus/citizen, country, and religion. Doing good deeds is one of them, not doing actions that make someone and ourselves lose.

## E. Conclusions

Based on this description, it can be concluded as follows:

1. Indonesia's seriousness in participating in the vision of world peace has undergone a transformation, which means, along with changes in the tactical environment and national loyalty, to be more proactive in responding to disputes. The actions and professionalism of several peace fighters, both those who joined the Garuda Contingent and civilian experts, have become evident that the Indonesian people have gained confidence in carrying out this noble vision. Without reducing the high interest in Indonesian civilian experts currently working on the UN's vision, this paper only describes the Army's actions in its relationship and service to world peace and a roadmap toward world-class peacekeepers.
2. To realize peace through law teaching, it is necessary to teach peace at every level of education. Humans naturally develop through the learning process. The first stage of a child's learning is what is around him. In this case, the family is the first learning medium. Furthermore, the next stage is obtained from the School and Campus / official teaching. Until teaching to provide peace, support can be given to children or adults both formally and informally. This witnessed the role of official teaching/Schools and Colleges, which played a role in passing on the knowledge, skills, and attitudes acquired in the family. School and Campus is a description of a small community. In it, there are individuals with various types of characters and cultures. In the following places, introducing and practicing the multiple values that provide peace support is very relevant and suitable.

## F. Suggestion

Based on the results of the description of this paper, the authors suggest that legal education should emphasize the importance of world peace and make peace and public tranquility the main focus of the goal. Given the main purpose of the law is to establish a safe life.

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# NATIONAL LEGAL REFORM TOWARDS PROGRESSIVE LAW (ANALYSIS OF MARRIAGE LAW IN INDONESIA)

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**ABSTRACT**

Institution of marriage is one of the very important elements in the development of a country. From this institution, a family will be formed and becomes one of the important elements in the formation of a country. Thus, family is a reflection of a country. If the families in a country are good then the country will be good, and conversely, if the families as elements forming a country are in bad condition then the country will also be bad.

The importance of the existence of a family in the formation of a nation and state does a matter; indeed, a good and dignified marriage institution as the womb for the birth of a family is a necessity. Therefore we need a progressive marriage law that can give birth to good families which in the end make a positive contribution to the development of a good nation and state in the future.

The Indonesian marriage law was first born by the enactment of Law Number 1 of 1974 concerning Marriage. However, as the time goes by, to maintain the progress of the law, it was reformed with Law Number 16 of 2019 on Amendment to Law Number 1 of 1974 concerning Marriage.

An important note that becomes the main change in this law is the limitation of the age of marriage. The age of marriage in Law Number 1 of 1974 is contained in Article 7 paragraph (1) of Law Number 1 of 1974 which states that marriage is only permitted if the man reaches the age of 19 (nineteen), and the woman has reached the age of 16 (sixteen). Along with the development of time and social changes that occur in Indonesia, the age of marriage in the law has changed to 19 years for both men and women.

The renewal of the Marriage Law in Indonesia is contained in Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage which has substantively changed the age limit for marriage. The amended provisions in Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage in Article 7 paragraph (1) state that "Marriage can only be permitted if a man and woman have reached the age of 19 (nineteen).” The renewal of legal provisions on the minimum age of marriage for women is a very substantive progressive step where the law has provided equality and justice for men and women who will marry and is a progressive step to form a happy and prosperous family in accordance with the ideals of progressive law itself.

***Keywords**: Legal Reform, Marriage Law and Age of Marriage*

## A. Introduction

The institution of marriage is one of the most important elements in the development of country. From this institution, a family will be formed and becomes one of the important elements in the formation of a country. Thus, family is a reflection of a country. If the families in a country are good then the country will be good, and conversely if the families as elements forming a country are in bad condition then the country will also be bad.

The family, in the social system, has the position as an elementary institution in society. This position can be seen at least from the following indicators. First, the family is a universal basic social institution, being the first social institution needed for the formation of an individual's personality. Second, the family becomes an important center for the functioning of other social institutions in society. Third, the family as the most important and prime social element for its members, in addition to its intimate emotional bond and intense interaction, influences the intensive socialization process. Fourth, the family is a system that is functionally related to other elements and the social foundation for the formation of a civilized society and becomes a functional structure for the future development of society, including the development of the nation in it1.

Indeed, the existence of a family is essential in the formation of a nation and state. The formation of a good and dignified marriage institution as the womb for the birth of a family

is a necessity. Therefore, we need a progressive marriage law that can bear good families which in the end make positive contributions to the development of a good nation and state in the future.

The legal rules regarding marriage in Indonesia are contained in Law Number 1 of 1974 concerning Marriage which has been amended by Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage.

The paper, entitled "NATIONAL LEGAL REFORM TOWARDS PROGRESSIVE LAW (An Analysis of the Marriage Law in Indonesia), will discuss several important notes regarding the legal rules contained in the marriage law in Indonesia, that is, Law Number 16 of 2019 on Amendments to Law No. on Law Number 1 of 1974 concerning Marriage in terms of progressive legal aspects.

## B. Discussion

Progressive legal studies were born out of concerns about the legal situation in Indonesia. At a macro level, the legal situation was not close to the ideal state; to establish the welfare and happiness of the people. This concept was pioneered by Sahipto Rahardjo who wanted to find a way to overcome legal adversity more meaningfully, in the sense of changing faster, fundamental reversal, liberation, breakthrough and others. This method was carried out first by placing the position of humans and humanity as the main discourse or primus in the discussion and enforcement of law, so that in a pattern of relations between law and humans, the relationship "law for humans, and not vice versa, humans for law.” In such a relationship pattern, the law does not exist for itself, but for something bigger and wider, namely human and humanity. Thus, whenever there is a problem in and with the law, it is the law that is reviewed and corrected, not humans who are forced to be included in the legal scheme. This pattern of relationships shows that law is not a sterile and esoteric institution, but only part of humanity2.

The idea of progressive law emerged because of concerns about the legal situation in Indonesia. The legal situation at a macro level was said to come far from the ideal state,

namely the welfare and happiness of its people. What happened was just the opposite; a slump and setback, resulting in a lot of disappointment with the legal situation.3

Understanding the term progressivism in the context of progressive law can be described as follows4:

1. Progressivism starts from the view that basically humans are good, and thus progressive law has a strong moral content. Progressivism tries to make law a moral institution.
2. Progressive law has a goal in the form of human welfare and happiness, so, as a consequence, the law is always in the process of becoming. Therefore, progressive law is always sensitive to changes in society at all levels.
3. Progressive law has the character of rejecting the status quo when this situation creates a decandent and corrupt social condition. Progressive law rebels against the status quo, which leads to progressive legal interpretation.
4. Progressive law has a strong character as a liberating force by rejecting the status quo. Paradigm "law for humans" makes it feel free to seek and find the right format, thought, hope, and action to make it happen.

The concept of progressive law as desired by its pioneer, Satjipto Rahardjo above, in relation to the marriage law in Indonesia, is to require that marriage law in Indonesia at an ideal level is a marriage law that can give birth to good families amidst the currents of social change that affect it.

The Indonesian marriage law was first born with the enactment of Law Number 1 of 1974 concerning Marriage. However, as time goes by, to maintain the progress of the law, an amendment was made to the law with Law Number 16 of 2019 on Amendment to Law Number 1 of 1974 concerning Marriage.

This paper presents several important notes about marriage law in terms of progressive legal aspects as follows:

1. Marriage registration

Marriage is essentially not only a husband and wife bond which has been given the impression of a private relationship. Instead, marriage is very influential on the public interest because the institution of marriage is present in the midst of society that is bound by the provisions of public law. From marriage will be born children who are new members in community life. Thus, the registration of marriage is a necessity as a legal certainty in the bond of husband and wife who live in society. Marriage registration which is in concrete form packaged in a marriage certificate will provide legal certainty and guarantee the rights and obligations of husband and wife and even children born in it.

In Indonesia, it is mandatory for the people to register their marriages when they have married. This can be clearly seen in Article 2 paragraph (2) of the Marriage Law. This provision stipulates that every marriage is registered according to the prevailing laws and regulations.

Marriage registration is not only a statutory order. Even, in Islam, it is also an order because there is goodness in it.5 This command is generally found in the Quran Chapter Al-Baqarah verse 282 which means:

"O believers! When you contract a loan for a fixed period of time, commit it to writing. Let the scribe maintain justice between the parties. The scribe should not refuse to write as Allah has taught them to write. They will write what the debtor dictates, bearing Allah in mind and not defrauding the debt. If the debtor is incompetent, weak, or unable to dictate, let their guardian dictate for them with justice. Call upon two of your men to witness. If two men cannot be found, then one man and two women of your choice will witness—so if one of the women forgets the other may remind her. The witnesses must not refuse when they are summoned. You must not be against writing ˹contracts˺ for a fixed period—whether the sum is small or great. This is more just ˹for you˺ in the sight of Allah, and more convenient to establish evidence and remove doubts. However, if you conduct an immediate transaction among yourselves, then there is no need for you to record it, but call upon witnesses when a deal is finalized. Let no harm come to the scribe or witnesses. If you do, then you have

gravely exceeded ˹your limits˺. Be mindful of Allah, for Allah ˹is the One Who˺ teaches you. And Allah has ˹perfect˺ knowledge of all things."

The urgency of registering marriages can be seen from the function of marriage registration itself. According to the Constitutional Court, the importance of administrative obligations in the form of registration of marriages can be seen from 2 (two) perspectives. First, from the perspective of the state, the registration is required in the context of the state's function to guarantee the protection, promotion, enforcement and fulfillment of human rights. This is the responsibility of the state and must be carried out in accordance with the laws and regulations. Second, the registration of marriages carried out by the state is to strengthen the important legal act of marriage in the life of the related spouse, which surely has wide-ranging juridical consequences. In this regard, the documents produced from the registration of marriages at a later date can be proven with perfect evidence with an authentic deed, so that the protection and services by the state related to the rights arising from a marriage can be carried out effectively and efficiently6.

Marriage registration is a progressive step to ensure public order which leads to the welfare of the individuals. We can imagine how messy it would be if the marriage was not recorded. The rights and obligations between family members may be denied by one party or jointly which may create chaos in a society that is far from the ideals of the law itself. This is the point where the registration of marriages is a progressive legal step in bringing order and legal protection to society.

2. Age limit for marriage

The age of marriage in Law Number 1 of 1974 is contained in Article 7 paragraph (1) of Law Number 1 of 1974 which states that marriage is only permitted if the man reaches the age of 19 (nineteen) and the woman has reached the age of 16 (sixteen). Along with the development of time and social changes that occur in Indonesia, the age of marriage in the law has changed to 19 years for both men and women.

The amended provisions in Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage in Article 7 paragraph (1) state that "Marriage can only be permitted if a man and woman have reached the age of 19 (nineteen).

The age limit provisions in Law Number 1 of 1974 concerning Marriage are amended by Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage because:

1. The Constitutional Court of the Republic of Indonesia has issued a Constitutional Court Decision Number 22/PUU-XV/2017 one of which states "However, when the difference in treatment between men and women has an impact on or hinders the fulfillment of basic rights or constitutional rights of citizens, whether included in the group of civil and political rights as well as economic, educational, social and cultural rights, which should not be distinguished solely on the basis of gender, then such a distinction is clearly discrimination ." In the same consideration, it is also stated that the regulation of the minimum age limit for marriage that differs between men and women not only creates discrimination in the context of the implementation of the right to form a family as guaranteed in Article 28B paragraph (1) of the 1945 Constitution, but also creates discrimination against the protection and fulfillment of children's rights as guaranteed in Article 28B paragraph (2) of the 1945 Constitution. In this case, when the minimum age of marriage for women is lower than for men, legally women can form a family faster. For this reason, in its ruling, the Constitutional Court ordered the legislators to make changes to Law Number 1 of 1974 concerning Marriage within a maximum period of 3 (three) years.

2. Changes in norms in Law Number 1 of 1974 concerning Marriage reach the age limit for marriage, improvement in norms reaches by increasing the minimum age limit for marriage for women. In this case, the minimum age for marriage for women is the same as that for men, which is 19 (nineteen) years. The age limit in question is considered to have matured mentally and physically to be able to carry out a marriage in order to realize the purpose of marriage properly without ending in divorce and obtaining healthy and quality offspring. It is also expected that an increase in the age limit higher than 16 (sixteen) years for women to marry will result in a lower birth rate and reduce the risk of maternal and child mortality. In addition, it can also fulfill children's rights to optimize children's growth and development including parental assistance and provide children's access to education as high as possible.

This change in the progressive legal aspect is the aspect of justice between the men and women of the prospective bride in terms of age limits. Originally, it was 19 years for men and 16 years for women, and now both men and women are 19 years old. The significant

justice is an equal opportunity to gain access to education for men and women with the same age limit.

On the other hand, with the renewal of marriage law, especially regarding the provisions of the article on the minimum age limit for which men and women are allowed to marry, it is to maintain the quality of the children (offspring) born from the marriage. Increasing the age limit for women from 16 years to 19 years will result in a lower birth rate and reduce the risk of maternal and child mortality. In addition, it can fulfill the rights of children to optimize their growth and development. This is the substance of progressive law where the law is for humans and humanizes humans, which in turn will provide happiness and prosperity for them.

## C. Conclusion

The amendment of the Marriage Law in Indonesia as contained in Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage has substantively changed the age limit for marriage. The amended provisions in Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 concerning Marriage in Article 7 paragraph (1) state that "Marriage can only be permitted if a man and woman have reached the age of 19 (nineteen). The renewal of the legal provisions for the minimum age for marriage for women is a very substantive progressive step where the law has provided equality and justice for men and women who will marry and is a progressive step to form a happy and prosperous family in accordance with the ideals of progressive law itself. This includes efforts to register marriages that provide legal protection for family members to obtain their rights, whether as husband, wife or children.

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# RENEWAL OF CRIMINAL LAW THROUGH THE DIVERSION PROCESS FOR CHILDREN IN CONFLICT WITH THE LAW TO ACHIEVE RESTORATIVE JUSTICE

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**ABSTRACT**

The existence of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is a form of criminal law reform. In the Juvenile Criminal Justice System Act, it is expressly regulated regarding diversion and restorative justice to avoid children from the judicial process so that there is no stigma against children and it is hoped that children can return to their social environment naturally. This study uses a normative juridical research method with a statutory approach. The purpose of the study was to analyze the renewal of criminal law through the diversion process of children in conflict with the law in order to achieve restorative justice. In conclusion, the implementation of diversion with a restorative justice approach is a transfer of the settlement of children's cases from the criminal justice process to a process outside a fair criminal justice with an emphasis on restoring back to its original state and not being punitive.

***Keywords:*** *Diversion, restorative justice, Juvenile Criminal Justice System.*

## A. INTRODUCTION

Children are the next generation of the nation who have dignity as whole human beings and are also entitled to education and decent treatment. The 1945 Constitution Article 28B paragraph (2) states that every child shall have the right to live, to grow and to develop, and shall have the right of protection from violence and discrimination. It is important to protect children from the negative influence resulting from the development of communication and

information technology. Additionally, the changes of lifestyle from parents can highly affect the behaviour and characteristics of their children. The Convention on the Rights of the Child has been ratified by the Government of the Republic of Indonesia as the basic principles of legal protection for children. The efforts to protect children's human rights themselves are related to the children's welfare. It is a shared responsibility by the society to protect children in conflict with the law. Data from the Direktorat Jenderal Permasyarakatan shows that the increasing number of child cases is due to the use of narcotics, psychotropic substances and other crimes committed by children. One way to foster children in conflict with the law is to increase the awareness of the law order. Law Number 11 of 2012 on child Juvenile Criminal Justice System guarantees the rights of children in conflict with the law starting from the investigation stage to the guidance stage after serving a sentence. The SPPA Law article 1 point 3 states that a child in conflict with the law is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old who is suspected of committing a crime from the level of investigation, prosecution and trial.

Prior to the enactment of SPPA, Law Number 3 of 1997, Juvenile Courts regulates the arrangements regarding juvenile justice, aimed at guarding and protecting children in conflict with the law by providing opportunities through coaching so that they can become independent, responsible and useful human beings for families and communities. However, in the implementation, children are treated as an object, and this violates the children's rights. Every child who is involved with the criminal justice system as a perpetrator has to be met with the principles of non-discrimination, survival and respect for the views of the child.

The existence of SPPA is a form of renewal of the criminal law against the Juvenile Court Law which brings changes to the child punishment system. SPPA regulates the substance of children's placement who undergo the judicial process at the Special Child Development Institution, not in a correctional institution. Prior to the existence of SPPA, the Juvenile Court Law guides the process of juvenile criminal justice in proceedings. With the renewal of the diversion regulation, which is a judicial process outside the formal court, the policy formulation relates to the authority of law enforcers in the investigation process, the prosecution process and the examination process in court. The regulation of diversion has an effect on the renewal of the criminal law enforcement system for children. In SPPA, there are strict arrangements regarding restorative justice and diversion to prevent children from

being judged so that they can avoid stigmatization of children who are in conflict with the law and are accepted back fairly by their social environment. In SPPA article 1 point 6 states that restorative justice is the settlement of criminal cases by involving the perpetrator or victim and other related parties to jointly seek a fair solution by emphasizing restoration to its original state. In this case coaching is carried out with a child-friendly pattern, not with retaliation or punishment. This is what distinguishes the provisions in the Juvenile Court Law and SPPA in carrying out legal proceedings against children.

Diversion is a term used to describe intervention approaches that redirect youths away from formal processing in the juvenile justice system, while still holding them accountable for their actions. SPPA regulates the obligation of law enforcers to seek diversion at all stages of the legal process. At the moment, diversion is considered to be the best and most effective way of solving child cases that is recognized internationally. At first, this thought came from children who deal with conflict because of several factors other then the children themselves such as society, education, family, friends, etc. Another reason of diversion is also to provide opportunities for lawbreakers to become good people again through non-formal channels involving community resources. Diversion seeks to provide justice to children who have already committed a crime.

Diversion arrangements are expected to reduce the number of children who involve to the criminal justice process, resolve children's cases by prioritizing restorative justice and diversion, increase public participation in handling children in conflict with the law and increase the role of advocates in child cases in court. There have been many criticisms over several weaknesses with the enactment of the Juvenile Court Law and because of that the Juvenile Court Law is no longer appropriate and should be reformed which then came Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Based on this background, this author is interested in examining how criminal law reform is carried out through a diversion process for children who are in conflict with the law in order to achieve restorative justice?.

## B. RESEARCH METHODS

This author uses a normative juridical research method which is carried out by examining library materials by analyzing various statutory provisions. This research is descriptive-analytical which provides a detailed and systematic explanation of a situation and symptoms that are studied based on legislation.

## C. RESULT AND DISCUSSION

The rise in cases of violations of children's rights occurs in line with the increase in critical issues such as poverty, injustice, access to pornography, national disintegration, drug trafficking syndicates to violation cases that have not been disclosed to the public. The implementation of child protection in Indonesia must prioritize the roles of parents, family, community and government in one unified vision as an effort to make Indonesia becomes a child-friendly country.

The quality of protection for children should have equality to that of adults because everyone has the same position before the law. Arif Gosita states that child protection is an effort to support the implementation of children's rights and obligations. Therefore, a child who obtains and maintains the right to grow and develop positively will receive fair treatment and avoid harmful threats. Child protection in the form of a legal action that has legal consequences that can prevent children from parents arbitrary actions. The process of justice for children often loses its main meaning which is as a mechanism that must end in order to provide the best interests of the child.

In the theory of restorative justice, the process of resolving acts of violations of law that have occurred is carried out by bringing together both the perpetrators and victims. During the meeting, the mediator provides an opportunity for the perpetrators to provide a clear picture of the actions that have been taken. Restorative justice is a process of all parties involved in a particular crime sit together to solve the problem. In the development of criminal law, there has been a paradigm shift in the philosophy of juvenile justice, which initially was retributive justice which emphasized retaliation for perpetrators and changed to rehabilitation and finally to restorative justice which emphasized more on the recovery of

victims, perpetrators of crimes and society. The shifting of settlement in child cases outside the formal channels of justice through diversion stipulated in international children's instruments has juridical implications for Indonesia to accommodate the provisions of diversion in children's laws and regulations in Indonesia.

In order to create the concept of diversion as an instrument towards restorative justice for children based on SPPA, settlement of criminal cases involves perpetrators, victims, families of perpetrators or families of victims and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliate towards perpetrators. Diversion is a form of protection for children in conflict with the law. Settlement of child cases in the juvenile justice system since the enactment of SPPA is far more different from when the Juvenile Court Law was still in force. The Juvenile Court Law does not recognize the process of diverting the settlement of cases involving children (perpetrators) outside juvenile justice, which has so far gone through the trial process. When a child is processed both at the level of investigation, prosecution and when a child is examined at a district court, diversion must be carried out during this examination, although there are restrictions that diversion can be carried out for a sentence of less than 7 (seven) years and not a repetition of a crime.

Diversion in SPPA is one of the distinguishing features from the previous regulations. The concept of diversion itself in Indonesia is a new thing since the existence of SPPA. In carrying out SPPA, law enforcers are not the only one who obligate to participate, communities can also participate in child protection ranging from prevention to social reintegration of children so then this will not be the obligation of law enforcers but including the community is given the space and movement to actively participate in carrying out the orders of the law. Some examples of community participation during the implementation of the diversion process can be attended by community representatives (community leaders) and can provide opinions if requested by the facilitator during investigations, prosecutions and during proceedings in court. The application of diversion in SPPA brings good news for legal developments in Indonesia because diversion reduces children (perpetrators) to prison sentences and to aim at achieving peace between victims and children, resolving child cases outside the judicial process, preventing children from being deprived of independence, and this to encourage the community to participate and embed a sense of responsibility towards

children. The implementation of restorative justice is to implement diversion in resolving cases of children who are in conflict with the law. The aim of establishing the Juvenile Criminal Justice system is as a form of criminal law renewal against the Juvenile Court Act, this is because the Juvenile Court Law uses a formal juridical approach that prioritizes retaliation and can have a negative impact on children in the form of stigma or labels that place children's status in society as ex-convict. This shows that so far the handling of juvenile offenders by law enforcement officials has been through the penal route that has been going on so far. Children who are involved in the criminal justice process receive bad treatment and even worse treatment than adults who are in the same situation. The majority of children who commit crimes experience acts of violence during the criminal justice process.

The diversion process is carried out through deliberations involving parents or the guardians of the child, social counselors and professional social workers. The restorative justice approach itself must be prioritized in every diversion process. The juvenile justice process will continue if the diversion process does not result in an agreement. As long as the diversion process lasts until the implementation of the diversion agreement, social counselors are required to provide assistance, guidance and supervision. If the diversion agreement is not implemented in accordance with the time specified, the social adviser must immediately report it to the responsible official, namely the direct superior of the official conducting the inspection. The process of restorative justice provides protection and opportunities for the perpetrators to be directly responsible to the victims as well as them to society. In practice, all related parties are brought together to reach an agreement on the actions of the perpetrator.

Diversion is a renewal of criminal law based on SPPA due to:

There is a legal vacuum in implementing a rule. SPPA still regulates in general regarding several provisions, therefore an implementing regulation is needed to comprehensively explain a rule in the law.

There are no rules that bind law enforcement officials as a whole, for example the Supreme Court has issued a Perma, however these technical rules only apply in the general court environment and problems arise if there are differences between diversion in the police, prosecutors and courts.

The juvenile justice system is a new system introduced in the criminal justice system in Indonesia. The absence of implementing regulations to make SPPA effective will have an impact on delays in implementing SPPA effectively which has an impact on threatening the rights and interests of children.

The application of diversion in child cases is a very decisive solution. The use of violence in carrying out diversion can make the implementation of diversion fail at every level. Officers must demonstrate the importance of obeying the law by using a persuasive approach and avoid arrest by using force and coercion while carrying out diversion. Diversion is important in the process of resolving child cases based on two factors which are children who are considered not to understand their mistakes so that a reduction in punishment is appropriate and that punishment for children must be differentiated from adults. The implementation of diversion must be in accordance with the main principles by taking persuasive actions to provide opportunities for children to fix their mistakes. The expected results by implementing diversion using a restorative justice approach are reducing the number of children who are arrested, detained and sentenced to prison, eliminating stigma and returning children to be fully human so that they are useful and accepted in society.

## D. CONCLUSION

Diversion application is a renewal of criminal law for the realization of restorative justice by protecting and providing justice to children who are in conflict with the law while still holding them accountable for their actions. Diversion is not an attempt of reconciliation between the child (perpetrator) and the victim or their family, but a form of punishment against children who are in conflict with the law in an informal way. The implementation of diversion with a restorative justice approach is a transfer of the settlement of children's cases from the criminal justice process to a process outside a fair criminal justice with an emphasis on restoring back to its original state and not being punitive.

## E. SUGGESTIONS

Socialization and education regarding diversion and restorative justice to the community.

The government is expected to consistently provide diversion facilities and infrastructure in order to achieve guarantees of legal protection for children as the nation's successor and the diversion is carried out as well as possible with the permission of the families of the perpetrators and victims so that the implementation of diversion can create restorative justice. The important role of parents and families in providing education, supervision in shaping children's character so that children's rights are protected and not being neglected then there will be no more children dealing with the law.

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# SIMULTANEOUS ELECTION STRATEGY FROM THE POLITICAL PERSPECTIVE OF NATIONAL LAW

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**Abstract**

General election is a democratic party that must be held by a democratic country. Indonesia, as a democratic country, has carried out the general election as a regular activity conducted every five years. Elections in Indonesia are always followed by the making of legal instruments related to the elections. This study aims to describe simultaneous election strategy from the political perspective of national law. The research used juridical-normative method by using secondary qualitative data collection. The research results showed that legal politics is a part of the legal studies which consist of two disciplines, namely political science and legal science. The weakness in the implementation of simultaneous election general is the indication of money politics as well as campaigns and elections manipulations. However, there are advantages of simultaneous general elections; that is, saving money for the conduct of elections and making it easier for the citizens as they do not need to go to the voting booth several times. The strategy for implementing simultaneous elections in Indonesia in the political perspective of national law in the context of the community's political participation is by renewing the general election system in Indonesia, reorganizing simultaneous general elections, and improving community political participation

***Keywords:*** *General Election, National Law Politics*

## A. INTRODUCTION

General elections are also one of the most basic means of channeling the citizens' rights. Since the Independence Day in 1945, Indonesia has held general elections eleven times, starting from the first General Election in 1955 until the 2014 General Election. In order to implement the principle of people's sovereignty led by wisdom in deliberation and representation, it is necessary to establish a consultative body and a people's representative institution whose members are elected through elections that are held democratically and transparently or openly. General elections are a means of democracy to realize a state government system that is sovereign by the people as mandated by the 1945 Constitution.

Democracy places humans as owners of sovereignty which is then known as the principle of popular sovereignty. The democratic process is also realized through election procedures to elect representatives of the people and other public officials. The state government that is formed through these elections is that which comes from the people, is carried out in accordance with the will of the people and is dedicated to the welfare of the people. The government formed through elections will have strong legitimacy from the people. This rationale is an affirmation of the implementation of the spirit and soul of Pancasila (the State Five Principles) and the 1945 Constitution.

## B. Formulation of the problem

1. What is the political perspective of the national law regarding simultaneous elections in Indonesia?
2. What are the advantages and disadvantages of holding simultaneous elections in Indonesia?
3. What is the strategy for implementing simultaneous elections in Indonesia in the political perspective of national law?

## C. Objectives

This paper is intended to explain the nature of science, as well as the development and application of science in the essence of the political perspective of national law related to simultaneous elections in Indonesia.

## D. Research methods

This legal research used juridical-normative method by collecting secondary qualitative data in the form of primary and secondary legal materials. Primary legal materials come from statutory regulations while secondary legal materials are expert opinions in several literature sources.

## E. Discussion

1. Political Perspective of National Law Regarding Simultaneous Elections in Indonesia

Legal politics is included in the legal science. According to Mahfud MD, legal politics is defined as a legal policy that will be or has been implemented by the government. At the empirical level, he tries to explain the nature of legal politics by directly using the legal politics approach in his research. He sees law from the juridical-socio-political side, namely presenting the political system as a variable that influences the formulation and implementation of law. He points out that law cannot be explained through a legal approach alone but must also use a political approach (Mahfud MD, 2012).

National legal politics was first officially made by the founders of the Indonesian nation, namely Pancasila which reflects the cultural diversity and customs of the nation in the unitary state of the Republic of Indonesia. Pancasila is the principle that guides and directs the formation of the 1945 Constitution, other laws and regulations. Pancasila is the fundamental norm that builds legal norms under it in stages, so that the lower legal norms do not conflict with the higher ones. Pancasila is also a legal ideal (rechtsidee) in the life of the Indonesian nation. National legal politics is a tool and means used by the government to form a national legal system, as explained by Mahfud MD that legal politics is a legal policy for enacting law so that it can achieve the state goals (Mahfud MD, 2012).

Legal politics of General Election regulations in Indonesia from the Perspective of Law Number 7 of 2017 concerning General Elections in the discussion of legal politics will certainly not be separated from discussions on the definition of legal politics. Until now, there is no single definition related to legal politics. Almost every expert who focuses on the study of legal politics has his own definition of the meaning of legal politics. The definition or understanding of legal politics as described by Moh. Mahfud MD essentially states that legal politics will not be separated from the national ideals of the State of Indonesia realized through legal policy. Moh. Mahfud MD, apart from discussing legal politics, offers criteria related to legal politics. There are three criteria regarding legal politics, namely:

1) State policy in enforcing the law to realize the ideals of the state

It has been explained above that to recognize the legal politics of general elections in Indonesia from the perspective of Law Number 7 of 2017 concerning General Elections, it is necessary to identify the criteria of legal politics. The first criterion is regarding state policies in enforcing laws or legal policies made to achieve the goals of general elections in Indonesia. The concerned legal policy is regarding regulations related to general elections. Viewing the history of the Indonesian nation since the Independence Day until now, there have been many legal policies made to achieve the goals of the general election.

Policies related to general elections will change again after the Constitutional Court Decision Number 14/PUU-XI/2013. In essence, the Constitutional Court's decision ordered the conduct of simultaneous elections in 2019. Consequently, the state must issue a new legal policy in order to realize a simultaneous general election (Sodikin, 2014). Therefore, the government together with the parliament, in this case the House of Representatives called DPR, issue a legal policy to respond to the decision of the Constitutional Court. The legal policy issued by the state (the Government together with the DPR) was Law Number 7 of 2017 concerning General Elections. The law is a legal policy issued by the state in response to the decision of the Constitutional Court. In addition, Law Number 7 of 2017 concerning General Elections was also made to improve and integrate the general election system in Indonesia.

2) The background of the legal policy being enforced

The second criterion to identify the legal politics of the general election system in Indonesia is by knowing the background of making legal policies. The legal policy referred to in this case is Law Number 7 of 2017 concerning General Elections. Law Number 7 of 2017 concerning General Elections was not born without a cause. Many backgrounds have inspired the birth of Law Number 7 of 2017 concerning General Elections. Viewing the considerations of Law Number 7 of 2017, there are several reasons for making the Law. First, Law Number 7 of 2017 concerning General Elections was issued to achieve the state goals. Second, strengthening the democratic state administration system. Third, the law was made in order to realize a fair and integrated general election. Fourth, the law was passed as an instrument that guarantees the regulation of the general election system. In addition to these four reasons, the preamble still provides two reasons behind the making of Law Number 7 of 2017 concerning General Elections. Fifth, the law has the aim of providing legal certainty for the implementation of general elections. Besides, it can be used as an instrument to prevent duplication in general election arrangement. Sixth, the last reason stated in the preamble is to create an effective and efficient general election.

3) Law enforcement of applicable legal policies

The discussion of law enforcement of the implemented policies cannot be separated from law enforcement of Law Number 7 of 2017 concerning General Elections. This is because what is meant by the legal policy applied in this case is Law Number 7 of 2017 concerning General Elections. Law enforcement is very important without which the legal policies issued cannot be carried out properly. Satjipto Rahardjo (2009) argues that law enforcement can occur if the law has achieved its objectives. This means that Law Number 7 of 2017 concerning General Elections can be said to have been enforced if the objectives of the law have been achieved. The general purpose of the General Election is the transfer of (1) power in a constitutional manner; (2) implement people's sovereignty in accordance with the constitutional mandate; and (3) fulfill people's human rights. The objectives of Law Number 7 of 2017 concerning General Elections are: (a) strengthening the democratic state administration system; (b) realizing elections that are fair and with integrity; (c) ensure consistency in the regulation of the electoral system; (d) provide legal certainty and prevent duplication in electoral arrangements; and (e) realizing effective and efficient elections.

2. Weaknesses and Strengths of the Implementation of Simultaneous Elections in Indonesia

Simultaneous elections were originally expected to improve the implementation of elections to be more efficient. In the Constitutional Court's Decision Number 14/PUU-XI/2013, the Constitutional Court is of the view that simultaneous elections will reduce time wastage and suppress horizontal conflicts or friction in society during the election period. In addition, through simultaneous elections, citizens can exercise their right to vote intelligently and efficiently. In other words, simultaneous elections will make the democratic process in elections clearer of certain interests, especially those related to political lobbies or negotiations carried out by political parties before determining the President-Vice President running mates which is often carried out based on temporary interests, not for the benefit of the nation and state in general and in the long term.

1. Disadvantages of Simultaneous Elections

a. The emergence of indications of money politics

The potential for money politics at this stage is fraud/intentional misconduct to mobilize votes for certain candidates. Handling money politics can be started by eliminating the root causes of money politics and the conditions that make money politics develop and technical strategies to solve them. The main factors causing the emergence of money politics can be seen from various aspects, both in terms of demographics and socio-economics, voting behavior, political clientalism, monetary and electoral systems.

b. Campaign and election manipulation

Theoretically, holding elections simultaneously between various elections, such as legislative elections with presidential elections, legislative elections with referendums on public issues, as well as all kinds of elections for public positions and important policy issues, are usually closely related to the electoral cycle, the utility of the mechanical effect of elections, government regimes and party models.

c. People feel confused about legislative and executive candidates

By holding elections simultaneously, the public will elect several legislative or executive candidates. Thus, it will be burdensome for people who do not know the basis of the election being carried out.

2. Advantages of Simultaneous Elections

a. Saving funds for the implementation of the Election

Simultaneous implementation of elections is realized to achieve elections that are efficient, effective, and can reduce the use of state funds to a minimum.

b. People don't have to repeat going to voting booth

With the simultaneous election system, the political party system is required to simplify with a simple multi-party system, so that people have to go to the polling station only once and vote simultaneously.

3. Strategy for Implementing Simultaneous Elections in Indonesia in the Perspective of National Law Politics

One of the main pillars in any democratic system is the existence of a mechanism for channeling people's opinions on a regular basis through general elections held regularly. General elections are also one of the most basic means of channeling the citizens' rights. As described above, the government formed through elections will have strong legitimacy from the people. The purpose of holding elections is to realize the order of state life as referred to by Pancasila and the 1945 Constitution, as well as the ideals of the Proclamation of Independence on 17 August 1945 and the development of law. Legal development is an integral part of national development that cannot be separated from development in other fields. Legal development is an effort to uphold justice and truth, protect the community, and guarantee public order in a state of law based on Pancasila and the 1945 Constitution.

The general election aims to elect representatives of the people to sit in deliberation institutions and people's representative institutions, form a government, continue the

struggle for independence, and maintain the integrity of the Unitary State of the Republic of Indonesia (hereinafter referred to as the Unitary State of the Republic of Indonesia). Democratic general elections are a means to uphold people's sovereignty and to achieve state goals as mandated in the Preamble to the 1945 Constitution. Therefore, elections must not cause damage to the joints of the life of society, nation and state because elections are a system to determine the people's choice of representatives at both the central and regional levels.

Indeed, the expected implication from the simultaneous election is that there will be efficiency in the implementation of the election along with the effectiveness that follows it, which can reduce the state budget spending in elections. With simultaneous elections, in the end political parties are required to reduce the political party system to a simple multi-party system, so that the level of relevance between the implementation of the electoral system and the political party system can go together with strengthening the presidential system, which ultimately has an impact on the conception of government policies that win full and solid supports in the parliament on the administration of government in Indonesia. In addition, the election results with a simultaneous system can be seen as relevant between the elected legislative members and the elected president in the contestation that strengthens the presidential system. The president as the spearhead of the executive can carry out his functions in the presidential system in a systematic and correlative manner with more significant integration in cooperation with the legislature. The Representatives can be an amplifier in the presidential system for policies implemented by the government. The president can exercise his presidential authority with very strong support in the parliament as a support for the government with the main tasks and functions as legislators. Therefore, the simultaneous electoral system must also be supported by a simple multi-party system as an important component in the implementation of elections.

If the timing of the presidential election is synchronized with the legislative election, the presidential election will ultimately affect the legislative general election. That is, voters will choose the president and political parties that support the president. Simultaneous elections can also be designed to provide a spill over effect from one election to another. Usually, the consideration is to influence the outcome of the presidential election by using the result of the legislative election as a factor in determining the winner. With the influence of a certain

party's vote on the condition that the presidential candidate wins that party, in the end one type of election will have a mechanical effect on the results of other elections with the same party background. The party with the most votes can lead its presidential candidate to occupy the presidency even though the result in the presidential election is not necessarily the best. In certain variants, mechanistic effects are expected to occur within a certain time span, as is commonly referred to as the coattail effect as described above.

1) Renewal of the General Election System in Indonesia

The dynamics of transition and consolidation experienced by the Indonesian people in that era, among others, the debate over the new format of the General Election in the transition era and the representation system in general, began with changes in the Indonesian constitutional system. Changes in the Indonesian state administration system began with the Amendment to the 1945 Constitution. One of the fundamental changes in the 1945 Constitution is the provision in Article 1 paragraph (2) of the 1945 Constitution which states that "Sovereignty is in the hands of the people and carried out according to the Constitution ". This provision is different from the provision in Article 1 paragraph (2) of the 1945 Constitution before the amendment which stated, "Sovereignty is in the hands of the people, and is carried out entirely by the People's Consultative Assembly". The meaning of sovereignty in the hands of the people is that people have sovereignty, responsibilities, rights and obligations to democratically elect leaders who will form a government to manage and serve all levels of society and elect representatives of the people to oversee the running of the government. The embodiment of people's sovereignty is carried out through elections as a means for the people to elect leaders through the Presidential and Vice-Presidential elections who are elected in one pair directly and elect representatives of the people, namely members of the People's Representative Council (DPR), Regional Representatives Council (DPD), and the People's Representative Council. The Regional Representatives Council (DPRD) will carry out the functions of supervising, channeling the people's political aspirations, making laws as the basis for all parties in the Republic of Indonesia in carrying out their respective functions, as well as formulating revenue and expenditure budgets to finance the implementation of these functions.

As the main pillar of democracy, elections are the best means and momentum for the people, in particular, to channel their political aspirations, to elect their best representatives

in the legislature and the President/Vice President peacefully. The successful implementation of elections and the institutionalization of a democratic system requires the nation's ability to manage politics and government in accordance with the mandate of the founding fathers of the nation. Even though political rights and civil liberties have been guaranteed by the constitution and the political participation of the people is getting wider, at the empirical level, the general election is still not able to deliver the Indonesian people to true sovereignty. The direct election of the President and Vice President can be said to be more democratic when compared to the appointment of the President and Vice President by the People's Consultative Assembly (MPR) as mandated in the 1945 Constitution before the Amendment, because the implementation mechanism involves the people directly, the President and Vice President in this case get a direct mandate and real support as a form of direct interaction between voters and the elected.

2) Reorganizing Simultaneous General Elections

Elections are an integral part of a democracy. The foundation of the general election in Indonesia is Pancasila democracy which is expressly stated in the Preamble to the 1945 Constitution. Pancasila is the main basis for the agreement to establish the nation and is part of the Preamble to the 1945 Constitution which cannot be changed because, apart from being a modus vivendi, it can be considered as a state "birth certificate" which guarantees the continuity of the Indonesian nation and state with its integrity or integration that is always solid. The Constitution as the basis for the rules of the political game regulates a democratic constitutional mechanism which also guarantees the integration of the nation and state. Democracy is channeled through elections or the election of certain public officials in an honest and fair manner.

Simultaneous implementation of elections is combining the Legislative Elections (Election for Members of the DPR, DPD, and DPRD) and the Election of the President and Vice President. In this new election system owned by Indonesia, there are several things that need evaluation because it was the first held in 2019. Simultaneous elections were held based on the results of the Constitutional Court Decision which granted Effendi Ghazali's request with the Community Coalition for Simultaneous Elections against Law Number 42 of 2008 concerning the General Election of President and Vice President. Some of the considerations of the Constitutional Court in the said Decision, as mentioned above, are that the

Presidential and Vice-Presidential Election which is held simultaneously with the Legislative Election will reduce time wastage and reduce conflicts or horizontal friction in society. In addition, the right of citizens to vote intelligently in this simultaneous election is related to the citizens' rights to build a map of checks and balances of the presidential government with their own beliefs.

3) Community Political Participation

The process of voicing people's opinions and the importance of guaranteeing its implementation in a democratic country is one of the characteristics of a democracy as follows:

a. The existence of a fair and honest general election system to elect representatives of the people (parliament) and head of government (president);
b. Freedom of the Press as a medium of control of the power of freedom to obtain information and knowledge;
c. Availability of an autonomous association system (political parties, NGOs);
d. The right to vote for all adult citizens and the right to sit in public positions

To ensure the implementation of the above principles, the electoral system that is built certainly must first provide political education for the people. Ignoring the people's political education will only result in community participation being limited to the voting process, otherwise not. Furthermore, this will result in poor quality of government because the people (read: voters) are not equipped with sufficient knowledge about the representatives of the people they will elect to represent their interests. The phenomenon of voters' ignorance of who they choose, how competent they are, their track record is symptomatic in every election. This makes the voting community always become a swing voter-floating mass who is an "easy target" for the party, even though there are voters who are already intelligent, who vote with knowledge, based on ideology.

## F. Conclusion

The electoral system in Indonesia has undergone a change, namely that previously the presidential and vice presidential elections were held with the elections for members of the DPR, DPD, and DPRD held at different times, now they are held at the same time or simultaneously. The implementation of simultaneous elections for President and Vice President and Elections for members of the DPR, DPD, and DPRD are more efficient, so that the financing for the implementation of the General Election will save more state money (State Revenue and Expenditure Budget) originating from taxpayers and the results of exploitation of natural resources and other economic resources. This can increase the state's ability to achieve state goals as mandated in the Preamble to the 1945 Constitution, which, among other things, promote the general welfare and the greatest prosperity of the people. In addition, the Presidential and Vice-Presidential Elections which are held simultaneously with the elections for members of the DPR, DPD, and DPRD also reduce the wastage of time because they are not in accordance with the mandate of the 1945 Constitution, namely that general elections are held in a direct, general, free, confidential, honest, and fair manner every five years.

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# APPLICATION OF RESTORATIVE JUSTICE IN THE CRIMINAL SYSTEM IN INDONESIA

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**Abstract**

This study was written to find out what types of Restorative Justice are and to find out whether the approach can be applied in Indonesia. This research uses literature study method. The literature search has several characteristics. First, this research deals directly with textual and numerical data, not with scenes and witnesses in the form of events, people, or other objects. Second, the data has been packaged so that researchers do not need to do anything other than work directly with the sources already in the library. Third, the data library is generally a secondary data source. Restorative justice is a court that prioritizes compensation for losses caused by criminal acts. Several types of practice the Restorative Justice process. Restorative Justice which is suitable for use in Indonesia with the Victim Offender Mediation approach, in Indonesia itself is implemented in the juvenile criminal justice system which is regulated in Law No. 11 of 2012. The application of Restorative Justice in Indonesia requires awareness and understanding of the community. Restorative Justice is suitable for use in Indonesia with this approach. Victim Offender Mediation, in Indonesia itself is carried out in the juvenile criminal justice system which is regulated in Law No. 11 of 2012. In Indonesia, in the future, Restorative Justice can be applied to crimes with a criminal penalty of not more than 5 years, crimes that have no impact on safety soul and on the crime of dignity.

***Keywords :*** *Application, Restorative Justice*

## A. Introduction

The Criminal Code (WvS) as Ius Constitutum is a legacy of the Dutch colonial era, while the Criminal Code/WvS as Ius Constitutum is a legacy of the Dutch colonial era left behind by the progress of people's lives. The enactment of the Criminal Code (WvS) to date is based on article 2 of the transitional regulation of the 1945 Constitution which provides legitimacy to the formal juridical application of criminal law in Indonesia, so why is the Dutch Criminal Code in Indonesia fulfilled. Regarding the Criminal Code (WvS) which is enforced on the principle of deliberation for consensus and is legally valid in Indonesia, its enforcement is based on Law No. 1 of 1946 which is based on applicable legislation. The criminal law of imprisonment still dominates in Indonesia compared to other types of criminal law. Even in substantive criminal law, the type of imprisonment is the most common type of crime threaten.

Several main types of offenses in the Criminal Code consist of four types, namely capital punishment, imprisonment (with life imprisonment and probation), imprisonment and fines. In Indonesian material criminal law, there are six main types, namely capital punishment, imprisonment (consisting of life imprisonment and temporary punishment), imprisonment, fines, life imprisonment, special criminal supervision for children in accordance with the legal basis of the Juvenile Justice Law no. . 3 years 1997.

In Widodo Barda Nawawi's book, explaining that the threat of imprisonment, based on the Criminal Code of other countries and the Indonesian Criminal Code, is very common. In Indonesian criminal law, simple and alternative threats to liberty account for 98% of all regulated crimes. About 92% of all crimes result in imprisonment under non-criminal law.

If you look at the number of confinement crimes in existing criminal cases compared to other types of criminal acts, namely in Article 10 of the Criminal Code, the number of confinement crimes convicted is in line with criminal acts that continue to occur. It has nothing to do with because crime is increasing. Is imprisonment an ineffective punishment?

Answering the question above regarding criminal penalties, the prison law in criminal cases is not effectively implemented, because there is no guarantee when the prisoner comes out whether it will be better or worse. Because in prisons, prisonization can happen. Prisonization itself is the process of absorbing the way of life in prison. This process is through

learning during interactions with fellow prisoners. This is one of the reasons why someone who has been released from prison commits a crime (recidivist).

In addition to prisonization, the classic problem faced by correctional institutions with the implementation of imprisonment as the main crime (primary crime) is overcapacity.

The main crime in Indonesia is the imposition of imprisonment, but actually imprisonment is not the best solution in resolving some cases, especially with cases where the "damage" felt by the victim and the community can still be repaired until the "damaged" condition can turn into an initial condition, and can also eliminate the bad consequences of imprisonment. In dealing with crimes that can be restored, the paradigm of punishment is known, namely restorative justice, in which perpetrators are encouraged to harm the victims, their families and the community.

In Indonesia, the concept of Restorative Justice has been implemented in the juvenile criminal justice system based on Law No. 11 of 2012 which explains the juvenile justice system, this regulation is for children, namely for children who are in conflict with the law. This rule applies the Diversion approach to resolve child criminal cases, and also the concept of restorative justice where all stakeholders, especially the community, are involved, the most important stakeholder here is the community because to help the process of restoring conditions so that more

good. This law is a legal basis that is fair to all parties, and most importantly for children who are in conflict with the law and during their development period, children need attention, affection, and guidance from those closest to them in order to form a moral, intelligent, and responsible character for the family. society and state.

## B. Method

This research uses literature study method. The literature search has several characteristics. In this study directly dealing with textual and numerical data. Second, data are available from several sources. Third, library data in general are secondary data sources, namely researchers get secondary data rather than data obtained directly in the field.

## C. Discussion result

Restorative Justice and its approaches

Restorative justice is a court that prioritizes compensation for the losses caused by the crime committed by the perpetrator. Restorative justice deals with criminal acts with the involvement of victims, individuals and communities associated with using dialogue and mediation to reach consensus in resolving criminal cases fairly by victims and perpetrators and their families.

Several types of Restorative Justice process practices;

- Victim-offender Mediation and Dialogue is the discovery of perpetrators and victims, but it is also possible that there are participants who other.
- Family group conferencing, which brings together victims with their families and perpetrators, this approach is broader than VOM and can be used in cases of children who must involve parents and professional
- Peacemaking circles are an alternative way to criminalize if the perpetrator is aware of his actions and is willing to take responsibility.
- Community Reparative Board; This approach is implemented on adult perpetrators who commit non-violent crimes, as well as child crimes. The institution that handles it consists of citizens who have been trained to carry out their duties openly, face to face with the perpetrators on court orders. The aim is to obtain an agreement with the perpetrator and monitor its compliance, as well as report to the court
- Financial compensation to victims. Compensation for losses in the form of money suffered by the victim due to the actions of the perpetrator who must be held accountable. For victims, this is evidence of the fair functioning of the criminal justice system. Studies in the United States have shown that these corrective actions lead to a reduction in recidivism. However, this can also be arranged through informal procedures. Failure to pay a refund will result in the case being taken to court.
- personal service to victims; where compensation is the responsibility of the perpetrator, compensation and other assistance are the responsibility of the state and society.

- Community work; often referred to as 'restorative justice practice', is an alternative form of punishment based on public order (prison) and is voluntary.
- Written or verbal apologies to the victim or other affected person. One of the conditions for carrying out the reparation process is for the perpetrator to admit his guilt and show remorse by sending a written apology to victim
- Victim or Community Impact Panels (VIS); for victims of crime to tell the perpetrators to the police, and others about the impact of crime on the lives of victims and their families, friends, and those around them. Its purpose is to help perpetrators and others understand the physical, emotional and economic impact of crime on victims and Public.
- Statement on Resolution and Impact of Community Conflict or Environment.
- Empathy, this is to encourage the perpetrator to remain aware of the impact of his crime on the victim. Empathy means understanding what the victim feels with the same experience as victim.
- Dispute resolution training in prisons. Conflict resolution is a skill or ability that can be trained with prisoners as part of the Restorative Justice process.

**Application of Restorative Justice in Indonesia**

Restorative Justice which is suitable for use in Indonesia with the Victim Offender Mediation approach, in Indonesia itself is implemented in the juvenile criminal justice system based on Law No. 11 of 2012. With child perpetrators or victims, both children can be initiated by the police or perpetrators or the perpetrator's family in order to get a win win solution. The settlement can be done with a community panel, in the Indonesian context, many roles of customary law still exist in Indonesia

The most basic content of the law is restorative justice and strict diversion rules with the aim of keeping children away from the legal stage and avoiding it so that there is no stigma against children who violate the law. So, to achieve this, all stakeholders are needed. This process should aim to achieve restorative justice for children and victims alike. John Braithwaite argues, the concept of "restorative justice" (Braithwaite: 1989) refers to the informal dispute resolution process (without going through a formal court process) carried

out by the New Zealand Māori community. This is a common Maori practice recognized as legal by the government of Zealand New.

Criminal law has the function of protecting, protecting the state, society and individuals. In the Criminal Code, there are many rules that protect individuals, namely safety, namely life and body, property or property rights, dignity (good name), so there is a crime of defamation.

In Indonesia in the future, Restorative Justice can be applied to crimes with a criminal threat of not more than 5 years, because if it is more than 5 years it shows the seriousness of the crime. Crimes do not affect the safety of life such as fraud, embezzlement and theft. For crimes of dignity (good name) can also use punishment with a Restorative Justice approach because this is a complaint offense, meaning that if the person who is defamed does not want to complain, it cannot be processed.

For the implementation of Restorative Justice in Indonesia, public awareness and understanding is needed to understand that sentencing does not have to be in prison, because in prison also cannot guarantee prisoners can be better and can get worse.

## D. Conclusion

Restorative justice is a court that prioritizes compensation for the losses caused by the crime committed by the perpetrator. Restorative justice deals with criminal acts with the involvement of victims, individuals and communities associated with using dialogue and mediation to reach consensus in resolving criminal cases fairly by victims and perpetrators and their families. Victim-offender Mediation and Dialogue is where the perpetrators and victims are found, but there may also be other participants. Restorative Justice which is suitable to be used in Indonesia with the Victim Offender Mediation approach, in Indonesia itself is carried out in the juvenile criminal justice system which is based on Law No. 11 of 2012. In Indonesia, in the future, Restorative Justice can be applied with crimes with criminal threats of no more than than 5 years, the crimes have no impact on the safety of life and on the crimes of dignity.

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Proceedings of the International Conference on Law, Social Sciences, Economics, with the topic: The Development of Economic and Social Law in an Educational Atmosphere Towards a Social Revolution 5.0. This book contains the proceedings of the International Conference on Law, Social Science, Economics, on September 24, 2022 in Indonesia. This conference was held in collaboration between those organized by: Students of Batch XII and the Law Study Program of the Doctoral Program of the University of 17 August (UNTAG) Semarang, Indonesia. The papers from the conference are collected in a proceedings book entitled: Proceedings of The International Conference on Law, Social Science, Economics, 2022. The presentation of such a conference covering multi-disciplines will contribute a lot of inspiring input and new knowledge about current trends in the field of Law, Social Sciences, Economics. As such, it will contribute to the next generation of young researchers to produce innovative research findings. It is hoped that scientific attitudes and skills through research will encourage the development of knowledge produced through research from various scholars in various regions. Finally, we would like to express our deepest gratitude to all the colleagues of the steering committee for their cooperation in managing and organizing the conference. Hopefully, these seminars and conferences can continue in the coming years with more insightful articles from inspiring research. We would also like to thank the invited speakers for their invaluable contributions and for sharing their vision in their talks. We look forward to seeing you again at the next international conference.

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